House
Legislative
Analysis
Section

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CONCURRENT JURISDICTION AMONG TRIAL COURTS

House Bill 6260 as enrolled
Public Act 678 of 2002
Second Analysis (1-15-02)

Sponsor: Rep. Jim Howell
House Committee: Civil Law and the Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Michigan has circuit, district, and probate courts, each with jurisdiction over different kinds of cases. Those who come into contact with the court system generally agree that its process is slow and cumbersome. Many people believe that the answer to this problem lies in streamlining the trial court structure by unifying the courts. The Michigan Supreme Court studied this possibility for several years, and in 1996 established two-year trial court demonstration projects in six judicial circuits. In each of the project locations, the three separate trial courts were joined into one unified court, with one judge, one court administrator, and – as far as possible – a single court budget. Also in 1996, the legislature enacted laws that consolidated jurisdiction of all domestic relations matters under a single "family" division of the circuit court by transferring subject matter jurisdiction for juvenile matters from the probate court to the circuit court, a move intended to make courts more "family friendly," efficient, and cost effective. In family courts and in the demonstration projects, judges were permitted to serve in a court other than the court to which they were elected or appointed.

The demonstration projects were located in courts of diverse settings, in Berrien, Barry, Isabella, Lake, and Washtenaw counties, and in a multi-county circuit that includes Otsego, Crawford, and Kalkaska counties. Later, in light of positive results and at the request of the participating courts, the supreme court extended the demonstration projects until further order, and in 1999 began a seventh demonstration project in Iron County. In 2001, the legislature appropriated $2.3 million for "Next Generation" demonstration projects for the 2001-2002 and 2002-2003 fiscal years, and these were established in Cheboygan, Kalamazoo, Marquette, Genesee, Midland, Oakland, Livingston, Eaton, and the multi-county circuit of Arenac, Ogemaw, and Roscommon counties.

In a July 27, 2001 letter to the legislature, the chief justice of the supreme court noted that the creation of the family division had provided the opportunity for better service to families through coordination and consolidation of cases, and that the demonstration projects had yielded improvements in local courts, including greater administrative efficiency, more expedient case processing, and reduced costs to local funding units. The letter called for the continued operation of the family division, and for extending the benefits of the demonstration projects to all state trial courts. In a later communication, dated March 7, 2002, the chief justice admitted that it was unlikely that a "one size fits all" approach would be successful, and stated that "the appropriate solution to the issue of court reorganization is a plan that would permit, consistent with the constitution, concurrent jurisdiction among the trial courts on a local option basis." Consequently, legislation has been proposed that would allow trial courts within a county to adopt a plan of concurrent jurisdiction for that county. (Legislation has also been introduced, under Senate Bill 1400, which would require that circuit and probate courts establish a plan to preserve the family division of the circuit court).

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act of 1961 (Public Act 236) to create a new chapter to allow the judges of circuit, district, and probate courts to adopt plans for concurrent trial court jurisdiction. The bill would take effect on April 1, 2003.

In all instances, a concurrent jurisdiction plan would have to provide for the transfer or assignment of

cases between the trial courts affected by the plan and to individual judges of those courts in order to implement the plan and to fairly distribute the workload among those judges. A plan would become effective on the first day of the month at least 90 days after the approval of the plan by the supreme court. However, not later than 30 days before the plan is submitted to the supreme court for approval, the plan would be submitted to the local funding unit for review of the plan's financial implications, and the cost of implementing the plan would be subject to approval by the funding unit through the funding unit's budgetary process. A plan involving third class districts could include an agreement regarding the allocation of court revenue, other than revenue payable by statute or to libraries or state funds, and court expenses. The agreement would be subject to approval by the county board of commissioners and by each local funding unit of each participating district.

Plans of Concurrent Jurisdiction. Subject to approval from the state supreme court and within certain limitations set forth in the bill, the judges of the circuit, district, and probate courts within a county or judicial circuit could adopt a plan permitting concurrent jurisdiction among those trial courts. Specifically, the plan could be adopted by a majority vote of each of the following groups of judges: the judges of the circuit, district, and probate courts; the judges of the circuit and probate courts; the judges of the circuit and district courts; and the judges of the probate courts and the judges of the district courts. The plan could provide for the following:

**The circuit court and one or more circuit judges could exercise the power and jurisdiction of the probate court or the district court.

**The probate court and one or more probate judges could exercise the power and jurisdiction of the circuit court or district court.

**The district court and one or more district court judges could exercise the power and jurisdiction of the probate court or the circuit court.

In addition, the plan could not delegate the power of appointment to a public office delegated by the state constitution or statute to the circuit court or a circuit court judge, probate court or probate court judge, or district court or district court judge. The plan could include a family court plan as provided under Chapter 10 of the act.

Plans for Third Class Districts. The above provision for plans of concurrent jurisdiction would not apply to the counties of Genesee, Ingham, Kent, Macomb, Washtenaw, and Wayne, which have district court districts of the third class (that is, a district composed of one or more political subdivisions within a county and in which each political subdivision composing the district is responsible for maintaining, financing, and operating the district court within its respective political subdivision). Judges within these counties would be provided options for the adoption of a plan to permit concurrent jurisdiction, as outlined under Sections 406, 407, and 408 of the bill.

The options provided for third class districts under Section 406 would allow the circuit judges and the probate judges to adopt, by a majority vote of each group of judges, one or more concurrent jurisdiction plans for the circuit and probate court in that county, subject to approval from the state supreme court and within certain limitations set forth in the bill. The plan could provide for one or more of the following:

**The circuit court and one or more circuit judges could exercise the power and jurisdiction of the probate court.

**The probate court and one or more probate judges could exercise the power and jurisdiction of the circuit court.

The options provided for third class districts under Section 407 would allow the circuit judges, the probate judges, and the district judges in the county-funded district court district to adopt, by a majority vote of each group of judges, one or more concurrent jurisdiction plans for the participating trial courts in that county, subject to approval from the state supreme court and within certain limitations set forth in the bill. The plan could provide for one or more of the following:

**The circuit court and one or more circuit judges could exercise the power and jurisdiction of the probate court or the county-funded district court.

**The probate court and one or more probate judges could exercise the power and jurisdiction of the circuit court or the county-funded district court.

**The district court and one or more district court judges in the county-funded district court could exercise the power and jurisdiction of the probate court or the circuit court.

The options provided for third class districts under Section 408 would allow circuit judges, probate

judges, and district judges in one or more districts within the county to adopt, by a majority vote of each group of judges, one or more concurrent jurisdiction plans for the participating trial courts in that county, subject to the approval of the state supreme court. The plan could provide for one of more of the following:

**The circuit court and one or more circuit judges could exercise the power and jurisdiction of the probate court or the participating district courts within the county.

**The probate court and one or more probate judges could exercise the power and jurisdiction of the circuit court or the participating district courts within the county.

**The participating district courts within the county and one or more district court judges could exercise the power and jurisdiction of the probate court or the circuit court.

Record Maintenance. Unless an alternate method of record maintenance was approved by the county clerk as part of a plan of concurrent jurisdiction, records of the circuit court, probate court, and district court would continue to be maintained by that respective county clerk, probate register, or district court clerk in the same manner as the method employed for record management before the plan of concurrent jurisdiction was adopted.

Exclusive Jurisdiction. Notwithstanding a plan for concurrent jurisdiction, the circuit court, probate court, and district court would retain exclusive jurisdiction over certain matters, as follows:

**The probate court would have exclusive jurisdiction over trust and estate matters.

**The district court would have exclusive jurisdiction over small claims and civil infraction actions.

**The circuit court would have exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by law.

**The circuit court would have exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with Article 6, Section 13 of the state constitution.

**The circuit court would have exclusive jurisdiction to hear and decide matters within the jurisdiction of the court of claims, which is a function of the 30th circuit court (Ingham County).

MCL 600.601 and 600.841 et al.

BACKGROUND INFORMATION:

The bill would require that a plan for concurrent jurisdiction to be submitted to the local funding unit for its review of the plan's fiscal implications prior to the plan being submitted for the approval of the supreme court. In most instances, the local funding unit for the district court is the county (for districts of the first or second class). Districts of the third class - those composed of one or more political subdivisions within a county - located in the counties of Kent, Ingham, Genesee, Washtenaw, Wayne, Oakland, and Macomb are funded by the political subdivision and not the county. The local funding units for circuit and probate courts are the counties.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, initial local costs could result from realignment of jurisdiction due to staff assignment, facilities, and other general operational costs.

Based on the experience of seven demonstration projects, concurrent jurisdiction trial courts would result in savings to local court funding units. Efficiencies have been achieved through combining attorney defense contracts, reducing visiting judges, consolidating administrative staff, and streamlining the docket process through collective caseflow management.

The state would incur additional costs related to salaries of district court judges and part-time probate court judges depending on the number of trial courts that adopted a concurrent jurisdiction plan. The salary of circuit court judges and full-time probate court judges is the same, $139,919. The salary of a district court judge is $138,272; $1,647 less than a circuit court judge. The state pays 100 percent of the salary for full-time trial court judges. However, the state pays $27,750 of a part-time probate judge's salary. There will be 11 remaining part-time probate judges in Michigan effective April 1, 2003. The additional state costs for each part-time probate judge converted to full-time status under a concurrent jurisdiction plan would be approximately $115,000. (SFA analysis dated 12-10-02)

ARGUMENTS:

For:

The bill would permit coordination of Michigan's trial courts by allowing judges on different benches to help each other out when dockets are light on one bench but overcrowded on another. It has been generally recognized for years that getting through the state's courts often takes too much time and money. Currently, however, a district court judge cannot offer assistance to a circuit judge who is swamped with felony cases. Nor can a probate judge with an overwhelming docket turn for help to a less busy colleague on the circuit court. Unless the supreme court issues an order of cross-assignment, each judge is stuck in his or her jurisdictional box. This separation of courts has led to case backlogs in some courtrooms, while other judges confront much smaller dockets. By creating a larger pool of judges to hear all cases, the bill would help clear away backlogs.

For:

After years of study and trial with seven demonstration project courts in diverse settings, the Michigan Supreme Court is confident that unified courts are more efficient, process cases faster, and save money for taxpayers. The idea may not be workable in all 83 counties, but it is already succeeding in some of them: According to an article in a local newspaper last year, the experimental demonstration project that folded local circuit, probate and district courts into one trial court in Washtenaw County is working well. Cases now move more quickly and caseloads have been reduced in heavily burdened divisions, saving taxpayers both time and money. According to the article, Washtenaw courts cost $11 million to run, but generated only a little more than $10 million before consolidation. In 2000, after consolidation, the courts' revenues exceeded expenditures by more than $2 million. In addition, cases were processed faster: the number of criminal cases pending more than 300 days dropped from 87 to 12, and the number of civil cases pending more than two years was cut in half. (*Detroit Free Press*, December 19, 2001).

For:

The National Center for State Courts (NCSC) evaluated Michigan's trial court consolidation demonstration projects, and published an evaluation report in 1999, and a follow-up assessment report in September, 2001 *("Michigan Trial Court Consolidation: 2001 Follow-Up Assessment Report,"* by David C. Steelman, Principal Court Management Consultant, National Center for State Courts, amended November 2001). Generally, the NCSC found that the demonstration projects clearly did well, both in terms of expectations established before their commencement and in the eyes of key stakeholders, such as local bar leaders, county funding authorities, law enforcement officials, and prosecuting attorneys. The report found that the demonstration projects have hastened the delivery of justice to families. Among the specific findings made in the evaluation, the report noted that all of the consolidated courts have generally made more efficient use of judicial and quasi-judicial resources under the demonstration projects than the pre-consolidation courts; that all of the demonstration projects have resulted in reduced net court operating costs or improved management of court revenues and operating costs; in almost all respects, the demonstration courts have reduced the size and age of pending inventory since the commencement of their court consolidation projects; and all of the demonstration projects have made effective use of technology and employed it productively to enhance scheduling and information exchange.

Against:

The circuit and probate judges of Saginaw County have argued against the bill, stating that the probate court is a specialty court and has a culture of its own and should continue as such. In addition, they say, Article 6, Section 13 of the state constitution specifies that "The circuit court shall have original jurisdiction in all matters not prohibited by law; appellant jurisdiction from all inferior courts and tribunals. . . . supervisory and general control over inferior courts and tribunals within their respective jurisdiction. . . ." Consequently, a circuit judge cannot function as another type of judge, since he or she has jurisdiction and supervisory control over all inferior courts.

Against:

Some people question the constitutionality of the bill. For example, in a March 8, 2002, letter to the governor, Justice Stephen J. Markman of the Michigan Supreme Court points out that court reform must "be carried out in a manner consistent with the constitution of Michigan." Some of the constitutional questions that Justice Markman cautions must be addressed when compiling legislation such as that proposed in the bill are:

**Is creating a unified or undivided trial court consistent with Article 6, Section 1, which provides that the judicial power shall be "divided into a circuit court and a probate court"?

**Is creating a unified or undivided trial court with general jurisdiction by combining the circuit court with the probate court consistent with Article 6, Sections 1 and 15 of the constitution, which provide that the circuit court has general jurisdiction while the probate court has limited jurisdiction?

**Is there some constitutional standard by which to distinguish a court which is performing the duties and responsibilities of a "general jurisdiction" court under Article 6, Section 1, and one which is performing the duties and responsibilities of a "limited jurisdiction" court under Article 6, Section 15?

**Is the indefinite cross-assignment of probate judges to the circuit court, or circuit judges to the probate court, consistent with Article 6, Section 23, which allows the supreme court to cross-assign judges for "limited" periods of time?

**Is there some provision of the constitution which is implicated where the people elect to a particular judicial office a person who proceeds upon election to carry out the duties and responsibilities of a distinct judicial office?

**Does creating different court structures in different counties raise "equal protection" considerations under Article 1, Section 2?

Against:

Some people maintain that, under the bill, each judge would be required to function as a "jack of all trades." They argue that matters handled in the different courts are too specialized to easily allow judges to switch back and forth. Also, some note that the bill fails to take into account the fact that voters elect judicial candidates to specific offices. The bill would circumvent this fundamental right.

Against:

The bill does not go far enough, according to representatives of the association that represents probate judges. For example, it doesn't solve the problems associated with part-time probate judges. At present, a number of probate judges in smaller courts are paid on a part-time basis, so many continue to practice law to supplement their salaries. The association is concerned about the propriety of allowing an attorney to practice law in the same circuit in which he or she presides as a judge. Others maintain that the statutory salary schedule results in a financial penalty for counties with part-time probate judges. (Those counties are fourteen of the state's least populated counties, namely Alcona, Arenac, Baraga, Benzie, Crawford, Iron, Kalkaska, Keweenaw, Lake, Missaukee, Montmorency, Ontonagon, Oscoda, and Presque Isle).

One of the state's probate judges has analyzed the problems associated with part-time judges. ("*Analysis of Michigan's Part Time Judiciary*," by Judge Kathryn J. Root, Oscoda County Probate Court, November 6, 2002). The analysis notes that a probate judge in a county that had a population of less than 15,000 in the 1990 federal census, and that has not voted to participate in a probate district, is defined as part-time or part-paid, because the judge is not prohibited from the practice of law, and does not receive the same salary as a judge who is prohibited from the practice of law. The salary for part-time judges is $20,000, and is governed by statute. The maximum local supplement a county can establish is $43,000, and the total salary cap is $63,000. The state pays $14,000 of the statutory salary, and reimburses each county $6,000 of the statutory salary and $5,750 of the local supplement. Therefore, the total maximum amount paid by the state is $25,750, while the balance of $37,250 must be paid by the county. On the other hand, counties that have full-time probate judge incur no costs, since those salaries are fully paid by the state.

Also, according to the analysis, access to the judicial system in counties with part-time probate judges is restricted due to the combination of jurisdiction and the assignment statute: All counties with part-time judges are in multi-county circuits and multi-county districts. Most part-time judges are the only judges living in their county, so are readily available to do judicial work. However, even if a judge is available, citizens must wait to have a case heard until the judge with the appropriate jurisdiction comes to town. The length of the wait may be hours, days, weeks, or months, depending on the situation. The analysis also points out that, even though most part-time judges are usually readily available to do judicial work, they are generally precluded from doing so because the county has to pay the cost of assignment. The analysis concludes that the proposed concurrent jurisdiction provision of the bill would eliminate the barrier of jurisdiction, and remove the assignment penalty. However, in order to ensure greater access to the judicial system for rural citizens, the bill will have to be amended to provide compensation by the

state for part-time judges for the additional services they would have to provide under the bill.

Response:

The problem of part-time probate judges is a difficult one to resolve, since, in many areas of northern Michigan, court caseloads are too small to justify having a full-time judge. On the other hand, if these judges *were* to be assigned to other court districts, the assignments would have to be made to districts in far-off urban areas.

In any case, a number of judgeships were recently changed under the provisions of Public Acts 253 – 256 of 2001, which followed the guidelines proposed by the State Court Administrative Office in its Judicial Resource Recommendations Report for the 2002 election cycle. This report is based upon analyses that gauge the workload of each court across the state to estimate judicial workloads and each community's need for judges.

Public Act 92 of 2002 also attempts to solve this problem by changing the boundary lines of six judicial circuits and six judicial districts in less populated areas of the state in Northern Michigan. This was done to create coterminous boundaries, to make better use of judicial resources, and to provide even caseloads among the courts.

For:

The Senate added a provision that would provide that the plan for concurrent jurisdiction be submitted to the local funding unit for consideration of the plan's fiscal implications and that such costs for implementing the plan be subject to the approval of the funding unit through its budgetary process. This added provision ensures that the financial aspects of the plan are considered, and that any plan determined to not be economically feasible is not forced upon the unit of government that financially supports the operation and administration of the courts. Yet, at the same time, this provision is written in such a manner as to not provide the local funding unit with full veto authority despite the views of the courts on the merits of developing the concurrent jurisdiction plan. As such, the provision would appear to bring both the courts and the funding units to the table when determining whether such a plan for concurrent jurisdiction should be adopted.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.