House
Legislative
Analysis
Section

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ALLOW FOR OPT-OUT OF THE FRIEND OF THE COURT

House Bill 6011 as enrolled
Public Act 571 of 2002
Third Analysis (10-10-02)

Sponsor: Rep. Laura Toy
House Committee: Family and Children Services
Senate Committee: Families, Mental Health, and Human Services

THE APPARENT PROBLEM:

In 1919 Michigan became the first state to create an office of the Friend of the Court, to assist the circuit courts in making determinations regarding family matters. There are 65 Friend of the Court offices statewide acting as the 'eyes and ears' of the family division of each circuit court.

The Friend of the Court is charged with the responsibility of protecting the best interests of children involved in domestic relations actions. The Friend of the Court makes recommendations to the circuit court and enforces court orders relating to custody, parenting time (visitation), and family support. To assist parties involved in these matters, the Friend of the Court provides assistance in collecting and disbursing child support (until the State Disbursement Unit is fully operational), enforcing and modifying child support orders, and enforcing and modifying custody and parenting time (visitation) orders. In all, the Friend of the Court system affects the lives of more than 2.5 million residents in the state.

It is estimated that approximately 60 percent of the more than 800,000 child support cases in the state are paid on time and in the correct amount without any enforcement actions taken by the Friend of the Court. Some parents may feel that going through the Friend of the Court to provide support payments may be an unnecessary step when arrangements may be better handled privately. Though current laws and Michigan Court Rules do not necessarily require parties to involve the Friend of the Court system in their domestic relations matter, such language allowing them to opt out of the system is not clear nor is it explicitly stated. In addition, application of this so-called opt-out provision is not applied consistently in courts throughout the state. Legislation has been introduced that would explicitly allow certain parties to opt out of the Friend of the Court system.

THE CONTENT OF THE BILL:

House Bill 6011 would amend the Friend of the Court Act (MCL 552.502 et al.) to allow parties to a domestic relations matter to opt out of the Friend of the Court system, and to clarify provisions pertaining to the initiation of enforcement proceedings. The bill is tie-barred to House Bills 6008-6010. Section 5a of the bill (the opt-out provisions) would take effect on December 1, 2002. The remaining provisions of the bill would take effect on June 1, 2003.

Duties of the Friend of the Court. The bill would require the Friend of the Court to inform each party that they could choose not to have the office administer and enforce obligations that could be imposed in a domestic relations matter, unless one of the parties is required to participate in a Title IV-D child support program. (See *Background Information.*) In addition, the office would be required to inform each party that they could direct the office to close their case, unless one of them is required to participate in a Title IV-D child support program. Furthermore, the office would be required to make available to individuals certain forms regarding the modification of child support, custody, or parenting time, without the assistance of legal counsel. The office would also include instructions on preparing and filing those forms, instructions for service of process, and scheduling a modification hearing.

Opt-Out Provisions. Under the bill, with certain exceptions, a Friend of the Court would be required to open or maintain a case for a domestic relations matter. If such a case were indeed open, the office would administer and enforce the obligations of the parties to the Friend of the Court case. If a Friend of the Court case is not open, the Friend of the Court would not administer or enforce an obligation of a party to the domestic relations matter.

The bill would, however, not require parties to a domestic relations matter have a Friend of the Court cases opened or maintained. During the initial proceedings, the parties would file a motion for the court to order the office not to open a case for their domestic relations matter. If a Friend of the Court case was not opened, the parties would have full responsibility for the administration and enforcement of any obligations imposed in the domestic relations matter. The court would be required to issue an order requiring the Friend of the Court not to open a case unless the court determines that one or more of the following:

- A party who is eligible for Title IV-D services because of his or her current or past receipt of public assistance.

- A party who applies for Title IV-D services.

- A party who requests that the office open and maintain a case, even though the party might not be eligible to receive Title IV-D services.

- There exists evidence of domestic violence or uneven bargaining positions and evidence that a party has chosen not to apply for Title IV-D services, against the best interest of either party or the child.

- The parties have not filed with the court a document, signed by each party, that includes a list of the services offered by the Friend of the Court and an acknowledgement that the parties are choosing to do without those services.

In addition, parties would be permitted to file a motion for the court to order the office of the Friend of the Court to close their case. The office would close the case unless the court determined that any of the following applied.

- A party objects.

- A party is eligible for IV-D services because he or she is receiving public assistance.

- A party is eligible for IV-D services because he or she received public assistance and an arrearage is owed to the governmental entity that provided the assistance.

- Records indicate that within the previous 12 months, a child support arrearage or custody or parenting time order violation has occurred.

- Within the previous 12 months, a party has reopened a case.

- There exists evidence of domestic violence or uneven bargaining positions and evidence that a party has chosen to close a case against the best interest of either party or a child of the party.

- The parties have not filed with the court a document, signed by each party, that includes a list of the services offered by the Friend of the Court and an acknowledgement that the parties are choosing to do without those services.

Case closure would not release a party from his or her obligations imposed in the domestic relations matter. If a case was closed, the parties would be responsible for the administration and enforcement of any obligation imposed under the domestic relations matter. The Friend of the Court would be required to reopen a case if a party applies for services from the office or applies for and receives public assistance.

If a party would like to ensure that the child supports payments that have been made after a case has been closed will be considered in any possible future enforcement action, the payments would have to be made through the State Disbursement Unit (SDU). In such a case, the office would close a case until each party provides the SDU with the information necessary to process the child support payments.

If a party to a domestic relations matter for which there is not an open Friend of the Court case applies for services from the Friend of the Court or applies for public assistance, the Friend of the Court would open or reopen a case. If the Friend of the Court then opens or reopens a case, the court would issue an order in that domestic relations matter that contains the provisions required by the Friend of the Court Act and the Support and Parenting Time Act.

In addition, if the parties to a domestic relations matter file a motion to not open a case or to close a case, the Friend of the Court would be required to advise the parties of the services that the office would no longer provide.

Initiating Enforcement Proceedings. The act requires a Friend of the Court to initiate enforcement proceedings under certain circumstances, except when there is an income withholding order in place. The bill would clarify that the office would not be required to initiate enforcement proceedings under the following circumstances:

• Despite an arrearage, there is an effective income withholding and payments are being made in the amount required under the support order.

• Despite an arrearage and an ineffective income withholding, payments are being made in the amount required in the support order.

• There are one or more enforcement measures initiated and there is an objection to one or more of those enforcement measures.

The bill would also require the Friend of the Court to initiate enforcement proceedings when a person legally responsible for the actual care of a child incurs an uninsured health care expense and submits to the office a written complaint. [Note: The requirement for the written complaint and the proceedings to collect the health care expenses would be added by House Bill 6009.]

In addition, an arrearage that arises at the moment a court issues an order imposing or modifying support (because the order relates back to a petition or motion filing date) would not be considered to be an arrearage for the purposes of initiating support enforcement measures, centralizing enforcement, or any other action required or authorized in response to a support arrearage under the Friend of the Court Act or the Support and Parenting Time Enforcement Act, unless the payer fails to become current with the court ordered support payments within two months after the order is entered.
The bill would repeal section 17a of the Friend of the Court Act, which pertains to the provision of forms. However, the language in that section would be added to the duties of the office found in section 5 of the act.

BACKGROUND INFORMATION:

Related Legislation. These bills are part of a larger package of bills that encompass a number of proposed reforms to the Friend of the Court system announced at a recent press conference by Governor Engler and Chief Justice Corrigan. These reform efforts are designed to clarify and strengthen existing law, and centralize and streamline procedures taken to enforce orders, both of which are intended to enable the local Friend of the Court Offices to refocus their resources, improve service, and increase child support collections. [See House Bills 6004-6010, 6017, and 6020.]

Title IV-D Services. Under Title IV-D of the federal Social Security Act, 42 U.S.C. 651 et al., the state must provide certain services related to child support. The state agency responsible for the provision of these services is the Office of Child Support within the Family Independence Agency. Title IV-D services include establishing paternity and other services related to the establishment, modification, and enforcement of child support obligations, including the use of a parent locator service. These services are automatically provided to those who have received or are currently receiving financial or medical assistance. In addition, these services are also available to any other individual who applies to receive those services.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminant fiscal impact on the state, and would result in cost savings for local units of government. (10-10-02)

ARGUMENTS:

For:

More than 60 percent of those parents making child support payments do so on time and in the correct amount. In these cases, the parties have virtually no actual involvement with the Friend of the Court. Requiring these parties to be involved with the Friend of the Court system when it is clearly not needed constitutes an unnecessary intrusion of government in the private lives of these individuals. Those parents that generally make child support payments on time and in the required amount without any enforcement actions being taken by the Friend of the Court have clearly demonstrated their willingness and ability to continue to provide support and care for their child after a divorce or separation. By contrast, when parents continually fail to make good faith efforts to provide their children with the required support and parenting time, the emotional, behavioral, and psychological affects on that child can be tremendous. Only in these instances, when it appears that parents are acting for their own interests, rather than the best interests of the child, should the Friend of the Court step in and enforce support and parenting time orders.

In recent years, the court system has been inundated with domestic relations cases. Of the cases filed in circuit courts last year, more than 70 percent were domestic relations matters. Domestic relations matters differ from other matters brought before the court, in that domestic matters are complex and on-going matters that consume a great deal of the court's

time. Allowing parties to opt out of the Friend of the Court system will free up the court system and allow it to address other domestic relations matters more quickly and efficiently.

In some counties, Friend of the Court caseworkers can have a caseload of 2,000 – 3,000 cases. Such a large number of cases greatly hinders the caseworkers' ability to effectively serve and manage each case. One of the more common complaints regarding the Friend of the Court has been the provision of services. Allowing parties to opt out of the Friend of the Court system will decrease the caseload of Friend of the Court caseworkers, thereby allowing them to provide more individualized services and also spend more time, energy, and resources on those cases with chronic support arrearages.

For:

Parties may already opt out of the Friend of the Court system. However, the process to opt out is not explicitly provided for and not consistently applied throughout the state. In some circuits, judges do not allow parties to opt out of the system. Under Michigan Court Rules (MCR 3.211), a judgment or order awarding child support must provide that the support be paid through the office of the Friend of the Court, unless otherwise stated in the judgment or order. In terms of the availability of opting-out of the Friend of the Court system, the language in this rule is ambiguous at best. The rule permits judges to not require support be paid through the Friend of the Court. This effectively permits judges to let parties opt out of the system. If support is not paid through the Friend of the Court, the office has no record of any payments received or disbursed, nor does the office have the ability to invoke any of the enforcement remedies provided for under law to collect child support payments. House Bill 6011 would place into statute clear language as to when parties may opt out of the Friend of the Court system.

Against:

The Friend of the Court is merely an extension of the circuit court. Allowing parties to opt out of the Friend of the Court will create several problems if the parties were to decide that they would like to opt back into the system. Under current practice, the Friend of the Court maintains copies of all proceedings related to the domestic relations matters. If the parties were to opt back into the system, the Friend of the Court would have to reconstruct its case file retroactively, which can be extremely difficult.

Furthermore, one of the main duties of the Friend of the Court is to assist circuit court judges and make recommendations regarding a particular domestic relations matter. What would happen if the matter were to require a hearing before a judge? Would the Friend of the Court still issue recommendations? If the office would still be required to issue recommendations, it would be ill prepared to do so, as it would lack the requisite information and lack a case file. If such a recommendation is not required of the Friend of the Court, then the bill essentially contradicts one of the original intentions of the act – to assist the circuit in making decisions regarding domestic relations matters.

Against:

Allowing parties that generally make all of the their payments in the required amount and on time to opt out of the Friend of the Court system could potentially reduce state incentive payments from the federal government. Under the Social Security Act (42 U.S.C. 658 and 658a) the state receives incentive payments based on the performance levels of paternity establishment, support orders, current payments, arrearages, and cost-effectiveness, in comparison to the performance of other states. The performance level of current payments is the total amount of support collected divided by the total amount of support ordered. The state's collection rate and, ultimately, the state incentive payments would decrease, if cases with a 100 percent collection rate were allowed to opt out of the Friend of the Court system. According to committee testimony, the state received $28 million in incentive payments in 1998. It is believed that the state could lose $2 million to $3 million in incentive payments because of the opt-out provision.

Response:

Requiring parties to remain in the Friend of the Court system just so the state receives extra money from the federal government is bad public policy. The collection of child support payments represents only one of several factors used to determine the state's incentive payment. Furthermore, assuming the reform efforts of the entire package result in increased collections, as is intended, the state's collection rate could very well increase or remain the same compared to current rates.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.