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BILL



ANALYSIS

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Senate Bill 585 (as enrolled)
 Sponsor: Senator Robert Geake
 Senate Committee: Families, Mental Health and Human Services
 House Committee: Judiciary and Civil Rights

PUBLIC ACT 365 of 1996

Date Completed: 7-22-96

RATIONALE

Created in 1919, Michigan's Friend of the Court (FOC) system is responsible for investigating and making recommendations with respect to custody, visitation (parenting time), and support in domestic relations matters; monitoring compliance with court orders; and enforcing the orders in case of violation. After a support order is entered in a domestic relations matter (except as otherwise provided in the order or judgment), the FOC office is required to receive all payments of support; at least once a month record the support payments due, paid, and past due; and disburse all support payments to the recipient of support. Many people believe that FOC offices are not adequately performing their statutory duties, or are not responsive to the needs of the clients they serve. In particular, there have been a number of complaints about gender bias among FOC employees, and there is a perception that FOC offices do not diligently pursue the enforcement of parenting time rights. In addition, both payers and payees have complained that the FOC system of disbursing child support payments is slow and inefficient.

CONTENT

The bill amends the Friend of the Court Act to specify additional duties of the FOC, including compiling data on complaints regarding support and parenting time, disbursing support payments within 14 days, and meeting with a party during an investigation. The bill also requires the FOC to be open to the public during nontraditional office hours.

The bill will take effect on January 1, 1997.

The bill requires each local office of the Friend of the Court to compile data on the number and type

of complaints regarding support and parenting time. The data must include, but are not limited to, the number of cases in which a party fails to appear at a show cause hearing and the number of cases in which a bench warrant is issued for failure to appear. The data must be transmitted at least annually in a report to the Office of the State Court Administrator. The following specific information also must be compiled:

- The number of State or Federal income tax intercepts subsequently found to be based on inaccurate information or employee error.
- The number of support orders modified due to inaccurate information or employee error.
- The number of grievances filed in a calendar year, the nature of each grievance, the judicial response to each grievance, and any sanction imposed as a result of each grievance.
- The number of custody recommendations recommending physical custody to the mother, the father, or a third party.
- The number of make-up parenting time petitions filed, the number of hearings held on such petitions, the number of instances make-up parenting time is ordered, and the amount of such time that is ordered.

Currently, after a support order is entered in a domestic relations matter, the FOC office must receive all payments of support orders and disburse them to the recipient of support. The bill requires that the FOC make this disbursement within 14 days after the office receives each payment.

The FOC Act requires each Friend of the Court to take all necessary steps to adopt office procedures to implement the Act, Supreme Court rules, and

recommendations of the FOC Bureau. The bill also specifies that Office of the Friend of the Court duties must be performed in accordance with the Elliott-Larsen Civil Rights Act.

The bill requires an FOC office to be open to the public, making available all of its services at least 20 hours each month during nontraditional office hours. This provision, however, is not to be construed to require an FOC office to be open for a greater number of hours than before the bill's effective date.

Currently, before the adjudication of a domestic relations matter, the FOC office must give an informational pamphlet to each party to the matter. The bill requires this pamphlet to include notification that each party to the dispute has the right to meet with the individual investigating the dispute before he or she makes a recommendation regarding the dispute.

The Act requires the FOC to investigate all relevant facts regarding child custody or parenting time if there is a custody or parenting time dispute and domestic relations mediation is refused by either party or is unsuccessful, or if ordered to do so by the court. The FOC also must investigate regarding child support if ordered to do so by the court. The bill provides that an investigation must include a meeting with a party, if requested by the party. If a party who requests a meeting during an investigation fails to attend the scheduled meeting without good cause, the investigation may be completed without a meeting with that party.

MCL 552.503 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill addresses various concerns about the Friend of the Court system. In particular, the bill aims to remove gender bias within FOC offices by requiring FOC duties to be performed in accordance with the Elliott-Larsen Civil Rights Act, which prohibits public agencies from discriminating in the provision of services because of sex, marital status, religion, race, color, or national origin. Also, many people reportedly experience financial difficulty because of long delays in receiving support payments, even though a payer might be subject to income withholding or has paid support

on time to the FOC. The bill will ensure that the FOC disburses support payments promptly, by putting a two-week deadline on this responsibility. In addition, requiring an FOC investigation to include a meeting with a party, upon request, will give individuals an opportunity to share relevant information with the FOC, which might have an impact on the office's recommendations. A party cannot delay an investigation simply by requesting a meeting and not showing up, however, since an investigation may be completed without a meeting if the requesting party fails to attend without good cause. By requiring each FOC office to compile data on the number and type of complaints regarding support and parenting time, the bill will enable policy-makers to identify problem areas and make the appropriate changes, and will enable the FOC to make its own improvements. While there has been considerable anecdotal testimony about problems within the FOC system, the State does not have a data base of instances of late payments, inattention to parenting time rights, or other grievances. The bill will generate the needed information.

Response: As a public agency, the FOC already is subject to the Elliott-Larsen Civil Rights Act. Perhaps FOC staff should be trained to recognize and avoid gender bias problems. In regard to meeting with a party in child support matters, there may be little or nothing for an investigator to discuss since the FOC is required by statute to use a child support formula. A hearing before the court--to which parties already are entitled--might be more likely to resolve individual concerns.

Opposing Argument

Requiring FOC offices to maintain at least 20 "nontraditional" office hours each month may result in increased costs, despite the bill's language that this requirement is not to be construed to increase total office hours. Since FOC offices serve the circuit court as well as the public, and must be open when the court is open, it will not be possible simply to shift personnel from traditional to nontraditional office hours. Keeping FOC offices open during nontraditional hours also raises questions about the availability of data processing services, the need for building security, and the possible need to renegotiate labor agreements.

Legislative Analyst: S. Margules

FISCAL IMPACT

Currently the FOC has 30 days in which to process support payments. Under this bill, payments will

have to be disbursed within 14 days. The impact on the FOC of this change will be minimal. Currently, approximately 10% of the support payments are not disbursed in a timely manner and this number is expected to decrease with the ongoing implementation of the Child Support Enforcement System (CSES).

According to the State Court Administrative Office, the requirement that Friend of the Court offices be open at least 20 nontraditional hours will have a significant fiscal impact on the courts. The SCAO has estimated the impact to be at least \$1 million annually for personnel, security, and data processing costs.

The total fiscal impact is indeterminate as not all FOC offices in the State are the same. Friend of the Court offices do not all have the same hours, do not all reside in the same building as the circuit court, and do not all have security; in addition, some employees do or do not belong to bargaining units.

There are currently 64 FOC offices. Assuming that half of the offices reside in the same facility as the circuit court, then 32 offices will need to be open during the same hours as the circuit court is open. Additionally, FOC offices that are not located in the same building also may be subject to following the hours of the circuit court. Therefore, any nontraditional hours, in most instances, will have to be in addition to the traditional hours of the court. This may require additional resources in the form of security, data processing, facilities management, and salaries, among other things.

The bill also opens up the possibility of employee grievances, which might call for renegotiations of collective bargaining agreements due to changes in "traditional" employee working hours. This cost is indeterminate as it will depend on whether timely agreements are reached by the interested parties and any additional cost that might result due the renegotiations.

Fiscal Analyst: M. Bain

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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.