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THE APPARENT PROBLEM:

Since May of 1987, Michigan has had in place a statewide formula for use in determining court-ordered child support payments. The development of the formula predated a 1987 federal mandate to do so, so that by the time federal law required state guidelines to be in place, Michigan's child support formula was in effect. However, recent changes to federal law imposed requirements that Michigan does not yet meet. Under the federal Family Support Act of 1988, the state must establish a "rebuttable presumption" that the amount of child support yielded under the formula is the correct amount of child support to be awarded. The presumption could be rebutted by a finding (in writing or on the record) that application of the formula would be unjust or inappropriate in a particular case.

Rules to implement the 1988 requirement were proposed on September 13, 1989. Among other things, the proposed regulations would require that as of October 13, 1989, the state must provide for the rebuttable presumption for use of the state child support formula. Under the rules, findings that rebut the guidelines would have to include the amount of support that would have been required, how the order varies from the guidelines, the justification of how the finding serves the best interest of the child, and, the value of any property awarded in place of a portion of the child support presumed under the formula.

A state that fails to meet the federal requirements is subject to financial penalties. According to the Office of Child Support, Michigan could suffer penalties of up to \$21 million per quarter if it fails to provide for the rebuttable presumption required by federal law. Legislation to meet that federal requirement has been developed.

THE CONTENT OF THE BILLS:

House Bills 5265-5271 constitute a package of bills to create a rebuttable statutory presumption in favor of using the state child support formula to determine child support payments. House Bills 5266-5271 would address federal requirements that in any judicial or administrative proceeding for the award of child support, there be a rebuttable presumption that the correct amount of child support is the amount yielded by the state child support formula. House Bill 5265 would place similar language in the Friend of the Court Act, allowing the friend of the court, in formulating its recommendations, to deviate from the child support formula in the same manner that the court could in issuing child support orders. None of the bills could take effect unless all (or their Senate counterparts) were enacted.

House Bill 5265 would amend the Friend of the Court Act, which requires the friend of the court to make a written report and recommendation on child support, if ordered to do so by the court. Under the bill, the written report would have to be placed in the court file and would have to include the support amount determined by using the child

support formula, along with all factual assumptions upon which that support amount was based. If the friend of the court determined from the facts of the case that application of the child support formula would be unjust or inappropriate, the written report would have to also include an alternative support recommendation, the rationale for it, and a description of how the alternative recommendation deviated from the child support formula.

MCL 552.505

House Bill 5266 would amend the divorce act to generally require the circuit court, when ordering child support, to order the support in the amount determined by using the state child support formula. The court could deviate from the formula if the parties agreed to a different amount (providing the party receiving child support was not receiving public assistance), or if the court determined from the facts of the case that application of the child support formula would be unjust or inappropriate. If the court decided that using the formula would be unjust or inappropriate, it would have to explain the following in writing or on the record: the support amount determined by the child support formula, how the support order deviated from the formula, the value of any property or other support awarded instead of the payment of child support, and the court's reasons for its determination.

MCL 552.15 and 552.16

House Bills 5267 through 5271 would amend various acts to insert language identical to that proposed by House Bill 5266. Those acts are as follows.

House Bill 5267: the Child Custody Act (MCL 722.27)

House Bill 5268: the Family Support Act (MCL 552.452)

House Bill 5269: the Paternity Act (MCL 722.717)

House Bill 5270: the emancipation of minors act (MCL 722.3)

House Bill 5271: the Revised Uniform Reciprocal Enforcement of Support Act (MCL 780.164)

FISCAL IMPLICATIONS:

According to the Office of Child Support within the Department of Social Services, the federal government could impose penalties of up to \$21 million per quarter for Michigan's failure to meet federal requirements for a rebuttable presumption in favor of using the state child support formula. (11-28-89)

ARGUMENTS:

For:

Consistent with federal requirements, the bills would enact a "rebuttable presumption" in favor of using the state child support formula to set child support payments. The bills

echo federal language in allowing alternate payment levels when using the formula would be "unjust or inappropriate" in a particular case. As required by the proposed federal regulations, the bills would require certain statements to be made when the child support formula was not followed. Those statements would include explanations of the amount of support that would have been required, how the order varied from that amount, and the value of any property awarded in place of a portion of child support.

Failure to meet the federal requirements would subject the state to federal penalties of up to \$21 million per quarter, but federal sanctions aside, the bills propose good public policy by encouraging the use of a rational child support formula and making for better uniformity statewide. In addition, House Bill 5265 would extend to the friend of the court the same flexibility in setting aside the child support formula that House Bills 5266 through 5271 would allow for the courts. Thus, the friend of the court would be formulating its child support recommendations under the same statutory guidance that the court would be using to issue child support orders.

Against:

Under the proposed federal regulations, a deviation from the child support formula would be allowed if strict adherence to the formula would be unjust or inappropriate, as determined under criteria established by the state. The regulations demand that the criteria be "based on the best interests of the child" As the bills do not incorporate this concept, they fall short of federal requirements.

Response: Criteria to allow deviations from the child support formula should not be based solely "on the best interests of the child," as that would make it virtually impossible to adjust payments downward, even temporarily, to accommodate unusual circumstances. The rules, which as yet are merely proposed rules, go beyond the underlying law, which does not require state criteria to be based on the best interests of the child. It appears likely that the rules will be modified in this respect; the bills do well to remain silent on the matter of the best interests of the child.

POSITIONS:

The Friend of the Court Association of Michigan supports the bills. (11- 28-89)

The State Court Administrative Office does not have a position on the bills. (11-28-89)

The Michigan Judges Association has not yet take a position on the bills. (11-28-89)