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SFA**BILL ANALYSIS**

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Senate Bill 841 (as enrolled)
Sponsor: Senator Robert Geake
Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

PUBLIC ACT 551 of 1998

Date Completed: 1-28-99

RATIONALE

Public Act 366 of 1996 amended the Friend of the Court (FOC) Act to create a citizen advisory committee in each county to review and investigate grievances concerning the FOC and advise the court and the county board of commissioners on the FOC's duties and performance as well as the community's needs relating to FOC services. Michigan Court Rules, however, specify who may have access to FOC records, and citizen advisory committees are not among the persons listed. Some people believe that the FOC Act should be amended further to specify the types of records that may and may not be provided to a citizen advisory committee, give the chief judge oversight in the provision of records and information, and require that advisory committees keep FOC records confidential. (Citizen advisory committees and the pertinent court rule are described in **BACKGROUND**, below.)

CONTENT

The bill amended the Friend of the Court Act to require that, except as otherwise provided in the bill, and under the chief judge's supervision, the FOC provide the citizen advisory committee with a grievance filed under the Act and access to records and information necessary for the advisory committee to perform its functions. The following types of records must be provided: case records and other information pertaining to the case of a party who has filed a grievance with the advisory committee; information regarding the procedures used by the FOC to carry out its responsibilities; and information regarding the administration of the FOC office, including budget and personnel information.

Information defined as confidential by Supreme Court rule may not be provided to a citizen advisory committee, nor may case information subject to confidentiality or suppression by specific court

order, unless the court that issues the order determines, after notice to the parties and an opportunity for response, that the requested information may be made available without impairing the rights of a party or the well-being of a child involved in the case.

An advisory committee may be given a judge's or referee's notes pertaining to a case only at the chief judge's express direction. A committee has access to records of a mediation session only if the court determines, after notice to the parties and an opportunity for a response, that access will not impair the rights of a party or the well-being of a child involved in the case. Upon request of a citizen advisory committee and under the chief judge's supervision, the FOC annually must provide the committee with information pertaining to a random sampling of grievances. If requested by the committee, and at the Supreme Court's direction, the State Court Administrative Office must assist the FOC in devising a statistically significant random sampling.

A citizen advisory committee, its members, and its staff must consider confidential a record or other information to which the committee has access in order to perform its functions. The committee, members, and staff also are required to safeguard the use and disclosure of confidential records and information. A committee or staff member who discloses a record or other information is guilty of a misdemeanor. An advisory committee member's unauthorized disclosure of a confidential record or other information is grounds for removal from the committee. A committee staff member's unauthorized disclosure of a record or information is grounds for dismissal.

The bill will take effect on March 1, 1999.

MCL 552.504b & 552.504c

BACKGROUND

Citizen Advisory Committees

Under the Friend of the Court Act, each FOC citizen advisory committee must include the following members:

- An advocate for children.
- A representative of noncustodial parents.
- A representative of custodial parents.
- An attorney who engages primarily in family law practice.
- The county sheriff or the sheriff's designee.
- The prosecuting attorney or his or her designee.
- The Director of the Family Independence Agency (FIA) or the Director's designee.
- A mental health professional who provides family counseling.
- A member of the general public who is not an individual who could serve on the committee in any of the above categories.

A citizen advisory committee is required to meet at least six times annually, keep minutes of each meeting, and submit a copy to the county board. At the end of each calendar year, the committee must submit an annual report of its activities to the county board, court, State Court Administrative Office, Governor's office, and standing Senate and House committees and Appropriations subcommittees responsible for judicial branch legislation. Citizen advisory committee meetings must be open to the public, unless the committee is reviewing, investigating, or holding a hearing on a grievance about FOC office operations or employees.

Court Rule

Michigan Court Rule 3.218 defines "confidential information" as the following:

- Staff notes from investigations, mediation sessions, and settlement conferences.
- Department of Social Services (FIA) protective services reports.
- Formal mediation records.
- Communications from minors.
- Friend of the Court grievances filed by the opposing party and the responses.
- A party's address or any other information if release is prohibited by a court order.
- All information classified as confidential under Title IV, Part D of the Social Security Act.

"Access" means inspection of records, obtaining copies of records upon receipt of payment for costs of reproduction, and oral transmission by staff of information contained in FOC records.

Under the court rule, a party, third-party custodian, guardian, guardian ad litem, or counsel for a minor, and an attorney of record must be given access to FOC records related to the case, other than confidential information. Protective services personnel from the FIA must be given access to FOC records related to the investigation of alleged abuse and neglect. The prosecuting attorney and personnel from the Office of Child Support and the FIA must be given access to FOC records required to perform the functions required by Title IV, Part D of the Social Security Act. Auditors from State and Federal agencies must be given access to FOC records required to perform their audit functions.

Any person who is denied access to FOC records or confidential information may file a motion for an order of access with the judge assigned to the case or, if none, the chief judge. A court, by administrative order, may make reasonable regulations necessary to protect FOC records and to prevent excessive and unreasonable interference with the discharge of FOC functions.

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 Michigan Court Rule (MCR 3.218) that governs access to and the confidentiality of FOC records was an obstacle to providing citizen advisory committees with access to FOC records and information. In order to allow the advisory committees to perform their review and investigatory functions adequately, the FOC Act, at a minimum should give advisory committees access to FOC records, while ensuring that the information shared with the committees remains confidential. In addition, some direction as to the types of records and information that may be provided to the committees and which records may not be shared is necessary.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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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.