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BILL ANALYSIS



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Senate Bill 586 (Substitute S-4 as passed by the Senate)
 Sponsor: Senator Glenn D. Steil
 Committee: Families, Mental Health and Human Services

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RATIONALE

Created in 1919, Michigan's Friend of the Court system is responsible for investigating and making recommendations with respect to custody, visitation, and support in domestic relations matters. Friend of the Court (FOC) offices monitor compliance with court orders, enforce the orders in case of violation, and receive support payments from noncustodial parents. Under the FOC Act, an FOC office is created in each judicial circuit of the State, and the head of each office is the Friend of the Court. Each FOC is an employee of the circuit court (except in the Third Circuit, where the FOC is an employee of the State Judicial Council). A Friend of the Court is appointed by the chief judge, who is responsible for annually reviewing the FOC's performance and may remove the FOC if he or she is guilty of misconduct, neglect of statutory duty, or failure to carry out court orders relative to a statutory duty. If a party to a domestic relations matter has a grievance concerning office operations or employees, he or she may file the grievance with the FOC office, which is required to have the grievance investigated and decided as soon as possible. A party who is dissatisfied with the FOC's decision then may file a grievance with the chief judge, who must have it investigated and decided.

Many people claim that FOC offices fail to perform their statutory duties, and believe that the system for investigating these failures is lacking in accountability. For example, before a domestic relations matter is adjudicated, the FOC is required by law to investigate all relevant facts, and make a report and recommendation to the parties and the court regarding child custody, visitation, or support. The investigation may include reports and evaluations by outside persons or agencies if requested by the parties or the court, and must include documentation of alleged facts, if practicable. Reportedly, however, an FOC

sometimes will make a recommendation without first investigating, will exclude outside evaluations, and/or will fail to document allegations. If a grievance then is filed, say detractors, the FOC office essentially is required to investigate itself; since the office is an agency of the circuit court, the court simply is investigating itself, too. It has been suggested that an independent, neutral entity should be created to look into complaints about FOC offices, and that county commissioners should have some input concerning an FOC's hiring, performance review, and removal.

CONTENT

The bill would amend the Friend of the Court Act to require each county board of commissioners to appoint a citizen Friend of the Court advisory committee, which would be required to review and investigate grievances concerning the FOC, and advise the court and the county board on the FOC's performance. The chief judge still would be responsible for the FOC's appointment, performance review, and removal, but the county board could reject an appointment or a decision to remove the FOC, and would participate in the performance review. Under the bill, the FOC could be removed or placed on probation without a determination of specific grounds for removal. The bill would require an FOC office or a chief judge to respond within 30 days to a grievance concerning the FOC. The bill also provides that a party to a domestic relations matter could file a grievance with the appropriate citizen advisory committee.

Citizen FOC Advisory Committee

A county board would have to establish for its county a citizen FOC advisory committee. A committee would be composed of the following,

who would have to be residents of the county: a representative of the circuit court; a representative of noncustodial parents; a representative of custodial parents; an advocate for children; a representative of the sheriff's office; an attorney who engaged primarily in family law practice; and a member of the general public. ("County board" would mean the county board of commissioners in the county served by the FOC office. If a judicial circuit included more than one county, action required to be taken by a majority of the county board would mean action by a majority of all the members serving on the county boards of commissioners for the counties comprising that circuit.)

The county board would have to appoint the advisory committee members, and could remove a member for cause. A vacancy on the committee would have to be filled for the remainder of the term in the same manner as the position was originally filled. The county board would have to attempt to compose the committee so that its membership reflected the ethnic, racial, and gender distribution of the community that it served. Except for initial members, a committee member would serve a renewable three-year term. Of the initial members, three would serve three-year terms, two would serve two-year terms, and two would serve one-year terms. A committee would have to elect one of its members as chairperson and one as vice-chairperson; each would serve a one-year term. The State Court Administrative Office (SCAO) would have to perform staff and support functions necessary for a citizen advisory committee to perform its duties and functions.

A citizen advisory committee would be advisory only, and would have to do the following:

- Meet at least six times annually, keep minutes of each meeting, and submit a copy to the county board.
- Review and investigate grievances concerning the FOC.
- Develop guidelines for the treatment of gender bias issues in the community.
- Advise the court and the county board on the duties and performance of the FOC and the FOC office, and on the community's needs relating to the office's services.
- At the end of each calendar year, submit an annual report of its activities to the county board, court, SCAO, Governor's office, and Senate and House standing committees and Appropriations subcommittees responsible for legislation concerning the judicial branch.

A citizen advisory committee chairperson could appoint subcommittees composed of three committee members to review, investigate, and hold hearings on grievances submitted to the committee. The chairperson could serve on a subcommittee and would have to attempt to appoint members so that each member had an equal opportunity for subcommittee participation.

Except as provided below, a citizen advisory committee meeting would have to be open to the public. A member of the public attending a meeting would have to be given a reasonable opportunity to address the committee on an issue under its consideration. If a vote were to be taken by the committee, the opportunity to address the committee would have to be given before the vote was taken. A citizen advisory committee meeting, including a subcommittee meeting, would not be open to the public while the committee or subcommittee was reviewing, investigating, or holding a hearing on a grievance concerning FOC office operations or employees.

FOC Appointment and Review

Currently, if the position of Friend of the Court becomes vacant for any reason, the chief judge is required to appoint a person to the position within six months after the vacancy occurs. The bill provides that the person appointed could not serve as the FOC if, within 30 days after the appointment was made, a majority of the county board rejected it. The bill also specifies that an FOC "is an at-will employee".

The Act requires the chief judge annually to review the performance record of each Friend of the Court serving that circuit to determine whether he or she is guilty of misconduct, neglect of statutory duty, or failure to carry out written orders of the court relative to a statutory duty; whether the purposes of the Act are being met; and whether the duties of the FOC are being carried out in a manner that reflects the needs of the community being served. Members of the public may submit written comments to the chief judge relating to these criteria. Under the bill, the chief judge and the county board would have to review the FOC's performance record, and members of the public could submit written comments to the chief judge or the county board. The citizen advisory committee also could advise the court and the county board regarding the criteria.

The Act requires that a written evaluation, including a summary of any public comments

received, to be made. The bill instead would require the court to prepare a written evaluation, including a summary of any public comments and of any citizen advisory committee report or recommendation.

FOC Removal

The Act provides that in a judicial circuit in which the Friend of the Court is employed by the State Judicial Council, the chief judge may remove the FOC or place the FOC on probation upon making a determination that he or she is guilty of misconduct, neglect of statutory duty, or failure to carry out written orders of the court relative to a statutory duty. In any other judicial council, a hearing to consider whether the FOC is guilty of misconduct, neglect of duty, or failure to carry out written orders must be convened as specified in the Act. The chief judge may remove the FOC or place him or her on probation if the hearing results in a determination that the FOC is guilty of misconduct, neglect of statutory duty, or failure to carry out written orders.

The bill would delete all of these provisions. The bill provides that the chief judge could remove the FOC or place him or her on probation. The chief judge's decision would be nullified if, within 30 days after the decision, a majority of the county board disapproved it.

Grievances

Under the Act, a party to a domestic relations matter who has a grievance concerning FOC office operations or employees may file the grievance with the appropriate FOC office. The office must have the grievance investigated and decided as soon as practicable. A party who is not satisfied with the decision of the office then may file a grievance with the chief judge, who is required to have it investigated and decided as soon as practicable. The bill would retain these procedures but require the office or the court, within 30 days after a grievance was filed, to respond to the grievance or issue a statement to the party filing it stating the reason a response was not possible within that time.

In addition, a party who had a grievance concerning office operations or employees, at any time during the proceedings, could file the grievance with the appropriate citizen advisory committee. In its discretion, the advisory committee would have to conduct a review or investigation of, or hold a formal or informal hearing on, the grievance. The committee could

delegate this responsibility to subcommittees appointed by the chairperson.

The citizen advisory committee also would have to establish a procedure for randomly selecting grievances submitted directly to the FOC office. The committee would have to review the office's response to those grievances and report its findings to the court and the county board, either immediately or in the committee's annual report.

If a citizen advisory committee reviewed or investigated a grievance, the committee would have to respond to the grievance as soon as practicable.

FOC Bureau

The Act provides for the creation of the State Friend of the Court Bureau within the State Court Administrative Office. Among other things, the Bureau is required annually to issue a report containing a detailed summary of the types of grievances received by each FOC office, and whether the grievances are resolved or outstanding. The bill would require the report to include at least all of the following:

- An evaluative summary, supplemented by applicable quantitative data, of the activities and functioning of each citizen advisory committee during the preceding year, and of the aggregate of all citizen advisory committees in the State during the preceding year.
- An identification of problems impeding the efficiency of the committees' activities and functioning, and the satisfaction of the users of the committees' services.

Currently, the report must be transmitted to the Legislature and to each FOC office. The bill would require that the report also be made available to the public.

In addition, the bill would require the Bureau to develop guidelines for, and encourage the use of, plain language within the FOC office, including the use of plain language in forms and instructions within the office and in statements of account of support payments, provided to parties.

State Advisory Committee

The Act requires the FOC Bureau to establish a nine-person advisory committee (which the bill would refer to as the "state advisory committee"). The advisory committee is required, among other things, to develop and provide the FOC office with the following:

- Form motions, responses, and orders for use by a payer or payee in requesting the court to modify his or her child support order, or in responding to a motion for modification without assistance of legal counsel.
- Instructions on preparing and filing the forms, on service of process, and on scheduling a support modification hearing.

Under the bill, the State advisory committee also would have to prepare the provide the FOC office with form motions, responses, and orders for use by an individual in requesting the court to modify his or her custody or parenting time order, as well as instructions on scheduling a custody or parenting time modification hearing. The FOC office would have to make these forms and instructions available to individuals requesting the court to modify their child support, custody, or parenting time order, or responding to a motion for modification.

The Act also requires the State advisory committee to advise the Bureau in the performance of its duties. The bill would require the Bureau to make a State advisory committee report or recommendation available to the public.

MCL 552.502 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

By creating a citizen advisory committee in each county, the bill would make the Friend of the Court system considerably more “user friendly” and accountable to the community. According to testimony of the Kent County Friend of the Court, FOC clients include over one-fourth of the State’s population on any given day. These individuals are children, mothers, and fathers whose lives can be seriously affected by a recommendation of the FOC office. For example, if custody is granted to a child’s mother despite allegations by the father that she is mentally unstable, the child’s welfare may be jeopardized and the father’s peace of mind shattered; if the FOC office and the court then fail to investigate a grievance, the father has nowhere to turn. Since courts as a rule reportedly adopt FOC recommendations, it is essential that the recommendations be made after a thorough investigation and with a full command of the

relevant facts. Although appropriate laws to require this are on the books, apparently these laws are not being uniformly followed or enforced. The proposed citizen advisory committees would provide an additional forum where a grievance could be filed and would have to be investigated. A citizen advisory committee also would be responsible for developing guidelines for the treatment of gender bias issues in its community, and advising the court and the county board on the FOC’s performance. While chief judges still could hire and fire Friends of the Court, these decisions could be rejected by the county boards. In addition, FOCs clearly would be at-will employees who could be removed or placed on probation without a specific determination of misconduct or neglect.

Opposing Argument

The bill is a good idea but does not go far enough. Friends of the Court should be fully accountable to county boards of commissioners, who are elected officials and must answer to the public. Their decisions tend to be more visible than judicial decisions, and county commissioners are far easier to replace in elections than judges appear to be. The proposed advisory committees simply would create another level of bureaucracy.

Response: There are constitutional limitations on what the Legislature can tell the judicial branch to do. This bill represents a pragmatic solution to a societal problem.

Opposing Argument

Some technical concerns about the bill have been raised. First, the composition of the proposed advisory committees has the potential for an appearance of impropriety. If a committee had to include representatives of custodial and noncustodial parents, as well as a family law attorney, the bill should ensure that none of these individuals had open cases or practiced before the court that the committee was advising. The bill also should ensure that the attorney’s clients or the parents did not suffer as a result of any action taken by the committee. In addition, the bill would enable the county board to reject a chief judge’s decision to appoint or remove an FOC. The judge, however, would remain ultimately responsible for the FOC’s performance and should have unfettered hiring and firing authority. Further, the bill should clearly limit the scope of review by a citizen advisory committee by specifying that a party was not entitled to an entirely new review of the FOC’s decision. It also has been suggested that citizen advisory committees should be required to look at the standards developed by the State FOC advisory committee.

Further, the law currently requires a Friend of the Court to demonstrate experience or education in at least one of three areas--a human service or behavioral science field, domestic relations law, or administration. It has been suggested that FOCs should have to meet at least two of these criteria.

Legislative Analyst: S. Margules

FISCAL IMPACT

The fiscal impact of this bill would depend on the changes in the responsibilities and duties of the Friend of the Court office and its employees. Assuming that there would be no changes in the FOC office, the bill would have no fiscal impact.

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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.