

SFA

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bills 137 and 138 (as enrolled)

Sponsor: Senator Rudy J. Nichols (Senate Bill 137)

Senator Norman D. Shinkle (Senate Bill 138)

Senate Committee: Judiciary

House Committee: Taxation

Date Completed: 6-15-89

RATIONALE

Under both the juvenile code and Code of Criminal Procedure, an order committing a juvenile to care outside of his or her own home must contain a provision for the parent, guardian, custodian, or child to reimburse the cost of care or service. Although neither statute provides specifically for enforcement of such an order, a reimbursement order that is not obeyed can be enforced through contempt of court proceedings. Contempt proceedings, however, necessarily occupy the court's time and resources and may be an inefficient method of exacting payment. It has been suggested, therefore, that courts intercept the tax refund of a delinquent payer to recover the costs of out-of-home placement, and some courts allegedly have begun to do so already. Reportedly, however, the State Court Administrative Office, when reviewing a form that had been drafted for use with interception orders, discovered that there was no statutory authority for courts to intercept tax refunds for foster care arrearages.

CONTENT

Senate Bills 137 and 138 would amend the juvenile code and the Code of Criminal Procedure, respectively, to allow a court in cases of delinquent accounts, to enter an order to intercept State tax refunds or the Federal income tax refund of a parent, guardian, custodian, or child, and to initiate the offset proceeding necessary to recover the cost of care or services for a juvenile committed to State or court jurisdiction. Senate Bill 137 would grant such authority to the probate court and Senate

Bill 138 would grant the authority to a circuit court. The bills also would require the court to send the person advance notice of the proposed offset, including notice of the opportunity to contest the offset on the ground that it was not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person. The court would have to provide for the prompt reimbursement of an amount withheld in error or an amount in excess of the delinquent amount. The bills are tie-barred to each other.

MCL 712A.18 (Senate Bill 137)
769.1 (Senate Bill 138)

BACKGROUND

Under the juvenile code, if a juvenile court finds that a child is within Chapter 12A of the code (a juvenile accused of violating the law, a status offender, or an abused or neglected child), the court can place the child in a suitable foster care home, place the child in a State-licensed or -approved private institution, commit the child to a public institution, or take other action. The Code of Criminal Procedure provides that a court having jurisdiction over a juvenile can commit the juvenile to a State institution or agency established for the care of State wards (e.g., detention facility, youth camp, halfway house, or group home), or impose any other sentence provided by law for an adult offender. (Under recent amendments to the law concerning juvenile offenders, a prosecutor may choose to prosecute either in juvenile court or in a court of general criminal

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jurisdiction if a juvenile is accused of certain serious assaultive or drug-related offenses. If such a juvenile is tried in general criminal court, he or she can be placed in either a juvenile facility or an adult correctional facility.)

Under both statutes, 25% of all amounts collected under an order to reimburse the costs of out-of-home care must be used to offset the administrative cost of collections. The balance is divided in the same ratio in which the county, State, and Federal government participate in the cost of care outside the child's home and under State or court supervision.

FISCAL IMPACT

The bills would result in an increase in collections from parents of children who are in out-of-home placement. Currently, private parental collections have, at best, been negligible. The interception of tax refunds would be greatest for employed parents (non-Aid to Families with Dependent Children groups). The increase in collections would offset, or decrease reimbursement provided by the county-local units of government, State, and Federal government.

ARGUMENTS

Supporting Argument

The bills would provide an efficient and effective method for recovering delinquent amounts owed to reimburse the cost of caring for juveniles placed outside their own home. Reportedly, less than 1% of all foster care payments are satisfied by parental collections (although Wayne County, which has made no such collections, accounts for some 60% of all foster care payments). The State already intercepts State and Federal tax refunds to recover child support arrearages, and the revenue Act provides for the interception of State refunds to satisfy taxpayers' liability to the State. In addition to enabling counties, the State, and the Federal government to recover revenue that is due them, the bill would force parents to consider the situation seriously by ensuring that they contributed to the cost of their children's care. Abusive or negligent parents whose children are placed in foster care should not be allowed to benefit financially by

saving the money they otherwise would have to spend if the children were in their own home.

Response: While the bills would amend Michigan law to authorize the interception of Federal as well as State tax refunds, Federal law apparently does not authorize the State to intercept Federal refunds to recover foster care payments, except in a category of cases in which Aid to Families with Dependent Children is involved, according to officials within the Department of Social Services.

Supporting Argument

The bills would protect individuals' due process by requiring advance notice of a proposed interception. Currently, advance notice is given before tax refunds are intercepted to pay child support arrearages.

Opposing Argument

Some people believe the bills would simply improve the efficiency of a bad system. Under the law, a parent can be required to pay for a child's out-of-home care even though the parent did not want the child removed and even though the parent was not at fault. In contrast, when parents are so negligent or abusive that their parental rights are terminated, they have no financial responsibility for their children. Further, since attitudes toward enforcing orders to collect from parents can differ dramatically from county to county and even from case to case, the system does not function equitably.

Response: The duty of parents to support their children is not based on fault. Parents are financially responsible, for example, when illness befalls a child through no fault of anyone. Likewise, parents' financial obligation is not diminished when their children are removed from the home. Moreover, courts base reimbursement orders on ability to pay, and the tax interception would be used only when someone had not paid an amount ordered by a court. The bills simply would improve collections legitimately ordered by a court.

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