



**House
Legislative
Analysis
Section**

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House Bills 5286 and 5287 as enrolled

Sponsor: Rep. Perry Bullard

House Bill 5649 as enrolled

Sponsor: Rep. Nick Ciaramitaro

House Bill 5650 as enrolled

Sponsor: Rep. Bill Martin

Senate Bill 715 as enrolled

Sponsor: Sen. Christopher D. Dingell

Senate Bills 902 and 904 as enrolled

Sponsor: Sen. Rudy J. Nichols

Senate Bills 903, 905 and 906 as enrolled

Sponsor: Sen. Harmon Cropsey

House Committee: Judiciary

Senate Committee: Judiciary

Third Analysis (10-23-90)

THE APPARENT PROBLEM:

*Although the divorce law allows a court to order support for a child after he or she reaches 18 years of age, the Michigan Supreme Court held in *Smith v. Smith* (November, 1989) that the provision violates the Age of Majority Act, which specifies that "a person who is at least 18 years of age is an adult of legal age for all purposes whatsoever." The court also ruled that the Age of Majority Act preempts a court rule that calls for ordering support through age 18 or high school graduation, whichever is later. As a result, a court may no longer order support for a child over age 18 who is still in high school or college, or for a disabled child. The ruling results in high school students being denied necessary support, and further, makes unenforceable a large number of settlements agreed to by the parties that call for postmajority support. The court urged the legislature to reconsider the statutes governing child support orders in order to expressly provide for postmajority support.

*In a related matter, the federal Department of Health and Human Services (HHS) has notified the Department of Social Services (DSS) of deficiencies in recently-enacted language providing for a rebuttable presumption for the use of the state child support formula. According to the DSS, Michigan could suffer penalties of about \$21 million per quarter if it fails to meet federal requirements for establishing the rebuttable presumption. Language to meet HHS criticisms has been developed. (For a more complete discussion of the problems with existing language, see the House Legislative Analysis Section Analysis of Senate Bill 715 Substitute H-1, dated September 19, 1990.)

*In another related matter, recent revisions in federal regulations mandate that each state designate a central registry for interstate support orders. Under federal requirements, a state must use certain federal forms when petitioning another state to commence action under the

Revised Uniform Reciprocal Enforcement of Support Act (RURESA), and must send those forms to the other state's interstate central registry. Legislation has been proposed to establish Michigan's interstate central registry.

THE CONTENT OF THE BILLS:

*Postmajority child support. The bills would allow child support payments to be ordered beyond the age of 18 under certain circumstances. House Bills 5286, 5649 and 5650 and Senate Bill 902 would allow a court to order a parent to pay support for his or her child who was 18 years of age or older during the time that the child was regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate, while residing on a full-time basis with the payee of support or at an institution, but in no case after the child reached 19½ years of age. A complaint or motion requesting support for a child over age 18 could be filed at any time before the child reached age 19½. Existing child support orders (those in effect before the effective date of the bills) that called for support to be provided past age 18, if entered without an agreement of the parties, would be valid and enforceable to the extent they called for support to be provided under the circumstances specified in the bill. However, the bills would specify that they would not require any payment of support for a child 18 years of age or older for any period between November 8, 1989 (the date the *Smith* decision was issued) and the effective date of the bills, or reimbursement of support paid between those dates, in judicial circuits that did not enforce postmajority support orders between those dates. Existing and future child support orders that were entered into as a result of an agreement of the parties would be valid and enforceable to their full extent, even if they called for support to be provided beyond what is specified in the bills.

Senate Bill 903 would allow a court to order a parent (divorced or not) to support a child 18 years of age or older under the same conditions as outlined for support orders for children of divorced parents. House Bill 5287 and Senate Bills 904-906 would make complementary amendments to related acts.

***Use of child support formula.** House Bills 5286, 5649, and 5650, and Senate Bills 715, 902, and 903 would replace language allowing parties to agree to an amount of support different from the amount determined by application of the child support formula. Instead, the bills would provide that the general requirement to use the child support formula would not prohibit a court from issuing a child support order that deviated from the guideline amount, providing the parties agreed, the court determined that application of the formula would be unjust or inappropriate, and the court met the requirements for certain statements in writing and on the record. Rather than the "reasons for its determination," a court deviating from the formula would state the "reasons why application of the child support formula would be unjust or inappropriate in the case."

***Interstate central registry.** Senate Bill 715 would designate the Office of Child Support within the DSS as Michigan's interstate central registry for receiving, forwarding, and responding to inquiries about interstate child support actions. Various provisions would in effect replace a court-to-court network for processing orders with a registry-to-registry network; rather than petitioning the courts of another state for enforcement, a court would, with the approval of the initiating state, forward documents to the appropriate interstate registry, which would transmit the petition to the appropriate court(s) in that state. A person seeking to register an out-of-state support order in Michigan would transmit the necessary paperwork to Michigan's central registry. A state initiating interstate enforcement of support would have to use a completed forms package as required by federal regulation, and send the forms to the responding state's central registry. The bill would authorize the Friend of the Court to receive and disburse child support payments from a payer in another state to a payee in Michigan in cases that did not constitute a formal interstate enforcement of support action.

***Acts to be amended.** House Bill 5286 would amend the divorce law (MCL 552.15 et al.), House Bill 5649 would amend the Paternity Act (MCL 722.717 and 722.717a), and House Bill 5650 would amend the Child Custody Act (MCL 722.22 et al.). Senate Bill 715 would amend the Revised Uniform Reciprocal Enforcement of Support Act (MCL 780.153a et al.), Senate Bill 902 would amend the Family Support Act (MCL 552.451 et al.), Senate Bill 903 would amend the emancipation of minors act (MCL 722.3 and 722.3a), Senate Bill 904 would amend the Friend of the Court Act (MCL 552.531), Senate Bill 905 would amend the support and Visitation Enforcement Act (MCL 552.602), and Senate Bill 906 would amend Public Act 379 of 1913 (MCL 552.151, which provides for the collection of alimony and the support and maintenance of minor children.

FISCAL IMPLICATIONS:

According to reports of the House and Senate Fiscal Agencies, the provisions allowing for postmajority child support orders have no fiscal implications for the state. (9-27-90 and 6-14-90) According to the DSS, enactment of the amendments regarding the use of the child support formula would avert the loss of about \$21 million per quarter in

federal funds. (9-17-90) According to the Senate Fiscal Agency, the portion of Senate Bill 715 that provides for the interstate central registry would have a minimal fiscal impact on the state and local units of government; the agency reports the State Court Administrative Office to have said that the bill would result in a minimal increase in administrative costs to the Friend of the Court. (3-20-90)

ARGUMENTS:

For:

The bills would undo the damage wrought by the Smith decision, allowing courts once again to order child support to be paid for children while still attending high school, but not past age 19½. For years, attorneys and judges have relied upon statute and court rules that authorized, and even encouraged, the awarding of postmajority support; attorneys have counseled their clients to seek and agree to such support until high school graduation. Approximately 90 percent of all divorce orders are mutually agreed to between the parties, and most of those provide for support to be paid until graduation from high school. The bills would reaffirm a sound policy that holds that a parent is financially responsible to support his or her children at least through their high school education. As the supreme court said, such legislation is necessary to render a parent's moral obligation into a legal duty.

For:

The package of bills includes a provision allowing a court to order a parent (divorced or not) to support a child during the period the child was regularly attending high school, but in no case past age 19½. (Under the emancipation of minors act, the child or a guardian may petition a court to order the parent to provide support. This would be most likely to happen in cases of "throwaway children," who have been kicked out of the home by their parents. The law currently allows a court to order support in such cases until the age of 18.) The tie-bar would assure that parents in "intact" families would have the same responsibility to provide financial support for their children through high school as that imposed on divorced parents.

Against:

Unlike existing language that was rendered void by the Smith decision, the bills do not make provision for postmajority support to be ordered for disabled children, who may need lifelong care. The bills should allow courts discretion to order financial support for longer periods of time, perhaps indefinitely, in certain cases. This concept was embodied in the current (voided) "exceptional circumstances clause."

Response: According to advocates for the handicapped, any child support paid on behalf of disabled adult "children" results in a dollar-for-dollar reduction in federal Supplemental Security Income (SSI) benefits and may jeopardize Medicaid eligibility. In addition to putting handicapped persons at risk of losing income, the loss of Medicaid eligibility results in loss of eligibility for many programs serving the handicapped. Thus, the great majority of handicapped persons are better off not receiving child support payments past the age of 18.

Against:

The bills are yet another attempt to place noncustodial parents, in most cases fathers, at a disadvantage within the legal system. While the bills purport to benefit "children," they are but another way to transfer income from divorced fathers to their ex-wives. The Smith decision correctly recognized that young people have indeed reached the age of majority at age 18, and thus should be self-supporting.

For:

The bills would refine language, enacted last year in response to federal demands, that provided for the presumptive use of the child support formula in determining support amounts. The bills' changes would answer federal criticisms of that language and thereby help to preserve about \$21 million per quarter in federal funding.

Against:

Under the applicable federal regulations, a deviation from the child support formula would be allowed if strict adherence to the formula would be unjust or inappropriate, as determined under criteria established by the state. The regulations demand that the criteria be "based on the best interests of the child." As the bills do not incorporate this concept, they fall short of federal requirements.

Response: Criteria to allow deviations from the child support formula should not be based solely "on the best interests of the child," as that would make it virtually impossible to adjust payments downward, even temporarily, to accommodate unusual circumstances. The rules, which as yet are merely proposed rules, go beyond the underlying law, which does not require state criteria to be based on the best interests of the child. It may be that the rules will be modified in this respect; the bills do well to remain silent on the matter of the best interests of the child.

For:

Senate Bill 715 would statutorily establish Michigan's central registry for interstate enforcement of child support, and bring the Revised Uniform Reciprocal Enforcement of Support Act into compliance with federal regulations relating to the enforcement of out-of-state support orders. Implementation of the state central registry system nationwide will improve efficiency and effectiveness of interstate enforcement efforts.