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Senate Bills 902 & 903 (Substitutes H-1)  
Senate Bills 904-906 as passed by the Senate

Sponsors: Sen. Rudy J. Nichols (SB 902 & SB 904) and  
Sen. Harmon Cropsey (SB 903, 905 & 906)

Senate Committee: Judiciary  
House Committee: Judiciary

First Analysis (9-19-90)

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### **THE APPARENT PROBLEM:**

Although the divorce law allows a court to order support for a child after he or she reaches 18 years of age, the Michigan Supreme Court held in Smith v. Smith (November, 1989) that the provision violates the Age of Majority Act, which specifies that "a person who is at least 18 years of age is an adult of legal age for all purposes whatsoever." The court also ruled that the Age of Majority Act preempts a court rule that calls for ordering support through age 18 or high school graduation, whichever is later. As a result, a court may no longer order support for a child over age 18 who is still in high school or college, or for a disabled child. The ruling results in high school students being denied necessary support, and further, makes unenforceable a large number of settlements agreed to by the parties that call for postmajority support. The court urged the legislature to reconsider the statutes governing child support orders in order to expressly provide for postmajority support.

### **THE CONTENT OF THE BILLS:**

The bills, together with House Bills 5286, 5649, 5650 (currently pending before the House) and enrolled House Bill 5287 (Public Act 104 of 1990), constitute a package of bills to allow child support payments to be ordered beyond the age of 18 under certain circumstances.

Senate Bill 902 would amend the Family Support Act (MCL 552.451 et al.) to allow a court to order a parent to pay support for his or her child who was 18 years of age or older during the time that the child was regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate, while residing on a full-time basis with the payee of support or at an institution, but in no case after the child reached 19 1/2 years of age. A complaint or motion requesting support for a child over age 18 could be filed at any time before the child reached age 19 1/2. Existing child support orders (those in effect before the effective date of the bills) that called for support to be provided past age 18, if entered without an agreement of the parties, would be valid and enforceable to the extent they called for support to be provided under the circumstances specified in the bill. However, the bills would specify that they would not require any payment of support for a child 18 years of age or older for any period between November 8, 1989 (the date the Smith decision was issued) and the effective date of the bills, or reimbursement of support paid between those dates, in judicial circuits that did not enforce postmajority support orders between those dates. Existing and future child support orders that were entered into as a result of an agreement of the parties would be valid and

enforceable to their full extent, even if they called for support to be provided beyond what is specified in the bills.

Senate Bill 903 would amend the emancipation of minors act (MCL 722.3 and 722.3a) to allow a court to order a parent (divorced or not) to support a child 18 years of age or older under the same conditions as outlined for support orders for children of divorced parents under Senate Bill 903.

Senate Bills 904-906 would make complementary amendments to the Friend of the Court Act (MCL 552.531), the Support and Visitation Enforcement Act (MCL 552.602), and Public Act 379 of 1913 (MCL 552.151), which provides for the collection of alimony and the support and maintenance of minor children.

### **FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, the bills would have no fiscal impact on state or local government. (6-14-90)

### **ARGUMENTS:**

#### **For:**

The package of bills would undo the damage wrought by the Smith decision, allowing courts once again to order child support to be paid for children while still attending high school, but not past age 19 1/2. For years, attorneys and judges have relied upon statute and court rules that authorized, and even encouraged, the awarding of postmajority support; attorneys have counseled their clients to seek and agree to such support until high school graduation. Approximately 90 percent of all divorce orders are mutually agreed to between the parties, and most of those provide for support to be paid until graduation from high school. The bills would reaffirm a sound policy that holds that a parent is financially responsible to support his or her children at least through their high school education. As the supreme court said, such legislation is necessary to render a parent's moral obligation into a legal duty.

#### **For:**

The package of bills contains a provision (in Senate Bill 903) to allow a court to order a parent (divorced or not) to support a child during the period the child was regularly attending high school, but in no case past age 19 1/2. (Under the emancipation of minors act, the child or a guardian may petition a court to order the parent to provide support. This would be most likely to happen in cases of "throwaway children," who have been kicked out of the home by their parents. The law currently allows a court to

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order support in such cases until the age of 18.) The provision would assure that parents in "intact" families would have the same responsibility to provide financial support for their children through high school as that imposed on divorced parents.

**Against:**

Unlike existing language that was rendered void by the Smith decision, the bills do not make provision for postmajority support to be ordered for disabled children, who may need lifelong care. The bills should allow courts discretion to order financial support for longer periods of time, perhaps indefinitely, in certain cases. This concept was embodied in the current (voided) "exceptional circumstances clause."

**Response:** According to advocates for the handicapped, any child support paid on behalf of disabled adult "children" results in a dollar-for-dollar reduction in federal Supplemental Security Income (SSI) benefits and may jeopardize Medicaid eligibility. In addition to putting handicapped persons at risk of losing income, the loss of Medicaid eligibility results in loss of eligibility for many programs serving the handicapped. Thus, the great majority of handicapped persons are better off not receiving child support payments past the age of 18.

**Against:**

The bills are yet another attempt to place noncustodial parents, in most cases fathers, at a disadvantage within the legal system. While the bills purport to benefit "children," they are but another way to transfer income from divorced fathers to their ex-wives. The Smith decision correctly recognized that young people have indeed reached the age of majority at age 18, and thus should be self-supporting.

**POSITIONS:**

The Department of Social Services supports the bills. (9-18-90)

The Family Law Section of the State Bar of Michigan supports the bills. (9-18-90)

The Friend of the Court Association of Michigan supports the bills. (9-18-90)

Fathers for Equal Rights supports the package in its current form, because the proposed language is "child-oriented." (9-19-90)