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BILL ANALYSIS



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Senate Bill 586 (as enrolled)
 Sponsor: Senator Glenn D. Steil
 Senate Committee: Families, Mental Health and Human Services
 House Committee: Judiciary and Civil Rights

PUBLIC ACT 366 of 1996

Date Completed: 6-11-97

RATIONALE

Created in 1919, Michigan's Friend of the Court system is responsible for investigating and making recommendations with respect to custody, parenting time, 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. 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. A party who is dissatisfied with the FOC's decision then may file a grievance with the chief judge.

Many people claimed that FOC offices failed to perform their statutory duties, and believed that the system for investigating these failures was 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, parenting time, 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 made a recommendation without first investigating, excluded outside evaluations, and/or failed to document allegations. If a grievance then was filed, said detractors, the FOC office essentially was required to investigate itself. It was suggested that an independent, neutral entity should be created to look into complaints about FOC offices, and that FOCs should be more accountable to the community.

CONTENT

The bill amended the Friend of the Court Act to establish in each county a citizen Friend of the Court advisory committee, which is 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 remains responsible for the FOC's appointment, performance review, and removal, but an appointment or removal will not be effective without the approval of a majority of the circuit, probate, and district judges in the FOC's geographic area. Under the bill, the FOC may be removed without a determination of specific grounds for removal. The bill requires 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 may file a grievance with the appropriate citizen advisory committee. The bill took effect January 1, 1997.

Citizen FOC Advisory Committee

The bill provides that a citizen FOC advisory committee is established in each county and is composed of the following, who must be residents of the county: a representative of noncustodial parents; a representative of custodial parents; an advocate for children; an attorney who engages primarily in family law practice; the county sheriff or the sheriff's designee; the prosecuting attorney or the prosecutor's designee; the Director of the Family Independence Agency (FIA) or the Director's designee; a mental health professional who provides family counseling; and a member of the general public who is not someone who could serve in a category listed above. (The bill defines

“county board” as the county board of commissioners in the county served by the FOC office. If a judicial circuit includes more than one county, action required to be taken by the county board means action by the county boards of commissioners for all counties comprising that circuit.)

Except for the sheriff, prosecutor, and FIA Director, the county board must appoint the advisory committee members. (In a charter county, however, the county executive must appoint the committee members with the advice and consent of the county board, and must exercise the other powers and duties prescribed for the county board by these provisions in regard to the committee.) The county board may remove a member for cause. A vacancy on the committee must be filled for the remainder of the term in the same manner as the position was originally filled. The county board must attempt to compose the committee so that its membership reflects the ethnic, racial, and gender distribution of the community that it serves. A committee must elect one of its members as chairperson and one as vice-chairperson; each is to serve a one-year term. The State Court Administrative Office (SCAO) must perform staff and support functions necessary for a citizen advisory committee to perform its duties and functions.

Except for initial members, a committee member is to serve a renewable three-year term. Of the initial members, three are to serve three-year terms, two are to serve two-year terms, and two are to serve one-year terms. Except for the sheriff, prosecutor, and FIA Director, a committee member may not serve more than two consecutive terms. After completing two consecutive terms, a former member may not be reappointed to serve during the two years immediately following the end of his or her previous term.

A citizen advisory committee is advisory only, and must 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.
- 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 may appoint subcommittees composed of three committee members to review, investigate, and hold hearings on grievances submitted to the committee. The chairperson may serve on a subcommittee and must attempt to appoint members so that each member has an equal opportunity for subcommittee participation.

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

FOC Appointment and Review

Under the Act, 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 an appointment is not effective until approved by a majority of the circuit, probate, and district court judges serving in all districts that have any area in common with the geographic area served by that FOC. 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 or, under the bill, the county board, relating to these criteria. The bill provides that the citizen advisory committee also may advise the court and the county board regarding the criteria.

The Act previously required a written evaluation, including a summary of any public comments received, to be made. The bill instead requires the court to prepare a written evaluation, including a

summary of any public comments and of any citizen advisory committee report or recommendation. The court and county board also, in a written response, may address the recommendation of the committee concerning its general operations.

FOC Removal

The Act provided that in a judicial circuit in which the Friend of the Court was employed by the State Judicial Council, the chief judge could remove the FOC or place the FOC on probation upon making a determination that he or she was 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 was guilty of misconduct, neglect of duty, or failure to carry out written orders had to be convened as specified in the Act. The chief judge could remove the FOC or place him or her on probation if the hearing resulted in a determination that the FOC was guilty of misconduct, neglect of statutory duty, or failure to carry out written orders.

The bill deleted all of these provisions. The bill provides that the chief judge may remove the FOC. A removal will not be effective until approved by a majority of the circuit, probate, and district court judges serving in all districts that have an area in common with the geographic area served by that FOC.

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 retains these procedures but requires the office or the court, within 30 days after a grievance is filed, to respond to the grievance or issue a statement to the party filing it stating the reason a response is not possible within that time.

In addition, a party who has a grievance concerning office operations, at any time during the proceedings, may file the grievance with the appropriate citizen advisory committee. In its discretion, the advisory committee must conduct a review or investigation of, or hold a formal or informal hearing on, the grievance. The committee may delegate this responsibility to

subcommittees appointed by the chairperson. A grievance filed under this provision is limited to office operations. If an individual files with the committee a grievance that concerns an office employee or a court or office decision or recommendation regarding a specific case, the committee must inform the individual that that matter is not a proper subject for a grievance.

The citizen advisory committee also must establish a procedure for randomly selecting grievances submitted directly to the FOC office. The committee must 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.

The citizen advisory committee must examine the grievances filed with the FOC and review or investigate each grievance that alleges that a decision was made based on gender rather than the best interests of the child.

If a citizen advisory committee reviews or investigates a grievance, the committee must 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 requires 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.

The Act requires the report to be transmitted to the Legislature and to each FOC office. The bill requires that the report also be made available to the public.

In addition, the bill requires 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 refers 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 must prepare and 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 must 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 requires the Bureau to make a State advisory committee report or recommendation available to the public.

FIA Information Requests

Under the bill, if the Family Independence Agency requests information from an FOC office, that office may provide the information requested on a quarterly basis. At least quarterly, the FIA must publish the information received under this provision.

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 will 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 citizen advisory committees will provide an additional forum where a grievance may be filed and must be investigated. A citizen advisory committee also will be responsible for advising the court and the county board on the FOC’s performance, and investigating grievances that claim that decisions were based on gender. While chief judges still may hire and fire Friends of the Court, these decisions must be approved by a majority of the judges in the area. In addition, the bill makes it clear that FOCs are at-will employees who may be removed 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 advisory committees simply will 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 advisory committees has the potential for an appearance of impropriety. If a committee must include

representatives of custodial and noncustodial parents, as well as a family law attorney, the bill should ensure that none of these individuals has open cases or practices before the court that the committee is advising. The bill also should ensure that the attorney's clients or the parents do not suffer as a result of any action taken by the committee. In addition, the bill requires that a majority of the judges in an FOC's area approve a chief judge's decision to appoint or remove the FOC. The chief judge, however, remains 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 is 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 bill will result in increased cost to the State Court Administrative Office, which will be responsible for providing the necessary staff support to the local citizen advisory committees. These costs are estimated to be approximately \$600,000.

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.