



Senate Fiscal Agency
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BILL ANALYSIS



Telephone: (517) 373-5383
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Senate Bill 588 (as enrolled)
Senate Bill 589 (as enrolled)
Senate Bill 592 (as enrolled)
Senate Bill 593 (as enrolled)
Senate Bill 594 (as enrolled)
Senate Bill 596 (as enrolled)
Senate Bill 597 (as enrolled)
Senate Bill 598 (as enrolled)
Senate Bill 711 (as enrolled)

PUBLIC ACT 367 of 1996
PUBLIC ACT 275 of 1996
PUBLIC ACT 276 of 1996
PUBLIC ACT 301 of 1996
PUBLIC ACT 302 of 1996
PUBLIC ACT 309 of 1996
PUBLIC ACT 303 of 1996
PUBLIC ACT 304 of 1996
PUBLIC ACT 266 of 1996

Sponsor: Senator Robert Geake (Senate Bill 588) Senator
Joanne G. Emmons (Senate Bill 589) Senator
Christopher D. Dingell (Senate Bill 598) Senator
Michael J. Bouchard (Senate Bill 592) Senator
Jon Cisky (Senate Bills 593 and 594) Senator
Joel D. Gougeon (Senate Bill 596) Senator
Loren Bennett (Senate Bill 597)
Senator John J.H. Schwarz, M.D. (Senate Bill 711)

Senate Committee: Families, Mental Health and Human Services (except Senate Bill 711)
Health Policy and Senior Citizens (Senate Bill 711)

House Committee: Judiciary and Civil Rights (except Senate Bill 711)
Insurance (Senate Bill 711)

Date Completed: 7-16-96

RATIONALE

In recent years, many people have voiced complaints about the Friend of the Court (FOC) system. While a number of concerns focus on the performance of the FOC itself, many others pertain to the failure of some divorced parents to live up to their responsibilities, particularly the duty to pay court-ordered child support. During the previous legislative session, the Senate Committee on Family Law, Mental Health and Corrections established a Subcommittee on Friend of the Court Operations to study the FOC system and make recommendations for reform. The subcommittee held 10 hearings in 1994 and submitted a report in August of that year.

The subcommittee's report included a number of findings regarding child support issues. Among other things, the subcommittee found that one of the single biggest problems facing the FOC is the issue of arrearage; and that, according to the FOC, it does not have the resources to enforce bench warrants (which are issued when a party fails to appear for a show cause hearing for violating a support or parenting time order). Concerning custody and parenting time issues, the

subcommittee found that parenting time is not adequately enforced, and that many times parents going through a custody battle file false reports of child abuse against the other parent. The subcommittee report contained specific recommendations to address these and other issues.

CONTENT

Senate Bill 588 amends the Support and Parenting Time Enforcement Act to allow the court, after notice and an opportunity for a hearing, to correct the amount of support retroactively, if an individual who is required by the court to report his or her income to the court or the Friend of the Court Office knowingly and intentionally fails to report, refuses to report, or knowingly misrepresents that income. The bill also permits an order of income withholding or a modification of such an order to be served upon a source of income either by ordinary mail, as currently required, or by electronic means as agreed by the

source of income and the Friend of the Court Office.

Senate Bill 589 amends the Revised Judicature Act to provide that, for an action to enforce a support order that is enforceable under the Support and Parenting Time Enforcement Act, the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether the last payment is made.

Senate Bill 592 amends the Friend of the Court Act to permit the FOC to report to a consumer reporting agency support information concerning any payer who requests that report; and require the FOC to report a payer who is two or more months in arrears. If the FOC Office makes incorrect information available to a consumer reporting agency, the FOC must contact the consumer reporting agency within 14 days and correct the information.

Senate Bill 593 amends the Support and Parenting Time Enforcement Act to impose liability for court costs on someone subject to a show cause hearing for failure to obey a support order or for violation of a parenting time order. **Senate Bill 594** amends the Revised Judicature Act (RJA) to require that one-half of the costs collected under **Senate Bill 593** be deposited in a county's Friend of the Court fund and one-half be remitted to a law enforcement agency. The bills are tie-barred to each other.

Senate Bills 596 and 597 amend the Child Protection Law and the Michigan Penal Code, respectively, to revise the penalty for making a false report of child abuse or neglect, or a false report of a crime. The bills are tie-barred to each other.

Senate Bill 598 amends the Child Custody Act to provide that, notwithstanding any other provision of law, a parent may not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. "Records or information" includes, but is not be limited to, medical, dental, and school records, day

care providers' records, and notification of meetings regarding the child's education.

Senate Bill 711 amends the Friend of the Court Act to require that the FOC inform an alleged violator of a custody or parenting time order, of the right to petition for modification of the parenting time order. Currently, the FOC must mail a notice to an alleged violator informing him or her of the nature of the violation, the proposed action under this or another applicable act, the availability of domestic relations mediation, and that failure to respond within 14 days may result in contempt of court proceedings being brought against the violator.

All of the bills will take effect January 1, 1997. The following is a more detailed description of Senate Bills 592, 593, 594, 596, and 597.

Senate Bill 592

Currently, the Friend of the Court may report to a credit reporting agency support information concerning all payers with a support arrearage of one or more months or an amount equal to at least \$1,000, whichever is reached first. Thereafter, the FOC must make the information available to the agency on a monthly basis. The bill, instead, requires the FOC to report the arrearage amount for each payer with an arrearage of two or more months. The bill also permits the FOC, on a monthly basis, to make available support information concerning any other payer who requests that report. In either case, the information must be in a format acceptable to the Friend of the Court, the Family Independence Agency, and the consumer reporting agency. The FOC may not make information available to a consumer reporting agency if the Office determines that the agency does not have sufficient capability "to systematically and timely make accurate use of the information" and if the agency does not furnish evidence satisfactory to the Office that the agency is a consumer reporting agency.

The Friend of the Court Act requires the FOC to give the payer notice of the proposed action; the amount of the arrearage; the payer's right to a review, the date by which a request for a review must be made, and the grounds on which the payer may object; and that the payer may avoid the reporting by paying the entire arrearage within

21 days after the date notice was sent. The bill deletes a requirement that the payer also be notified that, if he or she is reported, support information will continue to be provided to the consumer reporting agency until the arrearage falls and remains below the applicable threshold for two years.

The FOC currently must give the payer a review to enable him or her to object to the reporting of the support information on the ground of a mistake of fact concerning the amount of the arrearage or the identity of the payer. This review must be provided if (a) before the initial reporting, the payer requests a review within 14 days after the date notice was sent, or (b) the payer requests a review within 30 days after notifying the FOC that he or she has been denied credit by a lender due in part to the reporting. The bill deletes those two circumstances and provides that, if a payer requests a review within the time specified in the notice, the Office may not report the support information as required or permitted by these provisions until after one of the following occurs:

- The payer fails to produce evidence that the support information is incorrect and the time scheduled for the review has passed.
- After conducting the review, the Office determines the correct support information.

The bill deletes a requirement that a review be held before a referee, the FOC, or an FOC employee who has not had prior involvement with the enforcement of a support obligation of the payer.

Under the Act, the FOC may not make support information available if (a) 21 days have not expired after the date the notice was sent, (b) the payer pays the entire arrearage within 21 days after the date the notice was sent, (c) the payer requests a review and two working days have not expired after the review, or (d) the payer pays the entire arrearage within two working days after the review. The bill provides, instead, that the FOC may not make support information, including an arrearage, available if 21 days have not expired after the date the notice was sent. In addition, the FOC may not report an arrearage, as required above, if the payer pays the entire arrearage within 21 days after the date the notice was sent.

The bill provides that, within 14 days after the FOC knows that incorrect information has been made

available to a consumer reporting agency, the FOC must contact the consumer reporting agency and correct the information.

The bill also deletes provisions that do the following:

- Require the FOC to discontinue reporting support information regarding a payer and request deletion of information previously reported if the payer's arrearage has fallen and remained below the applicable threshold for two years.
- Provide that support information is not available if the support recipient has filed with the FOC an agreement signed by the payer and the recipient, stipulating that information be made available only upon the recipient's request (unless the recipient receives public assistance or an arrearage is payable to the State).
- Permit the FOC to charge a consumer reporting agency a fee up to the FOC's actual cost of complying with these reporting requirements.

Currently, upon request of a consumer reporting agency, the FOC must make available to the agency current support information of an individual payer whose case is being reported to the agency. Under the bill, the FOC also must make information available to the agency upon request of a payer.

Senate Bill 593

Under the Support and Parenting Time Enforcement Act, if a person has been ordered to pay support and fails or refuses to obey, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the Office of the Friend of the Court may commence a civil contempt proceeding by filing in the circuit court a petition for an order to show cause why the payer should not be held in contempt. If the payer fails to appear, the court may issue a bench warrant requiring the payer to be brought before the court. If the payer is arrested and cannot be brought before the court within 24 hours, he or she may "recognize for his or her appearance" by leaving with the sheriff a sum of money stated in the bench warrant, up to the amount of arrearage under the support order. If the payer fails to appear as required, the court must transmit the deposit to the FOC for payment to one or more support recipients.

Under the bill, if a court issues a bench warrant under these provisions, except for good cause shown on the record, the court must order the payer to pay the costs related to the hearing, issuance of the warrant, arrest, and further hearings. In addition, the amount that a payer leaves with the sheriff for personal recognizance may include costs ordered if the payer fails to appear. The costs ordered pursuant to a bench warrant and for failure to appear must be transmitted to the county treasurer for distribution as provided in the RJA.

The Act provides that, if the Office of the FOC determines that action should be taken to resolve a parenting time dispute, the FOC must commence a civil contempt proceeding by filing with the circuit court a petition for an order to show cause why either parent who has violated a parenting time order should not be held in contempt. If the court finds that either parent has violated a parenting time order, the court must find the parent in contempt and may enter various orders. The bill reflects language added by Public Act 239 of 1996 (House Bill 5388) concerning suspension of a parent's occupational or driver's license due to noncompliance with an order for make-up and ongoing parenting time. The bill provides, in addition, that the court may state on the record the reason it is not ordering one of the listed sanctions.

The bill provides that, if a parent fails to appear in response to a show cause order, the court may issue a bench warrant requiring that the parent be brought before the court without unnecessary delay to show cause why he or she should not be held in contempt. Except for good cause shown on the record, the court must order the parent to pay the costs of the hearing, issuance of the warrant, arrest, and further hearings. Those costs must be transmitted to the county treasurer for distribution as provided in the RJA.

Senate Bill 594

In any judicial circuit, the bill requires that one-half of the costs collected under Senate Bill 593 be deposited in the county's Friend of the Court fund. In a judicial circuit in which circuit court employees are not employees of the State Judicial Council (that is, other than in the Third Circuit Court in Wayne County), money transmitted for a show cause hearing for failure to pay support must supplement and not supplant other money appropriated by the county for FOC functions as

measured by amounts the county appropriated for those functions in previous and current fiscal years. The bill also requires the county treasurer, in those circuits, to create the FOC fund as an interest bearing account, and requires interest earned to be credited to the account to be used as provided in the Act. (The RJA requires a county board of commissioners to appropriate money in an FOC fund for the purpose of fulfilling the statutory obligations of the Friend of the Court.)

In any circuit, the county treasurer must remit one-half of the costs actually paid by a payer as ordered under Senate Bill 593 to the law enforcement agency that executes the bench warrant issued for the payer's arrest.

Senate Bills 596 and 597

The Child Protection Law requires certain individuals to report an instance of suspected child abuse or neglect, and provides that the following offenses are misdemeanors:

- Knowingly failing to report an instance of suspected child abuse or neglect, if the offender is a person required by the Law to report.
- Disseminating, or permitting or encouraging the dissemination of, information contained in the central registry provided for by the Law and in reports and records made under the Law.
- Willfully maintaining a report or record required to be expunged under the Law.

Senate Bill 596 specifies that these misdemeanors are punishable by imprisonment for up to 93 days and/or a maximum fine of \$100.

The Child Protection Law also provides that it is a misdemeanor for a person knowingly and maliciously to make a false report of child abuse or neglect under the Law. The bill provides, instead, that a person who intentionally makes a false report of child abuse or neglect under the Law knowing that the report is false, is guilty of a crime depending on the abuse or neglect reported. If the abuse or neglect reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$100. If the abuse or neglect would constitute a felony if the report were true, the person is guilty of a felony punishable by the lesser of the following: (a) the

penalty for the child abuse or neglect falsely reported, or (b) imprisonment for up to four years and/or a fine of up to \$2,000.

The Michigan Penal Code provides that it is a misdemeanor, punishable by imprisonment for up to 90 days and/or a maximum fine of \$100, for a person willfully and knowingly to make a false report of a crime to a law enforcement officer. Senate Bill 597 provides instead that a person who intentionally makes a false report of the commission of a crime to a law enforcement officer knowing the report is false, is guilty of a crime depending upon the falsely reported offense. If the report is a false report of a misdemeanor, the person is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$100. If the report is a false report of a felony, the person is guilty of a felony punishable by the lesser of the following: (a) the penalty for the felony falsely reported, or (b) imprisonment for up to four years and/or a fine of up to \$2,000. These penalties apply except as provided below.

Currently, if a false report relates to a bombing, attempted bombing, or threat to bomb and the report is willfully and knowingly communicated to a law enforcement officer or to any other person, the person making the report is guilty of a misdemeanor. The bill provides, instead, that if the false report relates to a bombing, attempted bombing, or threat to bomb, and the person intentionally communicates the report to a law enforcement officer or any other person knowing the report is false, the person making the report is guilty of a crime punishable by the lesser of the following: (a) the penalty for the bombing, attempted bombing, or threat to bomb falsely reported, or (b) imprisonment for up to four years and/or a fine of up to \$2,000.

MCL 552.633 et al. (S.B. 588)
600.5809 (S.B. 589)
552.512 (S.B. 592)
552.631 et al. (S.B. 593)
600.2530 (S.B. 594)
722.633 (S.B. 596)
750.411a (S.B. 597)
722.30 (S.B. 598)
552.511 (S.B. 711)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Several of these bills address the failure of individuals to pay court-ordered support. In particular, under Senate Bill 588, a court may correct the amount of support retroactively if a person misrepresents or intentionally fails to report his or her income.

In addition, under the Revised Judicature Act, the period of limitations currently is 10 years for an action founded upon a judgment or decree rendered in a court of record of this State, from the time the judgment or decree was rendered. By specifying that the deadline for bringing an action to enforce a support order is 10 years after the time the last support payment is due, Senate Bill 589 will codify current law as articulated in 1992 by the Michigan Court of Appeals: that for child support payments, the 10-year period of limitations begins to run when each installment becomes due (*Ewing v Bolden*, 194 Mich App 95).

Senate Bill 592 expands the reporting of support information to consumer reporting agencies, by requiring the FOC to report a payer who is two or more months in arrears, and allowing the FOC to report information on any payer who requests it. These changes will give financial institutions and other credit-granting entities greater access to information about an individual's payment history and enable them to consider the support obligations of people who apply for credit. Since the FOC also will be able to report information on any payer upon his or her request, the information will not necessarily be of a negative nature, but may serve to enhance the credit rating of a payer who faithfully complies with a child support order.

In addition, Senate Bills 593 and 594 will improve the ability of the FOC to enforce support orders, as well as parenting time orders, by imposing liability for court costs on an individual subject to a show cause hearing for failure to obey an order. If someone fails to appear in response to a show cause order, it is the individual, rather than the taxpayers, who should be financially liable for the costs of a bench warrant, arrest, and hearing. These bills will ensure that FOC offices and law enforcement agencies have the resources necessary to execute bench warrants.

Supporting Argument

Senate Bills 596 and 597 recognize that when parents are falsely accused of abuse or neglect, the parents as well as their children can suffer emotional, psychological, and financial damage. According to the Senate Subcommittee on FOC

Operations, many times parents going through a custody battle file false reports of child abuse against the other parent. A parent who makes a false accusation might be attempting to influence the FOC's custody, parenting time, or support recommendation, or might simply be feeling vindictive and wishing to inflict damage on the estranged partner. According to testimony on behalf of the National Congress for Fathers and Children, once an allegation is made and the system is set in motion, an investigation typically will take between six months and two years to complete. "[D]uring this entire period of time the relationship between the parent and the child is strained if not destroyed by the polarization created by the charging and accusatory person. Furthermore, during this time the minor children are subjected to repeated interviews frequently causing the children to be so indoctrinated by the perception that something abusive has occurred that they are permanently render[ed] unable to distinguish fact from fantasy, reality from fiction."

Although the law currently contains misdemeanor penalties for false reports of child abuse or neglect that are made knowingly and maliciously or willfully, the bills establish a felony penalty for someone who intentionally makes a false report of abuse or neglect or another crime that would be a felony, knowing that the report is false. This standard will ensure that the most serious and damaging cases are subject to appropriate penalties.

Supporting Argument

Senate Bill 598 will help address the concern that FOC offices, as well as many parents, frequently overlook the importance of parenting time. A person does not lose his or her status as a parent simply because he or she is not the primary caregiver. The ability to play a meaningful role in the life of a child, however, is predicated on the parent's having sufficient information to assist in making major decisions about the child's welfare. The bill recognizes that it is essential for noncustodial as well as custodial parents to have records and information regarding their children's medical, dental, educational, and day care status. According to the Friend of the Court Association, this bill restates existing law as currently enforced on a daily basis by FOC offices.

Opposing Argument

The Friend of the Court Association believes that it would be appropriate to report support information in every case to consumer reporting agencies. This practice would simplify the entire

reporting process, establishing uniform standards for who is reported and the conditions under which reporting is done. Requiring the FOC to report only those payers with an arrearage of two months, however, creates different categories of payers and means that the FOC must track each case at different points in time. While mandatory reporting at least will be an improvement over the current system, Senate Bill 592 still presents administrative processing difficulties for the FOC.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 588

The bill will have no fiscal impact on the court. The procedures outlined in the bill are currently executed.

Senate Bill 589

The bill will have no fiscal impact on State or local government.

Senate Bill 592

The bill will reduce some administrative cost to the Friend of the Court Office. The impact will be minimal.

Senate Bills 593 and 594

It is indeterminate how the bills will affect the counties, because court costs may differ with each bench warrant issued. If a court is able to collect related costs for each bench warrant issued, there may be some additional revenues for the Friend of the Court offices and law enforcement agencies. This amount is not expected to be significant.

Senate Bills 596 and 597

The bills will have an indeterminate impact on State and local government.

Given that the false reporting of child abuse under current law is a misdemeanor, changing this violation to a felony in some cases could result in increased prison commitments, and a corresponding decrease in local fines and jail sanctions. There are, however, no data available on the projected number of annual violations, or the expected average number of prison sentences as a result of those violations. An increase of five annual prison commitments, each receiving an

average one-year prison sentence, could result in increased costs to the Department of Corrections of approximately \$50,000 to \$65,000 annually.

Senate Bill 598

The bill will have no fiscal impact on State or local government.

Senate Bill 711

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: M. Bain
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.