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Senate Bills 1423, 1425, and 1428 (as introduced 6-26-08)  
Sponsor: Senator Mark C. Jansen  
Committee: Families and Human Services

Date Completed: 9-9-08

### **CONTENT**

**Senate Bill 1423** would amend the Friend of the Court (FOC) Act to do the following:

- Permit the circuit court to establish a citizen FOC advisory committee to investigate grievances concerning the FOC, and advise the court on the performance of the FOC office; and delete provisions allowing the county board of commissioners to establish an FOC advisory committee.
- Allow the court, if custody had been established, to order an investigation only if 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.
- Require the FOC Bureau to establish a procedure for periodically determining a factor by which child support could be increased according to the change in the consumer price index (CPI).
- Require child support to be adjusted by the CPI factor, rather than the child support formula, if the parties agreed to that calculation.
- 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, and remove specific minimum qualifications for a person who conducts domestic relations mediation.

- Provide that the FOC would not be required to enforce a spousal support order unless requested by a party who also received services under Title IV-D of the Social Security Act for the enforcement of a child support order.

**Senate Bill 1425** 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 1428** would amend the Office of Child Support Act to require the Office of Child Support to coordinate, through the FOC Bureau, the provision of Title IV-D services by FOC offices, and, together with the State Court Administrative Office, contract to provide those services. The bill also would repeal a section of the Act that creates the Child Support Bench Warrant Enforcement Fund.

Senate Bill 1423 is tie-barred to Senate Bills 1425 and 1428, each of which is tie-barred to Senate Bill 1423. The bills are described in detail below.

## **Senate Bill 1423**

### **Citizen Advisory Committee**

The Friend of the Court Act permits each county to establish a citizen FOC advisory committee composed of the following members, each of whom must be a resident of the county:

- A noncustodial parent.
- A custodial parent.
- An attorney who engages primarily in family law practice.
- The county sheriff or his or her designee.
- The prosecuting attorney or his or her designee.
- The director of the Department of Human Services (DHS) or his or her designee.
- A mental health professional who provides family counseling.
- Two members of the general public who are not serving on the committee in a category listed above.

The county board of commissioners must appoint the citizen advisory committee members, except for the county sheriff, the prosecuting attorney, and the DHS Director, and except as otherwise provided. In a charter county, the county executive must appoint the citizen advisory committee members with the advice and consent of the county board, and must exercise the other powers and duties prescribed for the county board in regard to the citizen advisory committee.

A vacancy on the committee must be filled for the remainder of the term in the same manner as the position originally was filled. The county board must attempt to compose the committee so that its membership reflects the ethnic, racial, and gender distribution of the community that it serves.

Committee members must serve renewable terms of three years. The committee must elect one of its members as chairperson and one as vice chairperson. Except for the prosecuting attorney, county sheriff, and DHS Director or their designees, a committee member may not serve more than two consecutive terms. After completing two consecutive terms, a former member may not be reappointed to serve during the two years immediately following the end of his or her previous term.

A committee must honor any guidelines established by the State Court Administrative Office (SCAO) for an FOC office pertaining to citizen advisory committees.

The bill would delete all of those provisions, instead permitting a circuit court to establish a citizen FOC advisory committee to do either of the following:

- Review and investigate grievances concerning the FOC as provided in Section 26 of the Act.
- Advise the court on the performance of the FOC office's statutory duties.

(Section 26 permits a party to an FOC case who has a grievance concerning FOC office operations to file a grievance with the citizen advisory committee. The committee, at its discretion, may conduct a review or investigation of, or hold a hearing on, the grievance.)

A citizen advisory committee would have to operate under guidelines established by the SCAO or the Supreme Court.

Except as otherwise provided by those guidelines, a citizen advisory committee meeting would be open to the public. A member of the public attending a citizen advisory committee meeting would have to be given a reasonable opportunity to address the committee on an issue under its consideration. If the committee were to take a vote, the opportunity to address the committee would have to be given before the vote was taken.

A citizen advisory committee meeting, including a meeting of a subcommittee, would not be open to the public while the committee or subcommittee was reviewing, investigating, or holding a hearing on a grievance.

Under the Act, a citizen advisory committee, its members, and its staff must consider as confidential a record or other information to which they have access in order to perform their functions under the Act. A committee member's unauthorized disclosure of such a record or confidential information is grounds for removal from the committee, and a committee staff member's unauthorized disclosure of a record or confidential information is grounds for dismissal.

The bill would delete those provisions.

#### FOC Investigation

The 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 there had been a substantial change in circumstances.

Under standards prescribed by the SCAO or 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 this 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 the amount 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 a FOC case.

Under the bill, instead, the FOC office would have to provide alternative dispute resolution 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 bill would refer to alternative dispute resolution rather than domestic relations mediation throughout the Act, and would refer to providers of alternative dispute resolution 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. Currently, "domestic relations matter" means a circuit court proceeding as to child custody or parenting time, child support, or spousal support, that arises out of litigation under a State statute. The bill would refer to "spousal support in conjunction with child support", rather than "spousal support" in that definition. The bill would remove the definition of "domestic relations mediation", which is similar to the proposed definition of "alternative dispute resolution".)

Currently, parties may not be required to meet with a domestic relations mediator. The mediation service may be provided directly by the 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 remove those provisions.

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.

In addition, the person must have knowledge of the State court system and the procedures used in domestic relations matters; knowledge of other resources in the community to which the parties can be referred for assistance; and knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research.

The bill would remove those provisions, instead requiring an FOC employee or person contracted who performed alternative dispute resolution under the Act to have qualifications as prescribed by the SCAO.

#### Review of Support Order

Under the Act, after a final judgment containing a child support order has been entered in a 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 require the FOC office to conduct a review at the initiative of the office under those circumstances.

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.

Also, 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.

The bill would require the FOC office to use the procedure described below to conduct a periodic review of a child support order.

#### Review Procedure

Under the Act, the FOC office must initiate a review by sending a notice to the parties. The notice must do the following:

- Request information sufficient to allow the FOC to review support.
- State the date the information is due.
- Advise the parties concerning how the review will be conducted.

After the information is due, the FOC office must calculate the support amount in accordance with the child support formula under the Act notify each party and his or her attorney of the amount calculated for support, the proposed effective date, and that either party may object to the recommended amount.

Under the bill, before sending notice of a review, the FOC office would have to multiply the current child support amount by the factor determined by the FOC Bureau under the bill. That factor would have to be determined based on the cumulative annual percentage change in the consumer price index (the most comprehensive index of consumer prices available for the State from the U.S. Bureau of Labor Statistics).

Notice of a review would have to advise the parties of the amount calculated and state that if the parties both sent written notice of acceptance to the FOC office within 21 days after the date the notice was sent, the office would not conduct any further calculation or make any recommendation as to child support, but instead the calculated amount would become the new child support amount.

The notice also would have to advise a party that if an acceptance of the calculated amount were not sent, the party would have

to provide information sufficient to allow the FOC to review support.

If the parties both sent a written notice accepting the calculated amount, the office could not conduct any further calculation or make a recommendation as currently provided. The FOC office would have to prepare an order, and the court would have to enter the order if it approved of the order.

Under the Act, the court may not require proof of a substantial change in circumstances to modify a child support order when support is adjusted based on a periodic review. Under the bill, that provision also would apply to an adjustment of the support amount based on the CPI change.

The bill would require the State FOC Bureau to establish a procedure to determine periodically a factor by which a child support payment could be increased under the provisions described above.

#### 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 failed 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 makeup parenting time

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 remove those provisions, and instead would require each FOC office to compile data as required by the FOC Bureau.

#### Health Care Expenses

The bill provides that if the SCAO or the Supreme Court established a minimum threshold for the enforcement of health care expenses, a complaint seeking enforcement for payment of a health care expense would have to include information showing that the 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

Under the bill, the FOC office would not have any duties related to spousal support unless the case was a Title IV-D case (referring to Title IV-D of the Social Security Act, which deals with child support).

The FOC would not be required to enforce a spousal support order unless requested by a party who also received Title IV-D services for the enforcement of a child support order.

### **Senate Bill 1425**

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 1428**

#### **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 OSC, together with the State Court Administrative Office, would have to contract to provide services under Title IV-D by FOC offices.

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.

MCL 552.502 et al. (S.B. 1423)  
722.27b (S.B. 1425)  
400.233 & 400.233a (S.B. 1428)

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

#### **Senate Bill 1423**

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.

Allowing for CPI adjustments instead of reviewing and recalculating support amounts would result in administrative savings.

#### **Senate Bill 1425**

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

#### **Senate Bill 1428**

Currently, the Office of Child Support in the Department of Human Services is the designated Title IV-D agency in the State of Michigan. Proposed language in Senate Bill 1428 would require the Office of Child Support and State Court Administrative Office to contract with the Friend of the Court to provide Title IV-D services. This change could lead to a short-run increase in

administrative cost to the Department of Human Services associated with identifying new processes for contracting for these services.

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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.