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SFA**BILL ANALYSIS**

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Senate Bill 1400 (as introduced 8-13-02)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 9-18-02

CONTENT

The bill would amend the Revised Judicature Act (RJA) to revise provisions pertaining to the organization and jurisdiction of the family division of circuit court (family court). The bill 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.**
- **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.**
- **Include cases involving foreign protection orders among the cases over which the family court has jurisdiction.**
- **Require that a family court plan identify any probate judge serving pursuant to that plan.**
- **Specify that a probate judge serving in family court would have the authority of a circuit judge in family court cases.**
- **Delete several provisions pertaining to the jurisdiction and caseload of family court judges.**

The bill would take effect on April 1, 2003.

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. 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 services of those agencies would be coordinated in order to promote more efficient and effective services. 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). That section provides that, 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 also requires the plan entered into before July 1, 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, that judge's pending cases are to be reassigned to the other family court judge or judges or are to be resolved by that judge by temporarily assigning him or her 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.

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.

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 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.)

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.

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.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman