



**House  
Legislative  
Analysis  
Section**

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**COURT RESOURCES, BOUNDARIES,  
AND DATING RELATIONSHIP  
VIOLENCE**

**House Bill 6498 as enrolled  
Public Act 715 of 2002  
Second Analysis (1-15-03)**

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

***THE APPARENT PROBLEM:***

As a community grows or declines due to shifts in population, the community's need for different types of judgeships may change. The analysis of "judicial resources" (that is, whether or not communities need more or fewer judges) is the responsibility of the State Court Administrative Office (SCAO), which collects and analyzes information on judicial workloads, among other things. The SCAO uses this information to allocate judicial resources through the temporary reassignment of judges and caseloads as necessary and biennially issues a Judicial Resources Recommendations report to recommend to the state supreme court and the legislature changes in the number of judgeships. One consideration reflected in the SCAO's August 2001 report is the legislature's creation of the family division of the circuit court in 1998 to handle delinquency cases, neglect and abuse cases, adoption proceedings, name changes, and other family matters. Because these matters were previously heard in the probate court, the creation of the family division has generally resulted in an increase in circuit courts' caseloads and a corresponding decrease in probate courts' caseloads. In areas where such a caseload shift has occurred but the legislature has not changed in statute the numbers of judges assigned to the various courts, a probate judge may be assigned to the circuit court, allowing the courts to more efficiently handle their respective caseloads.

Among other things, the August 2001 SCAO report recommended the addition of two judgeships in the 16<sup>th</sup> Circuit Court, which is the circuit court for Macomb County, and the elimination of two judgeships in the 3<sup>rd</sup> Circuit Court, which is the circuit court for Wayne County. The SCAO also recommended the addition of one 7<sup>th</sup> Circuit Court judgeship (Genesee County). In each case, however, the SCAO advised that the courts ought to be

reviewed for further adjustments to their allocation of judicial resources in two years. Further, the SCAO's report sheds light on potential future recommendations. Specifically, the report suggests that the 16<sup>th</sup> Circuit Court could use 12 judges (one more than the SCAO actually recommended) and that the 3<sup>rd</sup> Circuit Court and the Wayne County Probate Court could collectively make do with a total of 69 judges, down from the current 73—64 circuit court judges and nine probate judges. Moreover, the report suggests that the Genesee County circuit and probate courts could use 13 judges collectively—up from ten. In both Macomb and Genesee Counties, the SCAO noted that probate judges had been reassigned to the family division of the circuit courts.

In response to the SCAO's recommendations and observations, the legislature enacted Public Acts 253, 254, and 257 of 2001. Among other things, these acts permitted the addition of two judgeships to the 16<sup>th</sup> Circuit Court as of 2003 and provided for the elimination of two 3<sup>rd</sup> Circuit Court judgeships as of 2003 and the elimination of one more judgeship as of 2005. (Note: new judgeships must be approved by the local governments that fund each court. Thus, permitting an addition of a judgeship only results in the actual addition of a judgeship, when the addition is approved at the local level.) The acts also provided for the elimination of one Wayne County Probate Court judgeship on the earlier of the following two dates:

- the expiration of the term of an incumbent probate judge who is eligible to seek reelection but who does not file by affidavit to seek reelection to that office or who withdraws within three days after filing by affidavit to seek reelection; or

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- the expiration of the term of an incumbent probate judge who is not eligible to seek reelection to that office.

In Genessee County, the acts permitted two additional 7<sup>th</sup> Circuit Court judgeships—one in 2003 and one in 2005—and provided for the elimination of a probate judgeship in 2005.

To complicate matters further, in the November 2002 general election a sitting probate judge in Macomb County ran for and was elected as judge in the 16<sup>th</sup> Circuit Court. Given that two of the county's probate judges are currently handling cases for the family division of the 16<sup>th</sup> Circuit Court anyway, it has been suggested that this would be an appropriate time to change the statute to eliminate a probate judgeship in Macomb County and add a judgeship in the 16<sup>th</sup> Circuit. Legislation has been introduced to accomplish this, to clarify existing statutory language, and to potentially speed up certain changes already provided for in statute.

In a separate matter, the boundaries for multi-county judicial circuits, district court districts, and probate court districts in Northern Michigan have been aligned historically, but beginning in the 1970s, uneven caseload growth has resulted in changes in those boundary lines. For example, a county may be aligned with one set of neighboring counties for purposes of the circuit court, while being located with different neighbors in a district or probate court district. With the creation of the family division of the circuit court as part of a major court reorganization plan adopted in 1996, it has been suggested that the differing boundaries have complicated planning and implementing the new court entities. Public Act 92 of 2002 amended the Revised Judicature Act (RJA) to change the boundary lines of six judicial circuits and six judicial districts in Northern Michigan so that the boundaries of multi-county circuit and district court districts would be aligned. It has been suggested that it would be appropriate to change the boundary lines of several multi-county probate court districts in the northern part of the state to bring them into alignment with the boundaries of circuit and district court districts.

In another matter, the RJA states generally that a case charging assault or battery must be filed within two years of the occurrence of the assault or battery, and a case for damages resulting from injuries to a person or property must be filed within three years from the time the injury occurred. However, as amended by Public Acts 2 and 3 of 2000, the RJA sets a special period of limitations for victims of domestic violence: specifically, if a person has been assaulted or battered by her or his spouse or former spouse, by

someone with whom she or he has had a child in common, or by a person with who she or he has resided, she or he has five years from the date of the assault or battery to file a case for damages. It has been observed that this extension of the period of limitations does not apply to a person who has been assaulted or battered by a person that she or he has dated, unless the person falls into one of the categories included in the domestic violence provisions. Some people believe that a victim of violence committed by a lover or former lover should have five years to file a case for damages, whether or not the two were ever married, or had a child or lived together.

### ***THE CONTENT OF THE BILL:***

House Bill 6498 would amend the Revised Judicature Act (MCL 600.504 et al.) to modify the number of circuit and probate judgeships currently assigned to certain counties as follows:

3<sup>rd</sup> Judicial Circuit. Under current law, the 3<sup>rd</sup> Judicial Circuit, consisting of Wayne County, will have 64 judges until 12 noon, January 1, 2003, and then will have 63 judges until 12 noon, January 1, 2005. After that date, the circuit will have 61 judges. Under the bill, however, if a vacancy occurred between January 1, 2003, and January 1, 2005 in a judgeship held by an incumbent judge of the circuit who was ineligible to seek reelection to that office in 2004, then the judgeship would be eliminated unless the total number of judgeships in the circuit had been reduced to 61 before the vacancy occurred.

16<sup>th</sup> Judicial Circuit. Under current law, the 16<sup>th</sup> Judicial Circuit consists of Macomb County and has nine judges. In addition, subject to Section 550 of the act (MCL 600.550), the county, subject to local approval by a resolution adopted by its board of commissioners, may elect two additional circuit judgeships, effective January 1, 2003. The bill would add that the county could create one additional judgeship, effective January 1, 2005, under this provision. In addition, the bill would specify that, if a new office of judge is added to the circuit by election in 2004, the term of office of that judgeship for that election only would be eight years.

Probate Judges. Currently, the RJA specifies that, with certain exceptions, each probate court district created by law shall have one probate judge, and each county that is not part of a probate court district created by a resolution calling for a special election or previously created by law must have at least one probate judge. The counties of Berrien, Calhoun, Ingham, Monroe, Muskegon, Saginaw, St. Clair, and

Washtenaw each have two probate judges. In addition, until January 1, 2005 the county of Genesee has three judges, and beginning at 12 noon on January 1, 2005 will have two judges. However, if, after that date, a vacancy occurred in the judgeship held by the incumbent probate judge in Genesee County whose term of office expired January 1, 2005 and who would be ineligible to seek reelection to that office in 2004, that judgeship would be eliminated, effective 12 noon on January 1, 2005.

Macomb County currently has three probate judges. The bill would specify, instead, that Macomb County will have three probate judges until 12 noon, January 1, 2005. However, if the incumbent probate judge in Macomb County whose term of office expires on January 1, 2005 is elected in 2002 to the office of circuit judge in the 16<sup>th</sup> Judicial Circuit for a term beginning January 1, 2003, that probate judgeship would be eliminated, effective 12 noon, January 1, 2005. After that date, Macomb County will have two probate judges, under the provisions of the bill.

Currently, under the act, Wayne County is to have eight probate judges beginning on the earliest of the following dates: i) upon the expiration of the term of an incumbent probate judge who is not eligible to seek reelection to that office; or ii) upon the expiration of the term of an incumbent probate judge who is eligible to seek reelection but who does not file by affidavit to seek reelection to that office, or who withdraws within three days after filing by affidavit to seek reelection to that office. Under the bill the latter provision would specify, instead, “upon the occurrence of a vacancy in a judgeship held by an incumbent probate judge in Wayne County whose term expires on January 1, 2005, and who would be ineligible to seek reelection to that office in 2004.”

Changes to multi-county probate court district boundaries. The bill would change the boundaries of several multi-county probate court districts in Northern Michigan and eliminate some districts, as follows:

- The bill would add Baraga County, which is currently in the 3<sup>rd</sup> Probate Court District (“district” below), to the 1<sup>st</sup> district, which would consist of Baraga, Houghton and Keewenaw Counties.
- The bill would add Dickinson County, which is currently in the 4<sup>th</sup> district, to the 3<sup>rd</sup> district, which would consist of Iron and Dickinson Counties.
- The bill would eliminate the 4<sup>th</sup> district, which currently consists of Menominee and Dickinson Counties, and would not assign Menominee County to a district.

- The bill would remove Otsego County from the 8<sup>th</sup> district and add Presque Isle County, which is currently in the 9<sup>th</sup> district. The 8<sup>th</sup> district would consist of Cheboygan and Presque Isle Counties, and Otsego County would not be assigned to a district.

- The bill would add Alpena County, which is not currently assigned to a district, to the 9<sup>th</sup> district, which would consist of Alpena and Montmorency Counties.

- The bill would eliminate the 10<sup>th</sup> district, which currently consists of Kalkaska and Antrim Counties, and the 11<sup>th</sup> district, which consists of Grand Traverse and Leelenau Counties. The bill would not assign Antrim, Grand Traverse, or Leelenau Counties to a district but would assign Kalkaska County to the 14<sup>th</sup> district.

- The bill would remove Roscommon County from the 14<sup>th</sup> district, which would consist of Crawford and Kalkaska Counties. The bill would not assign Roscommon County to a district.

- The bill would remove Ogemaw County from the 15<sup>th</sup> district and would not assign it to another district. The 15<sup>th</sup> district would consist of Alcona and Oscoda Counties.

- The bill would remove Newaygo County from the 19<sup>th</sup> district and not assign it to a new district. The bill would add Mason County, which is currently assigned to the 20<sup>th</sup> district, to the 19<sup>th</sup> district, which would consist of Lake and Mason Counties.

- The bill would eliminate the 20<sup>th</sup> district and would not assign Oceana County to a district.

Lake County. The bill would allow probate judges in Lake County also to have the power, authority, and title of a district judge within the county.

Period of limitations in cases of assault, battery, or injury involving a dating relationship. Under current law, a case brought by a victim charging assault or battery must generally be filed within two years of the occurrence of the assault or battery. The RJA also sets a general period of limitations of three years after the time of death or injury for all other actions—i.e., actions for which a period of limitations is not explicitly set—to recover damages for the death of a person or for injury to a person or property. However, the RJA extends the period of limitations for victims of domestic violence. Specifically, the period of limitations is five years for an action charging assault or battery brought by a person who has been assaulted or battered by a spouse, former spouse, individual with whom she or

he has had a child in common, or a person with whom she or he has resided. Also, the period of limitations is five years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by an individual who falls into one of those categories.

The bill would extend the period of limitations to five years for a case for an action charging assault and battery by, or for an action to recover damages for injury to a person or property brought by a person who had been assaulted or battered by, an individual with whom she or he had or had had a "dating relationship", as defined below. (Currently, such cases are subject to the general two- and three-year periods of limitations described above.) The five-year period of limitations would apply to causes of action arising on or after January 1, 2003 and to causes of action in which the general two-year period of limitations had not already expired as of January 1, 2003.

"Dating relationship" would be defined as frequent, intimate associations primarily characterized by the expectation of affectional involvement. The definition would explicitly exclude a casual relationship or an ordinary fraternization between two individuals in a business or social context.

### **BACKGROUND INFORMATION:**

For more information on how the SCAO analyzes judicial resources, see the House Legislative Analysis Section's first analysis of Senate Bill 76 et al., dated 12-11-01.

For more information on related changes to multi-county judicial circuits and district court districts, see the House Legislative Analysis Section's analysis of House Bill 5674 as enrolled, dated 7-18-02.

For more information on the revision of domestic violence provisions to deal specifically with the problem of violence committed against a person with whom the perpetrator has had a dating relationship, see the House Legislative Analysis Section's enrolled analysis of House Bills 5271 et al., dated 1-10-02.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

### **ARGUMENTS:**

#### **For:**

The SCAO noted in its August 2001 Judicial Resources Report that two of Macomb County's

three probate judges have been reassigned to the circuit court. The SCAO also indicated that the 16<sup>th</sup> Circuit Court, which covers Macomb County, could use a total of 12 judges. In 2001 the legislature permitted two additional judges in the 16<sup>th</sup> Circuit Court beginning on January 1, 2003, bringing the circuit's total number of judgeships up to 11. Then, during the November 2002 general election, a Macomb County probate judge ran for and was elected to the 16<sup>th</sup> Circuit Court even though his term as probate judge was not set to expire until January 1, 2005. Because two of Macomb's probate judges are effectively serving on the circuit court and the SCAO has indicated that the 16<sup>th</sup> Circuit could use 12 judges, it is appropriate to allow Macomb County to drop a probate judgeship and add another circuit court judgeship effective January 1, 2005. Under the bill, the (new) governor could fill the vacancy left in the probate court by the judge who is leaving to join the circuit court, so that the two courts would continue to have 14 judges between them. At the same time, the bill would provide clarification that it is that judgeship that will be eliminated on January 1, 2005; without such clarification, it would be unclear, based on the statute, which of the three probate judgeships is to be eliminated. Beginning January 1, 2005, the circuit court could have up to 12 judges and the probate court would have two judges; this allocation of judicial resources would more accurately reflect the relative caseloads of the circuit and probate courts.

In the 2001 legislation, the legislature provided for the elimination of one probate judgeship and the addition of a circuit court judgeship, effective January 1, 2005, which coincides with the expiration date of the term of a current probate judge who would not be eligible for reelection, anyway. The bill would clarify that if that judge's term expires between January 1, 2003 and January 1, 2005, the (new) governor could appoint someone to fill the vacancy, but that it is that judgeship that will expire on January 1, 2005. As in the case of Macomb County, without this clarification, it is unclear which of Genesee's probate judgeships is to be eliminated on January 1, 2005.

Although judges in Wayne County would generally prefer not to see the reductions in the number of circuit and probate judgeships occur, these reductions are already provided for in statute. Given that they will occur, the bill proposes a humane solution to eliminate judgeships by attrition rather than forcing incumbents to run against one another.

#### **For:**

In actuality, none of the multi-county probate court districts whose boundaries would be altered currently

exists. The districts exist on paper, as possibilities that counties may or may not take advantage of, as they see fit. The bill would, however, preclude the possibility of future administrative hassles by creating coterminous court district boundaries and thus ensuring that judicial resources for counties that decide to create districts will be used in the most efficient and economical manner. It would also facilitate future combinations of judicial functions that may be proposed.

Under the bill, several counties that currently have the option of forming multi-county probate court districts would no longer be able to do so. However, these counties already have sufficiently large populations and caseloads to warrant at least one full-time probate court judge, so they do not have any reason to join a multi-county district anyway.

***For:***

Victims of abuse committed by people they have dated suffer the same injuries as other assault victims, but like victims of domestic violence, they are usually in a position of vulnerability while they remain “attached” to their assailant. This limits their likelihood of pursuing a lawsuit against the person that assaulted them until after the victim has made a clean break. However, even after initially breaking off a relationship with an abusive lover, a person is generally considered to be at great risk and often the fear of harm remains for some time after the parties have been separated. Further, the abused party may have a great deal on her or his mind when escaping from such a relationship. The two and three year limitations currently provided might not even outlast the time that it takes for the victim to feel safe from further abuse. Given the close nature of the relationship between the abuser and the abused, more time should be given to allow victims time to recover their lives before they set about recovering damages.

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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.