



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 99, 101, and 103 through 107 (as passed by the Senate)

Sponsor: Senator Mark C. Jansen (S.B. 99, 101 & 104)

Senator Valde Garcia (S.B. 103)

Senator Martha G. Scott (S.B. 105)

Senator Gilda Z. Jacobs (S.B. 106)

Senator Bill Hardiman (S.B. 107)

Committee: Families and Human Services

Date Completed: 3-4-09

RATIONALE

The Friend of the Court (FOC) was created in 1919 to assist the circuit court in protecting the interests of children in child custody, parenting time, and child support cases. The FOC is responsible for conducting investigations and making recommendations to the court regarding custody, parenting time, and the proper level of child support. In addition, the FOC has the responsibility to enforce custody, parenting time, and support orders. If a payer owes past due child support, enforcement options include income withholding, intercepting the payer's income tax refund, and placing a lien on the payer's real or personal property. The FOC also may recommend that the court suspend the payer's driver license or other licenses if the payer fails to comply with a court order.

If there is a dispute in a domestic relations case, the parties may request that the FOC conduct mediation to resolve the dispute. Mediation services sometimes can resolve a disagreement satisfactorily without the need for a court hearing, saving time and court expenses. The investigation, mediation, and enforcement work done by the FOC are labor intensive and expensive, however, while budgetary constraints have limited the amount of money available to fund those activities.

Title IV-D of the Social Security Act, which deals with the enforcement of child support and parenting time orders, provides money to the states for those purposes, but the Federal Budget Reduction Act of 2005 changed the matching funds requirements

for Title IV-D funding, effectively reducing the amount of Federal money available for child support and parenting time enforcement. Under Title IV-D, the Federal government matches state funds at a rate of 66.6%, meaning that for every dollar that a state puts into support and parenting time enforcement, it is eligible for \$2 in Federal funds. Previously, a state could use Federal money that it received under a certain incentive program as matching funds, but the Deficit Reduction Act prohibited that practice, effective October 1, 2007.

In response to that loss of matching funds, a Child Support Program Review Committee was created in Michigan to examine ways that the Friend of the Court could provide more efficient services and cut costs, as well as identify potential sources of additional revenue. It is estimated that an additional \$18.0 million is needed to maintain current funding for the FOC. (That money would be used as matching funds, to enable the State to receive an additional \$36 million in Federal funds, for a total gain of \$54 million.) The alternative to finding \$18 million in new revenue is to reduce costs within the child support program, or achieve a combination of lower expenditures and increased revenue.

The Committee issued its recommendations on December 8, 2006. It has been suggested that the laws governing the FOC be revised based on some of those recommendations, along with other suggested reforms.

CONTENT

Senate Bill 99 would amend the Friend of the Court Act to do the following:

- Allow the court, if custody had been established, to order an investigation only if proper cause had been shown or there had been a substantial change of circumstances.
- Permit the FOC, if it conducted a child custody and/or parenting time investigation, to charge the parties an amount that did not exceed its actual expenses for conducting the investigation and making its report and recommendation.
- Replace references to "domestic relations mediation" with "alternative dispute resolution".
- Require a person conducting alternative dispute resolution to have qualifications prescribed by the State Court Administrative Office.
- Provide that the FOC would not have any duty related to spousal support unless the support was ordered before April 1, 2009, or it was to be paid to a party who received services under Title IV-D of the Social Security Act for the enforcement of a child support order.

Senate Bill 101 would amend the Child Custody Act to refer to alternative dispute resolution, rather than domestic relations mediation, in provisions regarding a motion for grandparenting time.

Senate Bill 103 would amend the Revised Judicature Act (RJA) to do the following:

- Remove a requirement that \$10 of the fees paid in custody, support, and parenting time cases be deposited in the Child Support Bench Warrant Enforcement Fund.
- Increase from \$1.50 to \$3.50 the monthly fee for services that are not reimbursable under Title IV-D of the Social Security Act, and allocate the additional \$2 to the county general fund.

-- Specify the party responsible for paying certain fees in a proceeding in the circuit court.

-- Specify that certain provisions regarding record retention would apply only to records filed with the court and maintained by the court clerk or register.

Senate Bill 104 would amend the Office of Child Support Act to require the Office of Child Support to do the following:

- Coordinate, through the FOC Bureau, the provision of Title IV-D services by FOC offices.
- Determine a method to calculate the maximum obligation for reimbursement of medical expenses in connection with a mother's pregnancy and the birth of a child.

The bill also would repeal Section 6a of the Act, which creates the Child Support Bench Warrant Enforcement Fund.

Senate Bill 105 would amend the divorce Act to delete a requirement under which a person ordered to pay spousal or child support must pay a \$2 monthly service fee, which is credited to the county general fund.

Senate Bill 106 would amend the Paternity Act to do the following:

- Provide that the parents of a child born out of wedlock are liable for the medical expenses connected to the mother's pregnancy and the birth of the child.
- Revise the requirements for apportioning the cost of those expenses between the parents in a paternity action.

The bill also would repeal Section 19 of the Act, which requires the court to order a person ordered to pay support, to pay a monthly service fee of \$2, which is credited to the county general fund.

Senate Bill 107 would amend the Family Support Act to do the following:

- Permit a support order to include expenses of health care, child care,

and education, expenses connected with the mother's pregnancy or the birth of the child, and the expense of genetic testing.

-- Prohibit a child support order from being retroactive before the date that the complaint for support was filed, except under certain circumstances.

The bill also would repeal Section 7 of the Act, which requires the court to order a person ordered to pay support, to pay a monthly fee of \$2, which is credited to the county general fund.

The FOC Act, the RJA, the divorce Act, the Paternity Act, and the Family Support Act all require the Department of Human Services (DHS), the State Disbursement Unit (SDU), and each office of the FOC to cooperate in the transition to the centralized receipt and disbursement of support and fees. An FOC office must continue to receive support and fees through the transition, based on the schedule developed as required under the Office of Child Support Act, and modifications to that schedule as the DHS considers necessary. Senate Bills 99, 103, 105, 106, and 107 each would remove the reference to the transition in the respective Act, and state that the SDU would be responsible for the centralized receipt and disbursement of support. An FOC office could continue to receive support and fees.

Senate Bills 99 and 101 are tie-barred to one another, as are Senate Bills 99 and 104. Senate Bills 105, 106, and 107 all are tie-barred to Senate Bill 103. In addition, Senate Bills 106 and 107 are tie-barred to Senate Bill 104, and Senate Bill 107 is tie-barred to Senate Bill 106.

Senate Bill 99

FOC Investigation

The Friend of the Court Act requires the FOC office to investigate and make a written report and recommendation to the parties and to the court regarding child custody, parenting time, or both, under the following circumstances:

-- If there is a dispute as to child custody or parenting time, or both, and domestic relations mediation is refused by either party or is unsuccessful.

-- If ordered to do so by the court.

Under the bill, the FOC office would have to investigate and make a written report and recommendation if ordered to do so by the court. If custody had been established by court order, the court could order an investigation only if it first found that proper cause had been shown or that there had been a change in circumstances.

Under standards prescribed by the State Court Administrative Office (SCAO) under the supervision and direction of the Supreme Court, the FOC office could charge the parties an amount that did not exceed the expenses of the office for conducting the investigation and making the report and recommendation. Money collected under that provision would have to be deposited in the county FOC fund.

If the court ordered a whole or partial waiver or suspension of fees in the case because of indigency or inability to pay, the FOC office could not charge that amount for expenses or, if applicable, would have to reduce it.

The bill would delete a requirement that, if requested by a party, an investigation by the FOC office include a meeting with that party.

Alternative Dispute Resolution

The Act requires the FOC office to provide, either directly or by contract, domestic relations mediation to assist the parties in voluntarily settling a dispute concerning child custody or parenting time that arises in an FOC case.

Under the bill, in an FOC case, the FOC would have to provide alternative dispute resolution (ADR) to assist the parties in settling a dispute concerning child custody or parenting time under a plan approved by the chief judge and filed with the SCAO. The ADR would have to be provided under a plan approved by the chief judge and the SCAO, and would have to be consistent with standards established by the SCAO under the supervision and direction of the Supreme Court. The plan would have to include minimum qualifications and training requirements for ADR providers and a designation of matters subject to alternative dispute resolution by various means.

The bill would refer to alternative dispute resolution rather than domestic relations mediation throughout the Act, and would refer to providers of ADR rather than domestic relations mediators.

("Alternative dispute resolution" would mean a process established under the Act by which the parties are assisted in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter. The bill would delete the definition of "domestic relations mediation", which is similar to the proposed definition of alternative dispute resolution.)

Currently, the mediation service may be provided directly by the FOC office only if such a service was in place on July 1, 1983, if the service is not available from a private source, or if the court can demonstrate that providing the service within the FOC office is cost beneficial. The bill would delete that provision.

The Act requires a domestic relations mediator who performs mediation to have certain minimum qualifications, including one or more of the following:

- A license or a limited license to engage in the practice of psychology under the Public Health Code, or a master's degree in counseling, social work, or marriage and family counseling; and successful completion of a training program provided by the State FOC Bureau.
- At least five years of experience in family counseling, and successful completion of the FOC's training program.
- A graduate degree in a behavioral science and successful completion of a domestic relations mediation training program certified by the FOC Bureau with at least 40 hours of classroom instruction and 250 hours of practical experience.
- Membership in the State Bar of Michigan and successful completion of the FOC training program.
- Knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research.

Under the bill, an FOC employee or other person who provided ADR would have to have knowledge of the State court system and the procedures used in domestic

relations matters, have knowledge of other resources in the community to which the parties can be referred for assistance, and have any other qualifications as prescribed by the SCAO under the supervision and direction of the Supreme Court.

Under the Act, if the parties reach an agreement through domestic relations mediation, a consent order incorporating the agreement must be prepared by an employee of the FOC office who is a member of the State Bar, by a member of the State Bar who is appointed to assist the FOC office, or by the attorney for one of the parties in the mediation. Under the bill, the agreement would have to be prepared by an employee of the FOC office or an individual approved by the court, using a form provided by the SCAO, under the supervision and direction of the Supreme Court, or approved by the chief judge of the circuit court.

Confidentiality

The Act requires that secrecy of the communication between a domestic relations mediator and a party to the mediation be preserved inviolate as a privileged communication. The communication may not be admitted in any proceedings. The same protection must be given to communications between the parties in the presence of the mediator.

The bill would remove those provisions. Instead, communication between an FOC alternative dispute resolution provider and a party pertaining to the matter subject to ADR would be confidential as provided in court rule.

Review of Support Order

Under the Act, after a final judgment containing a child support order has been entered in an FOC case, the office must periodically review the order under certain circumstances, including at the initiative of the office if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage is available and the support order should be modified to include an order for health care coverage.

The bill would retain this requirement. The review would have to be conducted using a procedure provided in the Act.

As currently provided, reasonable grounds to review an order would include any of the following:

- Temporary or permanent changes in the physical custody of a child that the court had not ordered.
- Increased or decreased need of the child.
- Probable access by an employed parent to dependent health care coverage.
- Changed financial conditions of a recipient of support or a payer, including an application for or receipt of public assistance, unemployment compensation, or worker's compensation; or incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year.

Reasonable grounds to review an order also would include that the order was based on incorrect facts.

As currently required, within 14 days after receiving information that a recipient of support or payer was incarcerated or released from incarceration, the office would have to initiate a review of the order.

Modification of Support Order

The Act requires the FOC Bureau to develop, and the FOC to make available, form motions, responses, and orders for an individual to use to request the court to modify his or her child support, custody, or parenting time order, or for responding to a motion for such a modification, without assistance of legal counsel.

The bill would require the FOC Bureau to develop and the FOC to make available form motions, responses, and orders to be used by a party, without the assistance of legal counsel, in making or responding to a motion for a payment plan for support arrearages under the Support and Parenting Time Enforcement Act, or for the modification of a child support, custody, or parenting time order, including a domicile or residence provision.

Required Data Collection

The Act requires each FOC office to compile data on the number and type of complaints regarding support and parenting time. The data must include the number of cases in which a party fails to appear at a show cause hearing and the number of cases in which a bench warrant is issued for a failure to appear. The compiled data must be transmitted at least annually in a report to the SCAO. The Act also requires the following information to be compiled:

- The number of State or Federal income tax intercepts subsequently found to be based on inaccurate information or employee error.
- The number of support orders modified due to inaccurate information or employee error.
- The number of grievances filed in a calendar year, the nature of and the judicial response to each grievance, and any sanction imposed as a result of each grievance.
- The number of custody recommendations recommending physical custody to the mother, the father, or a third party.
- The number of makeup parenting time petitions filed, the number of hearings held on those petitions, the number of instances makeup parenting time is ordered, and the amount of makeup parenting time ordered.
- The number of reviews completed in a calendar year.

The bill would delete those provisions, and instead would require each FOC office to compile data as required by the SCAO, under the supervision and direction of the Supreme Court.

Health Care Expenses

Under the Act, a complaint seeking enforcement for payment of a health care expense must include information showing that specified conditions have been met. The bill would add the following condition: If the SCAO, under the supervision and direction of the Supreme Court, established a minimum threshold for the enforcement of health care expenses, the complaint would have to show that the health care expense was equal to or greater than the established threshold.

County as a Recipient of Support

Under the Act, "recipient of support" means the following:

- The spouse, if the support order orders spousal support.
- The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.
- The DHS, if support has been assigned to that Department.

The bill would add to that definition the county, if the minor is in county-supported foster care.

Spousal Support

The Act generally requires the FOC to open and maintain an FOC case for a domestic relations matter, although the parties in the case may file a motion with their initial pleadings for the court to order the FOC not to open an FOC case for the matter. If an FOC case is not opened for a domestic relations matter, the parties have full responsibility for administration and enforcement of the obligations imposed in the matter. If a party to a domestic relations matter for which there is not an open FOC case applies for services from the FOC or applies for public assistance, the FOC must open or reopen an FOC case. If the FOC opens or reopens a case under that provision, the court must issue a support order in the domestic relations matter that meets the requirements of Act and the Support and Parenting Time Act for an FOC case.

Under the bill, the court could direct the party making the application for services or public assistance or the FOC to prepare a written order and submit it for approval.

For the purpose of the provisions described above, a party would be considered to receive public assistance if he or she received cash assistance provided under the Social Welfare Act, medical assistance, or food assistance, or if foster care were being or had been provided to a child who was the subject of the case.

Under the bill, the FOC office would not have any duties related to spousal support unless the spousal support was ordered before April

1, 2009, or the support was to be paid to a party who received Title IV-D services for the enforcement of a child support order. The bill would permit the FOC to provide services with regard to spousal support in a case in which it did not have the duty to do so.

Title IV-D Services

The FOC Bureau would have to coordinate the provision of Title IV-D services by the FOC and cooperate with the Office of Child Support in providing those services.

Pregnancy, Birth Expenses

For the purposes of the FOC Act, "support" currently includes the payment of money ordered by the circuit court under the Paternity Act for the necessary expenses incurred by or for the mother in connection with her confinement or for other expenses in connection with the pregnancy of the mother, among other expenses. The bill instead would refer to the necessary expenses connected to the pregnancy of the mother or the birth of the child.

Senate Bill 101

The Child Custody Act permits a child's grandparent to seek a grandparenting time order under certain circumstances, by filing a motion or complaint with the circuit court. A party with legal custody of the child may file an opposing affidavit.

To give deference to the decisions of fit parents, it is presumed that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut that presumption, a grandparent must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time does create a substantial risk of harm to the child's mental, physical, or emotional health.

If the court has determined that a grandparent has met the standard for rebutting the presumption, the court may refer the grandparent's complaint or motion for grandparenting time to domestic relations mediation as provided by Supreme Court rule.

If the complaint or motion is referred to the Friend of the Court mediation service and no

settlement is reached through FOC mediation within a reasonable time after the date of referral, the complaint or motion must be heard by the court as provided in the Act.

The bill would refer to alternative dispute resolution in those provisions, rather than domestic relations mediation.

Senate Bill 103

Allocation of Fees

Under the RJA, before a final judgment or order is entered in an action in which the custody or parenting time of minor children is determined or modified, the party submitting the judgment or order must pay a fee of \$80. In an action in which the support of minor children is determined or modified, the party submitting the judgment or order must pay a fee of \$40.

At the end of each month, for each fee collected under those provisions, the court clerk must transfer \$10 to the State Treasurer for deposit in the Child Support Bench Warrant Enforcement Fund. The balance of the fees in custody and parenting time cases must be paid to the county treasurer and deposited into the FOC fund, to be used to fund services that are not Title IV-D services. The balance of the fees in child support actions must be paid to the county treasurer and deposited into the FOC fund.

The bill would remove the requirement that \$10 be transferred to the State Treasurer for deposit in the Child Support Bench Warrant Enforcement Fund.

The bill also would delete a provision under which the court may order a party to reimburse the other party all or part of the \$40 fee paid by that party.

Increased Service Fee

For services that are not reimbursable under Title IV-D of the Social Security Act, every person required to pay support or maintenance to be collected by the FOC must pay a fee of \$1.50 per month for each month or portion of a month that support or maintenance is required to be paid. The fee must be paid monthly, quarterly, or

semiannually as required by the FOC. The bill would increase that fee to \$3.50.

Currently, the FOC or the SDU must transmit, for each fee, \$0.25 to the appropriate county treasurer for deposit into the county's general fund. The bill would increase that amount to \$2.25, to be used to fund the provision of services by the FOC that are not reimbursable under Title IV-D.

A court could hold a person in contempt if he or she failed or refused to pay a service fee ordered under these provisions.

Responsibility for Fees

Under the RJA, before the filing of a claim of appeal or a motion for leave to appeal from the district court, the probate court, a municipal court, or an administrative tribunal or agency, \$150 must be paid to the clerk of the circuit court. The bill would require that amount to be paid by the appellant or moving party.

The RJA requires \$20 to be paid to the clerk when a motion is filed. Under the bill, the moving party would have to pay that amount.

Upon appeal to the Court of Appeals or the Supreme Court, the appellant would have to pay the \$25 fee currently required under the RJA.

The RJA requires a \$15 service fee for each writ of garnishment, attachment, execution, or judgment, and each judgment debtor discovery subpoena issued. The bill would require the applicant or requesting party to pay that fee.

Record Retention, Reproduction

The RJA provides for the retention of court records for specified periods of time, provides for copies to be made of certain court records, and permits the disposal or destruction of the records after the specified retention time has elapsed.

Specifically, a circuit court may order the destruction of its files and records in a case in which action has not been taken during the preceding 25 years.

In a county or probate court district in which the county board or boards of

commissioners pass a resolution under the Records Reproduction Act, the probate judge may have the probate court records reproduced in accordance with that resolution. A copy must be kept in a building outside the probate office and a copy kept in the probate office with any suitable equipment for displaying the record. The probate judge then may order a record destroyed.

If a public officer reproduces records kept by him or her under the Records Reproduction Act, the officer may offer the original records to the Department of History, Arts, and Libraries for placement in the State Archives. If the Department does not accept the offer within 30 days, the court may dispose of or destroy the records as provided under the Management and Budget Act.

A reproduction of a record in a medium under the Records Reproduction Act, or a reproduction consisting of a printout or other output readable by sight from such a medium, made as provided by law, has the same force and effect as the original and must be treated as an original for the purpose of admissibility of evidence. A duly certified or authenticated copy of the reproduction must be admitted into evidence equally with the original reproduction.

The bill specifies that those provisions would apply only to records filed with the court and maintained by the court clerk or register.

Senate Bill 104

Title IV-D Services

Under the bill, the Office of Child Support (OCS) would have to coordinate, through the FOC Bureau, the provision of services under Title IV-D of the Social Security Act by FOC offices.

The OCS also would have to determine a method to calculate a maximum obligation for reimbursement of medical expenses in connection with a mother's pregnancy and the birth of a child, as required under Federal law. The method would have to be based on each parent's ability to pay and on any other relevant factor, and apportion the expenses in the same manner as health care expenses are divided under the child support

formula established under Section 19 of the FOC Act.

(That section requires the FOC Bureau to develop a formula to be used in establishing and modifying a child support amount and health care obligation. The formula must be based on the needs of the child and the actual resources of each parent, and must consider the child care and dependent health care coverage costs of each parent. The formula must establish a minimum threshold for modification of a child support amount, and include guidelines for setting and administratively adjusting the payment amounts for overdue support.)

Currently, upon receiving a request from the FOC office under the Support and Parenting Time Act, the OCS must initiate offset proceedings against the State and Federal income tax refunds of a parent who is obligated to support a child and who owes past due support. The bill also would require the OCS to initiate offset proceedings as required by Federal regulations adopted under Title IV-D.

Repeal

The bill would repeal Section 6a of the OCS Act, which creates the Child Support Bench Warrant Enforcement Fund and requires fees collected under Section 2529(4) of the Revised Judicature Act to be deposited in the Fund. (That section allocates to the Fund a portion of the fees that must be paid to the circuit court in custody, support, and parenting time actions.) The OCS must contract with law enforcement agencies to use the Fund to enforce civil warrants related to child support.

Senate Bill 105

The divorce Act provides for the collection of a service fee to reimburse the county for the cost of enforcing a spousal or child support order or a parenting time order. The court must order the payment of a service fee of \$2 per month, payable semiannually on each January 2 and July 2. The service fee must be paid by the person ordered to pay the spousal or child support. The service fee must be computed from the beginning date of the support order and must continue while the support order is operative. The service fee must be turned over to the

county treasurer and credited to the county general fund.

The bill would delete those provisions.

Senate Bill 106

Pregnancy & Birth Expenses

Under the Paternity Act, the parents of a child born out of wedlock are liable for the necessary support and education of the child, and the child's funeral expenses. Under the bill, the parents also would be responsible for the medical expenses connected to the mother's pregnancy and the birth of the child.

The Act permits the court, based on each parent's ability to pay and any other relevant factor, to apportion the reasonable and necessary expenses of the mother's confinement and expenses in connection with her pregnancy between the parents, in the same manner as medical expenses of the child are divided in the child support formula. The court also may require the parent who did not pay the expense to pay his or her share of the expense to the other parent.

In addition, at the request of a person other than a parent who has paid the expenses of the mother's confinement or expenses in connection with her pregnancy, the court may order a parent against whom the request is made to pay to the person the parent's share of the expense.

Under the bill, those provisions would apply if Medicaid had not paid a medical expense connected to the pregnancy and birth. The court could order apportionment if it determined the expense to be reasonable and necessary. In its discretion, if one parent had paid the expense, the court could require the other parent to pay his or her share of the expense to the parent who paid. At the request of a person other than a parent who had paid the expense, the court would have the discretion to order a parent against whom the request was made to pay to that person the parent's share of the expense.

Currently, if Medicaid has not paid the confinement and pregnancy expenses of the mother, the court must require an itemized bill for the expenses upon request from the

father before an apportionment is made. The bill would retain that provision, but would refer to a request from a parent, rather than the father. Also, this would apply to medical expenses connected to the mother's pregnancy and the birth of the child, rather than confinement and pregnancy expenses.

Under the Act, if Medicaid has paid the confinement and pregnancy expenses of a mother, the court may not apportion those expenses to the mother. Based on the father's ability to pay and any other relevant factor, the court may apportion up to 100% of the reasonable and necessary confinement and pregnancy costs to the father. The bill would delete those provisions. Instead, if Medicaid had paid a medical expense connected to the mother's pregnancy or the birth of the child, on request from the Office of Child Support or its designee, the court in a paternity action would have to do all of the following:

- Determine the amount of the expense that was reasonable and necessary by using the actuarially based case rate established and certified by the Department of Community Health (DCH) or the amount of the expense paid by the DCH.
- Apportion that amount to the father using the method established under the OCS Act.
- Require the father to pay the amount apportioned to him to the Medicaid agency, through the SDU.

As currently provided, the court could not require the mother to pay any of the expenses.

The Act requires the court to admit in proceedings under the Act a bill for funeral expenses or expenses of the mother's confinement or connected to the pregnancy, which constitutes prima facie evidence of the amount of those expenses without third party testimony. The bill would refer to the mother's pregnancy or the birth of the child, and also would require the court to admit actuarially based case rates as determined by the DCH, which also would be as prima facie evidence of the relevant funeral or medical expense.

Those provisions would not prohibit the DCH from seeking reimbursement of expenses

from a party or other person, including an insurer, by a legal procedure other than a paternity action.

Repeal

The bill would repeal Section 19 of the Paternity Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court must order the payment of a service fee of \$2 per month, payable on each January 2 and July 2. The service fee must be paid by the person ordered to pay the spousal or child support. The service fee must be computed from the beginning date of the support order and continue while the support order is operative. The service fee must be turned over to the county treasurer and credited to the county general fund.

Senate Bill 107

Support Order

Under the Family Support Act, if the custodial parent of a minor child is living separately from the noncustodial parent and is refused financial assistance to provide necessary shelter, food, care, and clothing for the child, the custodial parent may file a complaint with the circuit court for the county where either parent lives, seeking an order for support for himself or herself and the minor child or children. Subject to certain restrictions, the court also may order support for a child or children after they reach 18 years of age.

If a parent files such a complaint, the court must issue a summons that must be served personally upon the noncustodial parent of the children and spouse of the petitioner. Under the bill, a summons would have to be served in the manner provided by court rules for the service of process in civil actions.

Upon hearing the complaint, the court may enter an order as it determines proper for the support of the petitioner and the minor child or children.

Under the bill, support ordered could include expenses of medical, dental, and other health care, child care, and education, necessary medical expenses incurred in connection with the mother's pregnancy or the birth of the child, and the expense of

genetic testing. A child support obligation would be retroactive only to the date that the complaint for support was filed unless any of the following circumstances existed:

- The defendant was avoiding service of process.
- Through domestic violence or other means, the defendant threatened or coerced the complainant not to file a proceeding under the Act.
- The defendant otherwise delayed the imposition of a support obligation.

The court would have to order medical expenses incurred in connection with the mother's pregnancy or the birth of the child in the same manner as medical expenses are ordered under Section 2 of the Paternity Act (which Senate Bill 106 would amend), and the order would have to include provisions as required by that section for orders entered under that Act.

Repeal

The bill would repeal Section 7 of the Family Support Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court must order a person ordered to pay spousal or child support under the Act to pay a service fee of \$2 per month, payable on each January 2 and July 2. The service fee must be computed from the beginning date of the support order and continue while the support order is operative. The service fee must be turned over to the county treasurer and credited to the county general fund.

- MCL 552.502 et al. (S.B. 99)
- 722.27b (S.B. 101)
- 600.2137 et al. (S.B. 103)
- 400.233 & 400.233a (S.B. 104)
- 552.23 & 552.24 (S.B. 105)
- 722.712 et al. (S.B. 106)
- 552.451 et al. (S.B. 107)

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 function of the child support program and the FOC is to ensure that noncustodial parents pay support as required, to protect

the interests of the children involved. With resources limited, it is necessary to streamline the functions of the FOC so that it can perform as efficiently and effectively as possible. The bills would improve FOC procedures and reduce costs in a number of ways, by redefining the scope of the FOC's activities, providing it with new tools to facilitate collection of child support, and allowing it to recoup costs in some cases.

Supporting Argument

Senate Bill 99 would require the court to approve a petition for modification of child custody only if it found that there had been a substantial change in circumstances, which would save the cost of conducting unnecessary investigations that were unlikely to lead to a change in the court order. The bill also would permit the court to require the party to pay the costs of the investigation, although the court could waive or reduce the required payment if the individual were unable to pay the complete costs. The investigation process is time-consuming and costly, and it is reasonable to expect the petitioning party to bear some of that expense.

Response: Investigations frequently benefit the court, and it would be unfair to impose their cost on the petitioning party. Investigations are a relatively cost-effective way of determining the appropriate support amount, and the alternative is to litigate the matter in court, which can clog the court docket and be more expensive overall.

Supporting Argument

Senate Bills 99 and 101 would update statutory language related to domestic relations mediation. When the FOC Act was revised in the 1990s, the term mediation was used because it reflected common usage. In the years since, other alternative methods of resolving disputes short of a formal mediation process have become more common. Those methods can be less expensive and less time-consuming, while producing an effective resolution to a dispute. The bills would replace references to "domestic relations mediation" with "alternative dispute resolution" to reflect the broader range of options that are available. The person performing the dispute resolution would have to meet qualifications specified by the SCAO.

Response: Senate Bill 99 would omit some specific requirements currently in place for those performing mediation.

Rather than leaving the qualifications to be prescribed by the SCAO, the bill should include specific standards to ensure that ADR providers had the necessary background and experience to provide competent dispute resolution. Reportedly, some past participants in mediation have been dissatisfied with the role that the mediators played, and thought that the mediator did not remain neutral during the process. Proper training and qualifications are necessary to help improve that result. Also, the language should make clear that participation in dispute resolution would be voluntary, as mediation has been in the past.

Supporting Argument

Senate Bill 104 would eliminate the Child Support Bench Warrant Support Enforcement Fund, and Senate Bill 103 would remove a requirement that a portion of fees in custody, support, and parenting time cases be deposited into that Fund. The Fund was created in 2004 to provide additional money to help enforce compliance with bench warrants in child support cases, and was anticipated to generate more revenue than it has, possibly enough to fund a separate enforcement unit. The fund currently generates about \$300,000 to \$400,000 a year, and cannot effectively serve its original purpose with that limited amount of money. The bills would allow that money to be deposited into the FOC fund, where it would be put to better use.

Supporting Argument

The bills would revise a number of provisions to update language, consolidate requirements among statutes, and allow the FOC to act more efficiently.

Senate Bill 104 would require the Office of Child Support and the FOC Bureau to coordinate the provision of Title IV-D services by FOC offices. Because those two offices deal with the same population and have overlapping responsibilities, greater cooperation between them is a logical way to produce more efficient services, creating higher client satisfaction while potentially reducing costs.

Senate Bills 105, 106 and 107 would remove the monthly service fee from the divorce Act, the Paternity Act, and the Family Support Act, and Senate Bill 103 would reinstate the fee in the Revised Judicature

Act. Reportedly, there has been some confusion over when the fee applies. The bills would incorporate the fee into existing language in the RJA, ensuring that the fee was applied in a manner consistent with other fees. The service fee would continue to be allocated to each county's general fund, as currently required.

Senate Bill 99 also would clarify certain provisions regarding record retention in circuit courts. The record retention process has been slowed by uncertainty, because officials reportedly are unsure whether the statute as written applies to the FOC office. To allow the process to proceed, the bill would make it clear that the retention provisions refer only to records filed with the court and maintained by the court clerk and register.

The bills would update language requiring the DHS, the FOC, and the SDU to cooperate on the transition to the centralized receipt and disbursement of support and fees. The SDU was created to provide more efficient centralized collection and disbursement of support, and the transition period is now complete, with the SDU handling those responsibilities. The changes in the bills would reflect current practice.

Senate Bill 107 would prohibit a court order from being retroactive before the date that the complaint for support was filed, with some exceptions. This provision would codify general current practice, while providing exceptions for those who sought to delay or intimidate the other party. Such tactics are sometimes used to stall the process, so that the payer does not have to pay support during the period of delay. The bill would remove that incentive to delay by allowing retroactive payments in those cases.

Response: In some cases, a claim for child support might not be filed immediately for some legitimate reason. For example, a mother may not be aware of the services that are available to help her obtain support from the father, or it may take some time to locate the father. In those situations, retroactive support would be appropriate and should be provided for in the bill.

Supporting Argument

The bills would revise certain provisions to comply with Federal requirements, ensuring that the State remained eligible for Title IV-

D funding. For instance, under Senate Bill 99, the FOC could work on spousal support cases only if the recipient of support also received Title IV-D services for the enforcement of a child support order, unless the support was ordered before April 1, 2009.

Opposing Argument

Some of the provisions in the bills could jeopardize Federal funding. For example, Senate Bill 99 would allow counties to collect child support if the child were in county-funded foster care. It is not clear that a local government is an authorized recipient of support under Title IV-D. If the State were found to be in violation of those provisions, it could be ineligible for Federal matching funds under Title IV-D.

In addition, the bills could expose the State to possible lawsuits by limiting the opportunities to request an investigation to modify a support order. Periodic reviews of a court order are essential to ensure that it remains appropriate. The bills also would place an undue burden on the party requesting an investigation by requiring him or her to pay the costs. In many cases, the parties are low-income individuals who may be struggling to pay the support amount, and might not be able to afford an investigation.

Response: The court could grant a full or partial waiver of the investigation expenses under those circumstances.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 99

Indeterminate revenue increases would result from the provision allowing the Friend of the Court to charge parties for actual costs of investigations and reports regarding child custody and parenting time.

Replacing domestic relations mediation with alternative dispute resolution would allow more individuals to take advantage of dispute resolutions.

Senate Bill 101

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

Senate Bill 103

The \$10 allocated to the Child Support Bench Warrant Enforcement Fund annually generates approximately \$360,000 to \$380,000. While up to 10% of the Fund may be used to administer the Fund, annual revenue has been allocated to counties. Eliminating the separate Child Support Bench Warrant Enforcement Fund allocation would streamline the collection of revenue and result in administrative savings.

The bill also would increase the monthly service fee from \$1.50 to \$3.50 and offset the elimination of the \$2 fee allocated to counties under the divorce Act, the Family Support Act, and the Paternity Act.

Senate Bill 104

Currently, the Office of Child Support in the Department of Human Services is the designated Title IV-D agency in the State of Michigan. Language in Senate Bill 104 would require the Office of Child Support and the State Court Administrative Office to contract with the Friend of the Court to provide Title IV-D services. To the extent that this requirement would lead to a change in how services are provided, the bill could result in a short-run increase in administrative cost to the Department of Human Services associated with identifying new processes for contracting for these Title IV-D services.

Senate Bill 105

Revenue from the service fee imposed under the divorce Act would continue to be available to counties through a \$2 increase in a service fee under the Revised Judicature Act proposed in Senate Bill 103, which is tie-barred to this legislation. Senate Bill 105 would have no fiscal impact on State or local government.

Senate Bill 106

The bill likely would increase the financial contribution from noncustodial parents for medical expenses. Increases in collected funding from noncustodial parents for medical expenses could reduce State expenditure for Medicaid through increased reimbursement from fathers for medical services already provided to eligible children and through other assistance programs, by

increasing financial resources available to custodial parents.

Senate Bill 107

The bill would make provisions in the Family Support Act consistent with the Paternity Act and therefore would have no fiscal impact.

Fiscal Analyst: Joe Carrasco
David Fosdick
Stephanie Yu

A0910\s99a

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.