Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1036 (as passed by the Senate)
Senate Bill 1037 (Substitute S-1 as passed by the Senate)
Senate Bills 1038-1045 (as passed by the Senate)
Senate Bill 1046 (Substitute S-1 as passed by the Senate)
Senate Bill 1047 (as passed by the Senate)
Senate Bill 1052 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Joel D. Gougeon (Senate Bills 1036 and 1039)
Senator Bill Schuette (Senate Bills 1037 and 1047)
Senator William Van Regenmorter (Senate Bills 1038 and 1052)
Senator Robert Geake (Senate Bills 1040, 1041, and 1046)
Senator Mike Rogers (Senate Bills 1042-1045)
Committee: Judiciary

Date Completed: 8-14-96

RATIONALE

Michigan's court system includes three different trial courts--the circuit, probate, and district courts--each with separate jurisdictional areas. While the circuit and probate courts themselves are established in the State Constitution, and the Constitution allows the Legislature to establish courts of limited jurisdiction (e.g., district courts), the jurisdiction of each court is specified in statute, and each trial court has jurisdiction over some family-related issues. For instance, the Revised Judicature Act gives the probate court jurisdiction over adoption, name change, juvenile delinquency, and abuse and neglect cases, while the circuit court oversees divorce and custody issues and the district court handles domestic violence personal protection orders. Some people believe that, to make the courts more accessible and less confusing and intimidating to the average citizen, a separate and distinct division of the circuit court should have jurisdiction over all family-related legal matters.

CONTENT

Senate Bill 1052 (S-1) would amend the Revised Judicature Act (RJA) to establish the "family division of circuit court" (family court). Senate Bills 1036 through 1047 would amend various acts to replace certain references to the probate court with references to the family court and include the family court in certain definitions regarding courts' jurisdiction.

Senate Bills 1036 through 1047 all are tie-barred to House Bill 5158 (Public Act 374 of 1996), which amended the Revised Judicature Act to revise the State funding of trial courts.

Senate Bill 1036

The bill would amend the Revised Probate Code to replace certain references to the probate court with references to the family court. The bill would transfer from the probate court to the family court proceedings concerning guardianships and conservatorships. The bill would apply to guardianships, conservatorships, and protective proceedings commenced on or after January 1, 1998.

Senate Bill 1037 (S-1)

The bill would amend Chapters X, XI, and XIIa of Public Act 288 of 1939 to replace certain references to the probate court with references to the family court. Chapter X of Public Act 288 is the Michigan Adoption Code, Chapter XI deals with legal name changes, and Chapter XIIa is the juvenile code. The bill would transfer proceedings dealing with adoption, name change, and juvenile delinquency and abuse and neglect from the probate court to the family court.

The bill would repeal sections of the juvenile code that provide for a probate judge's appointment of a register of probate, a deputy probate register, or

court clerk as register of the juvenile division of the probate court and require that a county board of supervisors provide suitable quarters, equipment and supplies for the use of the juvenile division of probate court (MCL 712A.7 and 712A.27).

The bill also includes provisions that would make it consistent with recently enacted juvenile justice reform legislation.

The bill would take effect on January 1, 1997, and apply to offenses committed on or after that date. The provisions of the bill concerning family court would apply to actions and proceedings commenced on or after January 1, 1998. Amendments to the name change provisions in Chapter XI would take effect 91 days after the Legislature's 1996 sine die adjournment.

Senate Bill 1038

The bill would amend the Mental Health Code to replace certain references to the probate court with references to the family court. The bill would apply to actions and proceedings commenced on or after January 1, 1998.

Senate Bill 1039

The bill would amend Public Act 271 of 1925 (which provides for the commitment to State institutions of certain children incapable of adoption due to mental or physical disability or for any other reason) to provide that, for purposes of the Act, "court" would mean the probate court for commitment proceedings commencing before January 1, 1998, and the family court for commitment proceedings commencing on or after January 1, 1998.

Senate Bill 1040

The bill would amend Public Act 137 of 1921 (which authorizes counties to contract with State-licensed agencies, institutions, and hospitals for the aid, care, support, maintenance, treatment, cure, or relief of children) to replace certain references to probate judges with references to judges of the family court. The bill would take effect on January 1, 1998.

Senate Bill 1041

The bill would amend the emancipation of minors Act to replace certain references to the probate court with references to the family court. The bill would take effect on January 1, 1998.

Senate Bill 1042

The bill would amend Public Act 84 of 1949 (which provides for the transfer of inmates of certain State institutions and agencies to other State institutions and agencies for the purpose of care and training) to make the Act applicable to persons committed by the probate court, the family court, or a court of general criminal jurisdiction.

Under Public Act 84, a person committed by the probate court or a court of general criminal jurisdiction to a State institution or agency authorized to receive juveniles under the discretion of the Department of Mental Health (DMH), the Department of Corrections (DOC), or the Department of Social Services (DSS) for the purpose of treatment and/or training may be transferred from that institution to any other State institution or agency, if it appears to the institution's superintendent that the person will substantially benefit and that the interests of the person and the State will be served by the transfer. The bill would include in that provision a person committed by the family court, and would refer to institutions authorized to receive juveniles under the discretion of the former DMH, the Department of Community Health, the DOC, the former DSS, or the Family independence Agency.

Senate Bill 1043

The bill would amend Public Act 214 of 1963, which authorizes the establishment of regional facilities for the diagnosis and custody of delinquent and neglected minors, to replace certain references to the probate court with references to the family court. The bill would take effect on January 1, 1998.

Senate Bill 1044

The bill would amend the Juvenile Diversion Act to specify that, for purposes of the Act, "court" would mean the juvenile division of the probate court (juvenile court) or the family court.

Senate Bill 1045

The bill would amend the Juvenile Facilities Act to specify that "juvenile" would mean a person within the jurisdiction of the juvenile court or the family court. Under the bill, "juvenile facility" would mean a county facility; an institution operated as an agency of the county, the juvenile court, or the family court; or a State institution or agency described in the Youth Rehabilitation Services Act.

In addition, where the Act currently refers to a juvenile within the jurisdiction of the circuit court (i.e., a juvenile tried and convicted as an adult, but committed to a juvenile facility), the bill would refer to a juvenile within the "general criminal" jurisdiction of the circuit court (which would distinguish those individuals from juveniles within the jurisdiction of the family court).

Senate Bill 1046 (S-1)

The bill would amend the Youth Rehabilitation Services Act to refer to the juvenile court or the family court, with respect to youths committed to State wardship and the distribution of the cost of care of State wards between the State and counties. The bill also includes provisions that would make it consistent with recently enacted juvenile justice reform legislation. The bill would take effect on January 1, 1997, and apply to offenses committed on or after that date.

Senate Bill 1047

The bill would amend the Code of Criminal Procedure to refer to the juvenile court or the family court, with regard to juvenile delinquency cases. The bill also would refer to juveniles within the jurisdiction of the "general criminal" jurisdiction of the circuit court (which would distinguish juveniles charged as adults from juveniles under the jurisdiction of the family court).

Senate Bill 1052 (S-1)

The bill would amend the Revised Judicature Act to create the family division of circuit court, and specify the family court's jurisdictional areas, consistent with Senate Bills 1036 through 1047. Except as otherwise provided in the RJA, all provisions of the Act governing the circuit court would apply to the family court. Each judicial circuit would have to have a family court.

Judges of the circuit court would be assigned to serve as judges of the family court. In a judicial circuit that contained a single county and that had three or more circuit judges, the chief judge of the circuit court would have to assign one or more circuit judges to the family court. In other judicial circuits, the circuit judge or judges would have to sit part-time as judges of the family court.

In all judicial circuits, the chief judge of the circuit court, subject to the Supreme Court's approval, would have to assign probate judges of the county or counties within the circuit to serve as judges of the family court. In a single-county circuit, a probate judge could be assigned full and continuing responsibility over any case within the family court's jurisdiction. In a multicounty circuit, a probate judge could be assigned full and continuing responsibility for any case within the family court's jurisdiction that was filed within his or her county and could be assigned temporarily to serve as a judge of the family court in another county in the circuit, in order to assist another family court judge who was absent from that county or was incapacitated for any reason. If a probate judge who was assigned to the family court were not licensed to practice law in Michigan, the judge could be assigned only matters that he or she could have heard while sitting as a probate judge before January 1, 1998, and that originated in the county in which he or she was elected as a probate judge.

Except as otherwise provided by law, the family court would have sole and exclusive jurisdiction over cases commenced on or after January 1, 1998, that involved the following matters:

-- Divorce and ancillary matters as set forth in: the divorce Act (MCL 552.1-552.45); Public Act 259 of 1909, dealing with rights in property (MCL 552.101-552.104); Public Act 52 of 1911, dealing with alimony awarded by an out-of-state court (MCL 552.121-552.155); the Friend of the Court Act (MCL 552.501-552.535); Public Act 299 of 1905, dealing with the name change of a divorced woman (MCL 552.391); Public Act 42 of 1949, dealing with property awards to spouses (MCL 552.401-552.402); the Family Support Act (MCL 552.451-552.459); the Support and Parenting Time Enforcement Act (MCL 552.601-552.650); and the Interstate Income Withholding Act (MCL 552.671-552.685).
-- Adoption under the Michigan Adoption Code (MCL 710.1-710.70) and the commitment to State institutions of certain children incapable of adoption due to mental or physical disabilities or any other reason under Public Act 271 of 1925 (MCL 722.531-722.534).
-- Name changes under Chapter XI of Public Act 288 of 1939 (MCL 711.1-711.2).
-- Juvenile delinquency, and abuse and neglect, under the juvenile code (MCL 712A.1-712A.31).
-- The status of minors and their emancipation under the emancipation of minors Act (MCL 722.1-722.6).
-- Child custody under the Child Custody Act (MCL 722.21-722.29) and child custody jurisdiction under the RJA (MCL 600.651-600.673).

-- Paternity and child support under the Paternity Act (MCL 722.711-722.730).
-- Child support under the Revised Uniform Reciprocal Enforcement of Support Act (MCL 780.151-780.183).

The family court would have concurrent jurisdiction with the district court over cases commenced on or after January 1, 1998, that involved personal protection orders in domestic violence and stalking incidents, under applicable sections of the RJA.

The family court would have ancillary jurisdiction over cases commenced on or after January 1, 1998, that involved guardians and conservators as provided in the Revised Probate Code (MCL 700.401-700.499) or treatment of, or guardianship of, mentally ill or developmentally disabled persons under the Mental Health Code (MCL 330.1001-330.2106).

When two or more matters within the jurisdiction of the family court involving members of the same family were pending in the probate or circuit court, those matters, whenever practicable, would have to be assigned to the judge to whom the first case was assigned. A chief judge could make exceptions, however, if necessary to promote efficiency in handling the court's docket.

A fee could not be charged for any of the following in family court:

-- Commencing a proceeding under any provision of the Mental Health Code or the juvenile code.
-- Filing an acknowledgment of paternity.
-- Filing a motion, petition, account, objection, or claim in a guardianship or limited guardianship proceeding, if the moving party were the subject of the proceeding.
-- A conservatorship proceeding, if the moving party were the subject of the proceeding, or, in the case of a conservatorship for a minor, for a motion to release restricted funds.

At the time of commencing a guardianship or limited guardianship proceeding in the family court, the party commencing the proceeding would have to pay a $50 filing fee to the court. A party would not be required to pay a fee if the party were the Attorney General, Department of Treasury, Family Independence Agency (the former Department of Social Services), State Public Administrator, or administrator of Veterans' Affairs of the United States Veterans Administration, or an agency of county government. The clerk of the court, on or before the fifth day of the month following the month in which any fees were collected, would have to transmit to the county treasurer all fees collected during the preceding month. Within 15 days after receiving the fees, the county treasurer would have to transmit all fees collected to the State Treasurer for deposit in the State Court Fund.

The family court would have to make one certified copy or exemplification of any letter of authority or letter of guardianship and furnish it without charge to the fiduciary or the fiduciary's attorney or guardian or guardian's attorney, on request. The court, where an order had to be entered in the administration of an estate, would have to deliver to the printer or publisher a certified copy of each order for publication.

The bill also would revise the RJA's provision for compensation of a judge assigned bythe Supreme Court to serve as a judge in another Michigan court. Currently, a judge serving in another court must receive, as a salary for each day served, $25 or 1/250 of the amount by which the total annual salary of a judge of the court to which he or she is assigned exceeds his or her total annual salary, whichever daily amount is greater. Under the bill, an assigned judge would not be eligible to receive any additional salary, but still would be entitled to receive actual and necessary expenses for travel, meals, and lodging.

MCL 700.3 et al. (S.B. 1036)
710.22 et al. (S.B. 1037)
330.1400 et al. (S.B. 1038)
722.531 (S.B. 1039)
722.501 & 722.503 (S.B. 1040)
722.4 et al. (S.B. 1041)
720.601 (S.B. 1042)
720.652 & 720.653 (S.B. 1043)
722.822 (S.B. 1044)
803.222 & 803.224 (S.B. 1045)
803.302 et al. (S.B. 1046)
761.1 et al. (S.B. 1047)
600.225 et al. (S.B. 1052)

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

Under the bills, the family court would have jurisdiction--whether exclusive, concurrent, or ancillary--over all cases involving divorce and related issues, child custody, paternity and family support, juvenile delinquency, child protective proceedings, adoption, mental health,

guardianships, and other protective proceedings. This would allow a single court to address all matters relating to the health and welfare of Michigan's families.

To facilitate the most effective and efficient handling of family matters, all cases involving a single family arising within a judicial circuit would be assigned to the same judge, if possible, though the chief judge of the circuit would have some flexibility to provide for exceptions in the assignment of cases. The chief judge also would retain the ability to assign family court judges to hear other circuit court matters in order to control the court's docket most efficiently.

In the 17 largest judicial districts, each of which is a single-county circuit and has three or more circuit judges, the chief judge would have to assign one or more circuit judges to the family court. In all of the judicial circuits, the chief circuit judge could assign probate judges of counties within the circuit to sit as judges of the family court, subject to the Supreme Court's approval, in order to balance caseloads between the new family court and the probate court. This likely would be necessary because of the substantial shifting of subject matter jurisdiction from the probate court to the family court. In single-county circuits, probate judges could be assigned to sit as judges of the family court on a continuing basis and would be authorized to hear all cases in the new court. In multiple-county circuits, each of which has one or two circuit judges, the circuit judge or judges would sit part-time as family court judges, aided by assigned probate judges from counties within the circuit.

The specialization of the proposed family court division and flexibility in the assignment of circuit and/or probate judges to hear cases in the new division would make the court system more accessible and understandable to those citizens whose domestic situation demands attention in several different legal areas. Rather than having separate and, perhaps, overlapping proceedings in two or three different trial courts within one judicial circuit, each family could combine the pertinent legal questions into one concurrent set of proceedings in the same court and, likely, before the same judge. This would make the court system more user-friendly to Michigan citizens and more efficient for those who work in and preside over the courts.

Response: The current system is a good one and, generally, works quite well. The perception that families are too often involved in cases in multiple courts at the same time has been exaggerated. On the rare occasions when those problems do arise, the courts can address any scheduling and jurisdictional conflicts administratively.

Opposing Argument

Although transferring some jurisdictional areas of the probate court to the circuit court might be a good idea, creating a separate court division exclusively for domestic matters would not be an effective method of managing a court's docket. Several problems could arise as a result of a legislative mandate to establish a family court.

By requiring all cases pertaining to certain matters to be assigned to particular judges, efficient case flow management could be interrupted. According to at least one circuit court chief judge, the best way to administer a court's workload is to assign cases to the next scheduled judge, who then is responsible for that case through its duration, rather than assigning particular types of cases to particular judges. In addition, a legislative mandate as to how the judiciary administered its caseload assignments would raise constitutional questions regarding separation of powers issues.

Another difficulty with establishing a family court division within the circuit court is the effect domestic cases can have on the presiding judge. Divorce and custody cases, for instance, can be very emotional and, reportedly, often take a heavy toll on the judges who preside over them. Consequently, those who sit on the bench may be reluctant to serve in a capacity in which they hear only those types of cases, and those who exclusively performed those duties would likely be more susceptible to professional burnout. Further, according to testimony before the Senate Judiciary Committee, in some states that have a separate family court, assignment of judges to that bench is sometimes used as a form of punishment. This could diminish the perceived importance of family-related court proceedings. Even though these types of problems could be addressed by a court's establishment of a temporary rotation process for serving as a family court judge, rotating assignments generally are not viewed as an efficient way to manage case flow.

Rather than create a separate court division for domestic matters, the bills should simply expand the circuit court's jurisdiction to include those proceedings. The question of how each circuit administered those cases and assigned judges to preside over them should be left to each individual circuit's chief judge and court administrator.

Response: Each judicial chief judge would have the ability to assign judges to the family court division in a manner in which he or she felt would

work best for that court. This would include altering those assignments from time to time in order to combat burnout and address unwillingness to hear those cases exclusively. In addition, regardless of whether designating a separate division caused slight administrative difficulties in some circuits, the effect of making the court system less confusing and more user-friendly would benefit the public.

In addition, in some circuits, where certain judges reportedly resist handling domestic civil cases, the bills could promote case flow efficiency. Assigning those cases only to judges serving in the family court would free up other judges to enable them to handle criminal and other civil cases more expediently. This could diminish courts' backlog and better serve the public.

Opposing Argument

Combining the jurisdiction and operation of different courts could have serious administrative and financial implications. The courts' administrative functions, with respect to their employees and people subject to their jurisdiction, would be disrupted and called into question. For instance, it would be unclear as to whether probation officers in the juvenile division of probate court would become employees of the circuit court. There also are concerns about the courts' infrastructure. In many counties, the probate and circuit courts are physically located in different buildings, with separate courtroom and related facilities. In addition, judges would be taking on cases with new and unfamiliar types of issues to address. With jurisdictional areas being combined into a family division of circuit court, use of facilities, placement of personnel and those conducting court business, and cross-training of judges and court workers would have to be worked out.

Response: The creation of the family court and the necessary jurisdictional changes would apply to cases filed on or after January 1, 1998. This should provide sufficient lead-time to phase-in whatever training, administrative, and logistical concerns that might need to be addressed. In addition, Public Act 374 of 1996 (House Bill 5158) specifies that all court workers in probate and circuit courts are employees of the county, so those workers, regardless of whether they performed services in the probate or circuit court, would not change employers.

Opposing Argument

The bills are simply a first step toward merging the constitutionally created separate trial courts. By combining jurisdictional areas into one division of circuit court, the bills effectively would circumvent the Constitution's establishment of separate and distinct trial courts, without the approval of a constitutional amendment.

Response: While some people have advocated eliminating the probate and district courts, and merging them with the circuit court into one trial court, the bills do not attempt to meld them together. Instead, some jurisdictional areas of the probate court (e.g., wills and estates) would be left to that court and the district court would remain largely unchanged. Giving the proposed family division of circuit court jurisdiction over some matters currently under the purview of the probate court simply would consolidate related issues for purposes of efficiency and ease of use.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The fiscal impact of Senate Bills 1036 through 1047 and 1052 (S-1) is indeterminate. A great shift in the jurisdiction of the probate court to the circuit court could produce savings to the State due to efficiencies that would be accomplished, such as the assignment of the same judge to different cases that arose with a single family. This could potentially lead to a decrease in the number or judges and proceedings.

Increases in cost could be seen in the areas of training for employees in the courts as well as travel and vehicle usage by judges since in some counties the probate and circuit courts are located in different buildings. Since the bill also would allow judges to be reimbursed only for expenses incurred, and not for salary as currently done, this would produce savings to the local funding units.

Most current data show that in FY 1992-93 the cost for assigned visiting judges was $682,506. Assuming a 3% growth, FY 1995-96 cost may be approximately $746,000. It is not known, however, how much of this amount is solely related to the salary differential payments, and therefore the savings that would result are indeterminate.

Fiscal Analyst: M. Bain

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