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BILL ANALYSIS

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Senate Bill 479 (as reported with amendments)
 Senate Bill 480 (as reported without amendment)
 Sponsor: Senator Rudy J. Nichols
 Committee: Judiciary
 Date Completed: 10-21-87

RATIONALE

According to the State Friend of the Court (FOC) Bureau, circuit court judges believe that several changes should be made to recently enacted legislation that governs FOC offices. Reportedly, newly imposed requirements — particularly the requirement to serve papers and schedule hearings when a child support payer or recipient seeks modification of the support order — have given FOC offices additional responsibilities without increased funding. Further, although FOC offices must give payers and payees petition forms upon request, circuit judges also have pointed out the need for standard forms for answers and orders, as well as instructions on how to serve process.

CONTENT

Senate Bills 479 and 480 would amend the Friend of the Court Act and the Support and Visitation Enforcement Act, respectively, to require the Office of the Friend of the Court to make available to child support payers and payees forms, and instructions on their use and on service of process, for requesting or responding to a request for a support modification hearing without the assistance of legal counsel.

Senate Bill 279

The bill would require the State Friend of the Court Bureau to develop and provide the Office of the Friend of the Court (FOC) with form motions, responses, and orders for use by payers and payees. The Bureau also would have to develop instructions on preparing and filing the forms, on service of process, and on scheduling a support modification hearing.

MCL 552.519 et al.

Senate Bill 480

Under the bill, requiring the Friend of the Court to make form motions, responses, and orders available to payers and payees would replace the requirements that the FOC, when contacted by a payer or payee who has experienced changed financial conditions, inform the person that a form petition is available; give a copy of the form and instructions on its use upon request; provide assistance when requested; and within seven days after receiving a petition file it with the court, schedule a hearing, and serve a copy of the petition on both parties.

The bill also provides that Section 3 (which the bill would amend) would not apply to an ex parte interim support order or a temporary support order entered under Michigan Court Rule 3.206.

In addition, the bill would require that every support order that is an order in a domestic relations matter as that term is defined in the FOC Act contain a statement that, except as otherwise provided in Section 3, a support order that is part of a judgment or is an order in a domestic relations matter, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment, and is not subject to retroactive modification. (Under Section 3, retroactive modification of a support payment is permissible with respect to any period during which a petition for modification was pending, from the date notice of the petition was given to the payer or payee.) This statement already must be contained in every "support order that is part of a judgment issued by a court of this state".

MCL 552.603

BACKGROUND

In response to Federal mandates that conditioned states' Aid to Families with Dependent Children (AFDC) grants upon their compliance, the Michigan Legislature passed Public Acts 208 through 216 of 1985. Those Acts made comprehensive changes in various laws that govern the powers of the FOC and enforcement of support orders, addressing such issues as mandatory income withholding, provision of arrearage information to credit reporting agencies, and interception of State and Federal tax returns.

More recently, again to safeguard AFDC funding, the Legislature passed Public Acts 97, 98, and 99 of 1987, to comply with Federal requirements that a court-ordered support payment be a judgment by operation of law, entitled to full faith and credit in any state, and not subject to retroactive modification.

FISCAL IMPACT

Senate Bill 479 would have no fiscal impact on State or local government. The State Friend of the Court Bureau already develops and provides form motions, responses, and orders to local Friend of the Court offices.

Senate Bill 480 would result in administrative savings to local Friend of the Court offices by eliminating requirements that the Friend of the Court file and serve petitions in certain proceedings.

ARGUMENTS

Supporting Argument

In order to meet a deadline for compliance with a Federal mandate that all states prohibit their courts from retroactively modifying child support orders, the Michigan Legislature acted rapidly last spring to enact conforming legislation. Because of the imminence of the deadline, there was no opportunity at that time to address the concerns of the circuit court judges regarding the responsibilities recently imposed upon Friend of the Court offices. These bills would do so now.

In addition to giving child support payers or payees a petition form upon request, FOC offices are required by the 1985 amendments to file the petition, schedule a hearing, and serve a copy on both parties. These clearly are new responsibilities for the Friend of the Court, but the FOC was not allocated additional funding to carry them out. To relieve this burden, the bills would have FOC offices give payers and payees instructions on serving process and scheduling a hearing, instead of actually doing so for the parties. The bills also would require that the FOC give payers and payees forms for answers and orders, as well as for petitions, to ensure that all documents prepared by payers and payees without the assistance of counsel were standard and complete.

Providing that Section 3 of the Support Visitation and Enforcement Act would not apply to an ex parte interim support order or temporary support order, and requiring that a support order contain a statement that it is a judgment, simply would conform to changes made earlier this year by Public Act 97.

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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.