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Senate Bill 1400 (as enrolled)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

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### **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 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. Before the family division of circuit court (family court) was created in 1996, each trial court had jurisdiction over some family-related issues. For instance, the Revised Judicature Act (RJA) gave the probate court jurisdiction over adoption, name change, juvenile delinquency, and abuse and neglect cases, while the circuit court oversaw divorce and custody issues and the district court handled domestic violence personal protection orders.

Public Act 388 of 1996 amended the RJA to create the family court and grant it sole and exclusive jurisdiction over most family-related cases and ancillary jurisdiction with the probate court over some other types of cases. Under the 1996 legislation, each judicial circuit must have a family court, and a family court judge has the same authority as a circuit court judge. In each circuit, by July 1, 1997, the chief circuit judge and the chief probate judge or judges had to enter into an agreement that established a plan for how the family court would operate in that circuit.

Consistent with the circuit's family court plan, the Act requires each chief circuit judge to assign the judge or judges of both the circuit court and the probate court who serve in the family court. According to Supreme Court Administrative Order 1997-1, however, the State Court Administrative Office (which is

under the Supreme Court) is required to provide for the assignment of probate judges to family court. In practice, the State Court Administrative Office issues cross-assignment orders enabling probate judges to be assigned to the family court, and the chief judges identify the individual probate judges who are assigned. The Supreme Court believes that the practice of cross-assigning probate judges should not continue indefinitely, and that legislation should address the issue of probate judges' authority to exercise the power of a family court judge.

### **CONTENT**

**The bill would amend the Revised Judicature Act to revise provisions pertaining to the organization and jurisdiction of the family court. The bill specifies that a probate judge serving in family court would have the authority of a circuit judge in family court cases. The bill also would do all of the following:**

- **Require that the chief circuit judge and chief probate judge in each judicial circuit establish a family court plan by July 1, 2003.**
- **Require the Supreme Court to develop a plan for a circuit court that did not do so by the deadline.**
- **Refer in several provisions to a judge's "service pursuant to the family court plan" rather than a judge's "assignment to" the family court; and repeal a section of the RJA regarding the assignment of judges to the family court.**
- **Require that a family court plan identify any probate judge serving pursuant to that plan.**

- **Include cases involving foreign protection orders among the cases over which the family court has jurisdiction.**
- **Delete several provisions pertaining to the jurisdiction and caseload of family court judges.**

The bill would take effect on April 1, 2003.

#### Probate Judges

The bill would require that a family court plan specifically identify any probate judge serving pursuant to the family court plan. The bill specifies that a probate judge identified in the plan would have the same power and authority, within the county or probate court district in which he or she served as probate judge, as that of a circuit judge in cases over which the family court had sole and exclusive jurisdiction, in addition to all the power and authority of a probate court judge.

The bill would delete provisions that specify all of the following:

- A plan in a multicounty circuit may provide that a probate judge in one county in the circuit be assigned temporarily to assist a probate judge of another county in the circuit.
- A case that was assigned to a probate judge who subsequently is assigned as a family court judge, and that is within the jurisdiction of the family court, must be assigned to the same judge in his or her capacity as a family court judge.
- A case that was assigned to a probate judge who subsequently is assigned to the family court, and that is not within the jurisdiction of the family court, must remain in the probate court, although the chief circuit judge may temporarily assign to probate court the probate judge to whom the case was assigned in probate court, to preside over the case until it is completed.
- A case commenced in probate court that was transferred to family court on January 1, 1998, may be reassigned to a family court judge, or the probate judge to whom the case was assigned may be temporarily assigned to the family court to resolve the case.

#### Family Court Plan

The RJA required that, by July 1, 1997, in each judicial circuit the chief circuit judge and the chief probate judge or judges enter into an agreement establishing a plan for how the family court operates in that circuit and how the services of certain agencies are coordinated in order to promote more efficient and effective services to families and individuals. The bill would require that, by July 1, 2003, in each judicial circuit, the chief circuit judge and the chief probate judge or judges enter into an agreement that established a plan known as the "family court plan", detailing how the family division in that circuit would be operated and how the services of the specified agencies would be coordinated in order to promote more efficient and effective services to families and individuals. Under the bill, if a probate court district includes counties that are in different judicial circuits, the chief judge of each circuit that includes a county in the probate court district and the chief probate judge would have to enter into a family court plan for each circuit. If, in any judicial circuit, an agreement were not entered into by July 1, 2003, the Supreme Court would have to develop and implement the family court plan for that circuit.

The bill would repeal Section 1013 of the RJA (MCL 600.1013). Under that section, in each judicial circuit, consistent with the 1997 plan, the chief circuit judge must assign the circuit judge or judges and probate judge or judges who serve in the family court. It also allows the chief circuit judge to assign one or more family court judges to assist with the circuit court caseload, if the family court caseload is not sufficient to use fully the time of the family court judges.

The RJA provides that a family court judge has the same power and authority as a circuit court judge. The bill specifies, instead, that a circuit judge serving in the family court would retain all the power and authority of a circuit court judge.

The RJA also requires the plan entered into before July 1997 to provide that "the duration of a judge's assignment" to the family court be consistent with the goal of developing sufficient judicial expertise in family law to serve properly the interests of families and

children whose cases are assigned to that judge. Under the bill, a family court plan would have to provide that a judge's "service pursuant to the family court plan" be consistent with that goal. In addition, the RJA specifies that, in furtherance of that goal, the chief judge of the circuit court has the authority and flexibility to determine the duration of a judge's "assignment to" the family court. The bill would refer, instead, to a judge's "service pursuant to the family court plan".

Under the RJA, a plan entered into by July 1, 1997, may provide that, when a judge's "assignment to" the family court ends, his or her pending cases are to be reassigned to the other family court judge or judges or are to be resolved by that judge through his or her temporary assignment to the family court for that purpose. The bill would allow the proposed family court plan to provide that, when a judge's "service pursuant to the family court plan" ended, his or her pending cases would have to be reassigned to another judge or judges serving pursuant to the family court plan or be resolved by that judge. The bill would delete reference to a judge's temporary assignment to the family court for that purpose.

As with the 1997 plan, a family court plan required under the bill would have to be reviewed and revised periodically, as necessary, by the chief circuit judge or judges and the chief probate judge or judges, and be submitted for approval by the Supreme Court.

#### Jurisdiction

The RJA lists the types of cases commenced on or after January 1, 1998, over which the family court has sole and exclusive jurisdiction. That list includes cases involving personal protection orders. The bill would include foreign protection orders in that provision. ("Foreign protection order" means an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person.)

#### Training

The RJA requires that a judge "assigned to" the family court receive appropriate training

as required by the Supreme Court. The Michigan Judicial Institute must provide appropriate training for all probate judges and circuit judges who are assigned to the family court. The bill would retain those requirements but would refer, instead, to a judge "serving pursuant to the family court plan".

MCL 600.1005 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**

Establishing the family division of circuit court in 1996 was viewed as a way to consolidate family-related judicial proceedings in a single court, thereby allowing one court to address all matters pertaining to the health and welfare of Michigan's families. Creating this specialty court and providing for flexibility in the assignment of circuit and/or probate judges to hear family court cases in each judicial circuit, also were expected to make the court system more accessible and understandable to people 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 circuit, the family court allows a family or individual to combine the pertinent legal issues into one concurrent set of proceedings in the same court and, likely, before the same judge. This can make the court system more user-friendly to Michigan residents and more efficient for those who work in and preside over the courts.

Since the 1996 legislation that created the family court transferred jurisdiction of certain cases from the probate court to the family division of circuit court, the circuit court caseload increased significantly and the probate court caseload was reduced. This was an anticipated development, and the legislation provided for the assignment of probate judges to the family court in order to address the caseload adequately and efficiently. Over the six years since that legislation was enacted, however, concerns have arisen over the dynamics of cross-assigning probate judges to hear cases in the family court. While the RJA calls for the chief

circuit judge in a judicial circuit to assign circuit and probate judges to the family court, the actual assignment of probate judges must be authorized by the Supreme Court, through the State Court Administrative Office (SCAO), because the current statute does not empower probate judges to exercise the authority of circuit judges in family court.

According to counsel to the Supreme Court, the Supreme Court stated, in a letter to the Governor, the Legislature and trial judges, "Although this Court has appropriately used its assignment authority...to implement the family division, such prerogative is not a substitute for permanent structural change as authorized by the people through constitutional amendment or by the Legislature as permitted by the constitution". In the letter, the Court restated its commitment to the family court but said, "the Court believes that the indefinite cross-assignment of Probate judges into the Family Division should not be a permanent solution and that this issue must be addressed with some urgency by the Legislature".

The bill would eliminate the need for the Supreme Court, through the SCAO, to cross-assign probate judges to the family court, by providing in statute that a probate judge identified in a family court plan as serving pursuant to that plan, "has the same power and authority, within the county or probate court district in which he or she serves as probate judge, as that of a circuit judge over [cases in which the family division has sole and exclusive jurisdiction], in addition to all the power and authority of a judge of the probate court". This statutory language would implement the "permanent structural change...by the Legislature as permitted by the constitution", recommended by the Supreme Court in its letter. At the same time, the bill would enable the family court to continue to function as a unified court in domestic matters.

#### **Opposing Argument**

The bill would circumvent the State Constitution. Probate courts and circuit courts both are constitutionally created offices. Judges of both courts are elected to their positions. A judge elected by the voters to serve in the probate court should not statutorily be given the power and authority of a circuit judge. By allowing the chief circuit

and chief probate judges to designate in a family court plan which probate judges would serve as judges in family court, which is a division of circuit court, the bill would allow those chief judges to supercede the will of the electorate. In addition, Article VI, Section 13 of the State Constitution grants to the circuit courts "supervisory and general control over inferior courts...within their respective jurisdictions". The bill effectively would fuse together those two courts, confusing the issue of which court has supervisory and general control. If the jurisdiction of certain judges of the probate and circuit courts is going to overlap, even on a limited basis, that change should be accomplished by a constitutional amendment approved by the electorate. At the very least, the bill should be contingent upon the Legislature's seeking an advisory opinion of the Supreme Court as to its constitutionality.

**Response:** The measures proposed by the bill are within the Legislature's constitutional authority. Under Article VI, Section 15 of the State Constitution, "The legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county...". That section also states: "The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law." Furthermore, any concern about circumventing the will of the voters also would apply to the current system of cross-assigning probate judges. Under the bill, at least, the Legislature would be exercising its constitutional authority to combine the office of probate judge with a judicial office of limited jurisdiction.

#### **Opposing Argument**

The system proposed by the bill would instill in the Supreme Court too much power over the operation of local courts. The family court plans would have to be entered into by the chief circuit and chief probate judges in each judicial circuit. Judges are appointed to be chief judges by the Supreme Court, not elected by their judicial peers on the respective courts. In addition, the bill would require the Supreme Court to impose a family court plan on any circuit that did not adopt a plan by July 1, 2003. The family court plans should be approved by all the circuit and probate judges serving in a judicial circuit, rather than be established by the Supreme Court. Although the 1996 legislation also

provided for the Supreme Court to devise a plan for circuits that did not do so, the Supreme Court's plan for one circuit has been labeled a "complete disaster" by a probate judge whose district cuts across more than one circuit. According to this judge, when one of the circuit judges refused to sign the locally developed plan, the Supreme Court imposed one that "contains all kinds of internal contradictions and impossibilities..." and has "caused great harm to many children of that county by directly creating delays of up to months in duration of the hearings and trials of child protection and custody cases..."

**Response:** Article VI, Section 4 of the State Constitution grants to the Supreme Court "general superintending control over all courts". This authority can be neither increased nor diminished by legislation. Furthermore, by eliminating the need for the Supreme Court to assign probate judges to family court, the bill would significantly reduce the Supreme Court's involvement in chief judges' decision-making concerning family courts.

#### **Opposing Argument**

Whether done by the Supreme Court or chief judges, the assignment or appointment of probate judges to circuit court suggests that judges are interchangeable between courts. That is not the case. Based upon their own experience and expertise, judges may be considered to specialize in particular areas of the law.

**Response:** The probate judges who actually are selected for family court are, and would continue to be, locally identified. Presumably, these decisions take into account individual judges' expertise and interests.

#### **Opposing Argument**

It would be a mistake to name the required plan a "family court plan", because there still is no "family court" in State statute. Although the term "family court" is commonly used as shorthand for the "family division of circuit court", there is nothing in statute called the "family court". This is more than a matter of nomenclature, because referring to a "family court plan" could mislead members of the public when they are within the court system or in the voting booth. Also, this term would further blur the constitutionally created distinctions among Michigan's courts.

Legislative Analyst: Patrick Affholter  
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**FISCAL IMPACT**

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

Fiscal Analyst: Bill 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.