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REVIEW OF SUPPORT ORDERS

House Bill 5220 (Substitute H-3)
First Analysis (12-15-93)

Sponsor: Rep. Roland Jersevic
Committee: Judiciary

THE APPARENT PROBLEM:

The state and society have an interest in ensuring that noncustodial parents pay court-ordered child support. Often, when support is not paid, children end up in poverty, with obvious consequences for them and society as a whole. Thus, improving child support collections for children receiving Aid to Families with Dependent Children (AFDC) becomes important both for the children and the state, which can reduce its public assistance costs through getting children off AFDC and increasing reimbursements to the state through the payment of back support.

With the primary aim of improving child support collections in cases where the child is receiving AFDC or medical assistance, Congress, through the provisions of the Family Support Act of 1988 (Public Law 100-485), has required periodic review of child support orders and adjustment, where appropriate, in accordance with state guidelines. Federal regulations on the matter were issued December 28, 1992, and specify an effective date of October 13, 1992. Federal regulators, however, apparently have given the state until the end of this year to enact the necessary statutory changes. The Department of Social Services (DSS) reports that the state stands to lose some \$71 million in federal child support enforcement funds, plus an additional \$26 million in federal incentive payments. Legislation to comply with federal mandates has been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Friend of the Court Act with regard to review and modification of support orders. In general, the bill would: require review of cases involving children receiving public assistance at least every 36 months, as opposed to every 24 months; establish detailed procedures on notification and responses to reviews and proposed modifications; establish procedures for Michigan to seek review of support orders issued in other states

and involving children on public assistance or medical assistance in Michigan; and, require reviewed support orders to include reasonably available health care coverage for children. A more detailed explanation follows.

Review of support orders. The friend of the court must now review child support cases where a child is receiving public assistance (AFDC support cases) at least once every two years; consistent with federal law, the bill would require review at least once every 36 months, unless the Department of Social Services (DSS) found good cause not to proceed with support action, and neither party had requested a review.

A child support order may also be reviewed at the initiative of the friend of the court if there are reasonable grounds to believe that the amount of the award should be modified. As required by federal regulations, the bill also would authorize the friend of the court to initiate a review based on reasonable grounds to believe that dependent health care coverage was available. "Reasonable grounds" to review an order would include: temporary or permanent changes in the custody of the child; increased or decreased need of the child, probable access by an employed parent to dependant health care coverage, or changed financial conditions of a recipient or payer of child support.

The friend of the court also must at present review an order upon written request from either party, although it need not do so if it had investigated the matter at the request of that party within the previous two years. Consistent with federal law, the bill would extend this period to 36 months, and require the office to determine whether an order was due for review within 15 days of receiving a review request.

Consistent with federal regulations, the bill would newly require the friend of the court to review child

support cases where the child was receiving medical assistance at least once every 36 months, unless neither party had requested a review and either the DSS had notified the friend of the court of good cause not to proceed, or the support order already required health care coverage to be provided.

Also consistent with federal regulations, the bill would newly require the friend of the court to review a case at least once every 36 months if requested by a state (the "initiating state") for a recipient of federal Title IV-D services (generally, AFDC cases). As required by federal regulations, the office would determine whether an order was due for review within 15 days of receiving a review request.

Notices. As required by federal regulations, the friend of the court would send notices to parties, conduct a review, and obtain a modification of an order (if appropriate) within 180 days after determining that a review was required.

Child support formula. Consistent with federal law and existing Michigan statute, the bill generally would require the state child support formula to be used to calculate an award. The friend of the court would prepare a written report as prescribed by the bill if it determined that the facts of the case would make use of the formula unjust or inappropriate. Although not required by federal regulations, the bill would require that the formula establish a minimum threshold for modification of support amount. The formula would have to consider the child care and dependent health care coverage costs of each party.

Modification exceptions. The friend of the court generally would have to petition the court if application of the child support formula indicated that modification was necessary. However, a petition would not be required if the difference between the existing and projected child support was within a threshold set by the formula, or if the court maintained an earlier determination that use of the formula was unjust or inappropriate, given the facts of the case.

Review procedures. Each party would have to be notified of the right to request a review of a child support order, along with how to make such a request. For a matter initiated 90 days or more after the bill took effect, that notice could be provided through the informational pamphlet

required under current law. For other cases, each friend of the court would send a notice to each party's last known address within 180 days after the bill took effect.

Consistent with federal regulations, the friend of the court would have to notify each party of a review at least 30 days before the review was conducted. That notice would request necessary information and would specify when it was due.

Health care coverage. Consistent with federal regulations, if a support order lacked provisions for health care coverage, the friend of the court would seek a modification that required one or both parents to obtain or maintain health care coverage for the child(ren), providing the coverage was available at a reasonable cost as a benefit of employment. The friend of the court would determine the costs to each party for dependent health care coverage and child care costs and would disclose these costs in the report to be issued in conjunction with a proposed modification.

Modification procedures. After conducting a review, the friend of the court would notify each party of any proposed increase or decrease in the amount of child support, any modification proposed to order health care coverage, or any determination that there should be no change in the child support order. If the friend of the court determined that there should be no change in the child support order, a party could object to that determination within 30 days and have the right to a hearing. The bill would allow a petition for modification to be made at the same time the parties are provided with notice of a proposed modification (this is not part of the federal mandate). A hearing on a proposed modification would be held at least 30 days after notice was provided. That notice, which would go to each party, would explain how to object to the proposed modification or determination that no change should be made.

The court would not modify a support order until a copy of the written report or other supporting documents used by the friend of the court were made available to each party and his or her attorney.

Interstate actions. As required by federal regulations, if Michigan was the "initiating state" in an interstate child support matter, the friend of the court would determine whether a review of a

support order in another state was appropriate, using the standards of existing law and the bill. If the friend of the court determined that a review of a support order in another state was appropriate, the friend of the court would obtain necessary information from the requesting party or recipient of public assistance or medical assistance. The friend of the court would initiate a request for review within 20 days after receiving the information. The friend of the court would send to a Michigan party copies of each notice issued by the responding state for distribution.

Referees. The bill would authorize circuit court referees to hold child support modification hearings. (Referees may now hold various sorts of hearings, recommend support obligation default orders, and perform other related duties.)

FISCAL IMPLICATIONS:

The DSS reports that the net fiscal impact of the bill would "be dependent on the increased and administrative costs actually incurred and actual amount of AFDC-related child support collections. The increased administrative costs will be almost fully felt in Fiscal Year 1995, while the child support collections will increase gradually over several years. By Fiscal Year 1996, the AFDC-related child support collections should exceed the administrative costs by over \$10 million and the gap between savings and costs will continue to widen over time."

Administrative costs are expected to increase under the bill due to an increase in the number of cases reviewed. Federal funds are available to cover 66 percent of the administrative costs under the bill, and additional incentive payments may be available. Potential savings will be realized through these incentive payments, and through increased AFDC-related child support collections.

The DSS estimates that based on a federal demonstration project, child support collections in AFDC cases could increase by \$2.88 million in fiscal year 1993-94, and increase further in succeeding fiscal years.

The DSS reports that failure to comply with federal requirements could result in the loss of about \$71 million in federal financial participation for child support activities, and an additional \$26 million in child support incentives. This money funds local friends of the court, prosecutors working on child

support cases, and the DSS office of child support. (12-13-93)

ARGUMENTS:

For:

The bill would bring Michigan into compliance with the federal Family Support Act, thus preserving millions of dollars in federal funding, making the state eligible for millions more, and improving child support collections. While some may be concerned about the change from a 24-month review cycle to a 36-month cycle, federally-imposed notice and hearing provisions are likely to considerably increase costs for friends of the court; without employing the 36-month period proposed by federal regulations, the bill would be unnecessarily burdensome for friends of the court. Even with the switch to 36 months, the bill will over time increase the number of reviews, although there will be initial lag.

Against:

Many believe that the legislature should not accede to expensive federal mandates, such as those proposed by the bill. The federal government has meddled too much in state matters of late, without regard to the effect on the states.

Response:

The mandate that led to the bill is not an unfunded mandate. The federal government covers over two-thirds of the costs of the bill, and increased collections under the bill are expected to further reduce state costs.

Against:

The bill may be unfair to noncustodial parents, particularly with regard to their due process rights, by failing to explicitly state the threshold for modification, instead leaving the decision to the friend of the court; by failing to address problems arising under the doctrine of imputed income, which assumes that a party has income higher than what is actually available; and by failing to clearly apportion the costs of health insurance where both parties are employed, again leaving that decision to the friend of the court.

POSITIONS:

The Department of Social Services strongly supports the bill. (12-14-93)

The Friend of the Court Association of Michigan supports the bill. (12-14-93)

The National Congress for Men and Children, Michigan Chapter, opposes the bill. (12-15-93)

The Capital Area Chapter of Fathers for Equal Rights opposes the bill. (12-15-93)