

Legislative Analysis



APPEARANCE BY PROSECUTOR IN DIVORCE PROCEEDING

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House Bill 5472 as enrolled
Public Act 376 of 2004
Sponsor: Rep. Ken Bradstreet
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (1-12-05)

BRIEF SUMMARY: The bill would allow, rather than require, county prosecutors or the Friend of the Court to investigate a divorce proceeding involving minor children to determine if the divorce was in the best interest of the children.

FISCAL IMPACT: The bill would reduce costs for counties and revenues for prosecutors, the amounts of which would depend on the frequency with which the \$5 fee has been paid.

THE APPARENT PROBLEM:

Currently, each complaint for an action for divorce must list the names and ages of children of the marriage. If there are children under 17 years of age, a copy of the summons must be served on the county prosecutor, except, in counties with a population of 500,000 or more, the summons could be served on either the prosecutor or the Friend of the Court (FOC). The prosecutor or FOC is then required to enter his or her appearance in the cause, and, if the interest of the children or the public good requires, he or she must also introduce evidence and appear at the divorce hearing and oppose the granting of a divorce decree.

This provision of law is considered by many to be archaic and most prosecutors are not involved with divorces. According to one prosecutor, only once in twelve years did a court ask his office to conduct an investigation in a divorce proceeding. It has been recommended that the provision be changed to allow, rather than require, a prosecutor or the FOC to investigate each divorce involving minor children.

THE CONTENT OF THE BILL:

House Bill 5472 would amend Chapter 84 of the Revised Statutes of 1846, entitled "Of divorce" (MCL 552.45). The statute currently requires a copy of a summons issued in a divorce proceeding to be served upon the county prosecutor or upon the Friend of Court in those counties with a population of 500,000 or more. The prosecutor or FOC must enter an appearance in the cause and introduce evidence and appear at the divorce hearing to oppose the divorce if the interest of the children or the public good so required. Instead, the bill would allow (as opposed to require) the summons to be served on the county prosecutor or, in the case of larger counties, the Friend of the Court.

In addition, current law requires the county treasurer to pay the prosecuting attorney \$5 for each divorce case that he or she investigates. The bill would eliminate this requirement.

BACKGROUND INFORMATION:

House Bill 5472 was originally part of a larger bicameral, multi-bill package of legislation known as the Marriage and Family Preservation Program. The governor vetoed the main bill in the package, House Bill 5467, on December 28, 2004. House Bills 5468-5471 and 5473-5474 all became law without the governor's signature. However, since the bills were tie-barred to House Bill 5467, none of those bills will take effect. Senate Bills 959, 961, 963, 964, and 966 were pocket vetoed. [Typically, if the governor does not sign a bill—or veto it—it takes effect. But a bill is *pocket vetoed* if the governor does not sign it and the legislature has adjourned sine die, as it does at the end of a year's session.]

House Bill 5472 was separated from the rest of the package and signed into law by the governor, and so will take effect.

ARGUMENTS:

For:

House Bill 5472 would revise an out-of-date and rarely used provision of law that requires a prosecutor (or, in larger counties, the Friend of the Court) to enter an appearance at every divorce that involves minor children and introduce evidence at the hearing and oppose a divorce decree if he or she believes the divorce not to be in the child's best interest. Instead, the bill would make action by the prosecutor or FOC permissible rather than mandatory. The vast majority of divorce cases do not require involvement on the part of the prosecutor or FOC, and the type of investigation that would be conducted in a divorce proceeding that involved minor children is more in line with the duties of a court-appointed guardian ad litem. However, there may be situations where a prosecutor feels strongly that the children would be better served if the divorce were denied; the option to intervene would be retained for these rare cases.

In addition, the statute currently requires the court to pay the prosecutor \$5 for each case he or she investigates and appears in. The bill would eliminate this provision and thereby allow the courts and county prosecutors to establish their own system of compensation.

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