

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bills 5265 through 5271 (as reported without amendment)

Sponsor: Representative Michael E. Nye

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 12-6-89

RATIONALE

Since May 1987, Michigan has used a formula to determine court-ordered child support payments. The development of the formula predated a 1987 Federal mandate to do so, so that by the time Federal law required State guidelines to be in place, Michigan's child support formula already was in effect. Recent changes in Federal law, however, imposed requirements that Michigan does not yet meet. Under the Federal Family Support Act, the State must establish a "rebuttable presumption" that the amount of child support yielded under the formula is the correct amount of child support to be awarded. The presumption may be rebutted by a finding (in writing or on the record) that application of the formula would be unjust or inappropriate in a particular case.

A State that fails to meet the Federal requirements is subject to financial penalties. Reportedly, Michigan could suffer penalties of up to \$58 million if it fails to provide for the rebuttable presumption required by Federal law. Some believe that Michigan law should be amended to meet the Federal requirement that a rebuttable presumption be established.

CONTENT

House Bill 5265 would amend the Friend of the Court Act to require the Office of the Friend of the Court (FOC) to include in its written report regarding child support the support amount determined by application of the child support formula and all factual assumptions upon

which that amount was based. Currently, the FOC is required to investigate all relevant facts and make a written report and recommendation to the parties and the court regarding child support, if ordered to do so by the court. The child support formula developed by the State Friend of the Court Bureau must be used as a guideline in recommending child support. Under the bill, if the FOC determined from the facts of the case that application of the child support formula would be unjust or inappropriate, the written report also would have to include an alternative support recommendation; all factual assumptions upon which the alternative support recommendation was based, if applicable; how the alternative recommendation deviated from the support formula; and, the reasons for the alternative support recommendation. The written report and recommendation would have to be placed in the court file.

House Bills 5266 through 5271 would amend various laws under which child support can be ordered to require the court to order support in an amount determined by application of the child support formula developed by the State FOC Bureau, although the court could enter an order that deviated from the formula if a) the parties agreed to a different amount, provided that the party receiving child support was not a recipient of public assistance, or b) the court determined from the facts of the case that application of the formula

H.B. 5265-5271 (12-6-89)

would be unjust or inappropriate and set forth in writing or on the record all of the following:

- The support amount determined by application of the formula.
- How the support order deviated from the formula.
- The value of property or other support awarded in lieu of payment of child support, if applicable.
- The court's reasons for its determination.

House Bill 5266 would amend the divorce law. House Bill 5267 would amend the Child Custody Act. House Bill 5268 would amend the Family Support Act. House Bill 5269 would amend the Paternity Act. House Bill 5270 would amend the emancipation of minors Act. House Bill 5271 would amend the Revised Uniform Reciprocal Enforcement of Support Act.

House Bills 5265 through 5271 are all tie-barred to each other.

MCL 552.505 (House Bill 5265)
552.15 & 552.16 (House Bill 5266)
722.27 (House Bill 5267)
552.452 (House Bill 5268)
722.717 (House Bill 5269)
722.3 (House Bill 5270)
780.164 (House Bill 5271)

BACKGROUND

Federal rules to implement the 1988 Federal Act's requirements recently were proposed. Among other things, the proposed rules would require that, as of October 13, 1989, the State provide for the rebuttable presumption for use of the State child support formula. Under the proposed rules, findings that rebut the formula would have to include the amount of support that would have been required, how the order varied from the formula, the justification of how the finding served the child's best interest, and the value of any property awarded in place of a portion of the child support presumed under the formula.

FISCAL IMPACT

The bills would bring Michigan into compliance with one requirement of the Federal Family

Support Act under which states must establish a rebuttable presumption that the amount of child support yielded under the State formula is the correct amount to be awarded. States may be subjected to Federal financial sanctions for failing to meet the mandates of that Act. Michigan receives approximately \$58 million in Federal funds for child support-related activities. By failing to comply with the rebuttable presumption mandate, Michigan could risk losing some or all of the \$58 million.

Complying with the Federal law would impose no added costs on the courts.

ARGUMENTS

Supporting Argument

Consistent with Federal requirements, the bills would establish in law a rebuttable presumption in favor of using the State child support formula to set child support payments. The bills also would include language parallel to a provision of the Federal Act that allows alternate payment levels if using the formula would be "unjust or inappropriate" in a particular case. As required by proposed Federal rules, the bills would require certain statements to be made when the child support formula was not followed. Those statements would include explanations of the amount of support that would have been required, how the order varied from that amount, and the value of any property awarded in place of a portion of child support.

Failure to meet the Federal requirements would subject the State to penalties of up to \$58 million, but Federal sanctions aside, the bills propose good public policy by encouraging the use of a rational child support formula and establishing statewide uniformity. In addition, House Bill 5265 would extend to the FOC the same flexibility in setting aside the child support formula that House Bills 5266 through 5271 would allow for the courts. Thus, the FOC would have to formulate its child support recommendations under the same statutory guidance that the court would use to issue child support orders.

Opposing Argument

Under the proposed Federal rules, 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 proposed rules demand that the criteria be "based on the best interests of the child". Since 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, because that would make it virtually impossible to adjust payments downward, even temporarily, to accommodate unusual circumstances. The Federal rules, which as yet are merely proposals, go farther than the Federal Act, which does not require State criteria to be based on the child's best interests. The bills prudently remain silent on this matter.

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