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January 29, 2009

Honorable Mark Jansen, Chairperson
Honorable Bill Hardiman, Majority Vice-Chairperson
Honorable Gilda Jacobs, Minority Vice-Chairperson
Senate Families and Human Services Committee
State Capitol
Lansing, Michigan

RE: Senate Bills 99 through 107

Senators:

The Friend of the Court Association of the State of Michigan is pleased to again support these important bills. Your support for this legislation in the past session was greatly appreciated. We regret the House was unable to take them up for final passage.

Senate Bills 99 through 107 result from a comprehensive report and series of recommendations dated October 20, 2006, addressed to the Governor Granholm, Chief Justice Taylor and legislative leadership. Subsequently we met with your staff as well as with representatives of the State Court Administrative Office, Office of Child Support, the Michigan Judges' Association, Prosecuting Attorneys' Association, Family Law Section, the Michigan Association of Counties and with the House staff in developing and perfecting specific suggested statutory changes and improvements.

Attached is our analysis of the changes and improvements included in each bill. The basic improvements we suggested and which are included in the bills are intended to promote both better use of public resources and commonality in procedures employed by the Friend of the Court as well as enhancing tools available to the FOC in assisting parties in domestic relations cases with minor children to comply with court orders concerning child support, custody and parenting time.

While there are a number of changes as evidenced by the analysis, the Friend of the Court Association would like to highlight several:

1. Provisions in the Friend of the Court Act providing for mediation of child custody and parenting time disputes are enhanced to require that each FOC office have an Alternative Dispute Resolution Service Plan, approved by the Chief Judge and SCAO, to assist parties in resolving disputes. The enhanced requirement recognizes differing needs from region to region of the state and resource availability. SCAO involvement will help ensure a desired level of statewide commonality, minimum service delivery and provider qualification standards and preservation of confidentiality for the parties involved.

2. New requirements in the Friend of the Court Act will permit FOC offices to provide and assist parties with SCAO prescribed form documents for past due support amounts to be paid through formal payment plans to which the parties agree in order to reduce the need for contempt and other related enforcement actions.

3. Among the changes to the Support and Parenting Time Enforcement Act, the currently automatic semi-annual surcharge imposed on past due support obligations without regard to ability to pay would be changed for the future and imposed upon the occurrence of a judicial finding that the payer willfully failed to comply with the support order. There is no evidence we are aware of that the automatic surcharge has even been remotely effective in promoting greater compliance with payment of support orders. In fact, because the surcharge is not based on any ability to pay determination and is not subject to retroactive modification, we are left with the conclusion that the resulting significant increases in past due amounts experienced in Michigan result at least in part from low and moderate income payers resorting to the underground economy or simply "giving up" on being able to comply given economic reality. The Office of Child Support participated in a study of past due child support amounts in larger states from which they could provide further information to the committee in support of this change.

4. Also in revisions to the Support and Parenting Time Enforcement Act, the license suspension process is updated to reflect the notice/objection/hearing process applied to other non compliance sanctions. We believe the modification will reduce delays and need for court hearings which result from the current process, thus freeing valuable resources for more productive compliance activities. The changes will also permit license reinstatement and lifting of suspension sanctions by obtaining a "certificate of compliance" from the FOC instead of the payer having to obtain a court order.

5. Finally, proposed amendments to the Support and Parenting Time Enforcement Act, include several additional contempt sanctions which become authorized for court consideration: a) "booting" of a vehicle owned by the payer; b) placing a payer or respondent under FOC "supervision" with conditions; and, c)

expanding use of "jail alternatives" beyond just those offered by local community corrections programs.

We urge the committee again favorably consider these bills in our continuing effort to improve delivery of FOC services.

A handwritten signature in cursive script, reading "Suzanne Hollyer". The signature is written in black ink and is positioned above the printed name.

Suzanne Hollyer,
President, Friend of the Court Association of the State of Michigan

Friend of the Court Association of Michigan
SB 99 - 107 Summary

Background:

The Friend of the Court Association of Michigan, at the separate requests of former Chief Justice Maura Corrigan and Senator Bill Hardiman, undertook a comprehensive review of existing mandated services, processes and funding for duties of the Friend of the Court under Michigan Law. Late in 2006 the Association issued a report on the review. During 2007 and early 2008 the Association worked with State Court Administrative staff and legislative staff to develop legislation designed to better utilize resources of the Office of the Friend of the Court.

A significant goal of the legislation proposed is to provide greater flexibility to the Friend of the Court in providing required services and to continue efforts commenced in 2002 to make statutory procedures more efficient and cost effective.

The resulting Senate passed bills also provide a number of enhancements to current law to permit the FOC to assist parties in complying with support orders and to resolve past due amounts.

Bill Analysis:

SB 99: This bill amends the Friend of the Court Act by:

1. Clarifying that the county may be a "recipient of support" in certain foster care cases.
2. Expanding providing of form motions, responses and orders to include those associated with payment plans and for modifying the domicile and residency provisions of a custody and/or parenting time order. The SCAO would be required to promulgate the forms.
3. Recognizing case law with regard to custody changes, clarifying that custody change investigations by the FOC can be ordered by the court after the court first finds that there has been a substantial change in circumstances.
4. Permitting the FOC to recover the costs of custody and/or parenting time investigation pursuant to State Court Administrative Office or Supreme Court standards. Provisions are made for whole or partial indigence or inability to pay waiver of any imposed assessment. Funds go to the FOC Fund.
5. Clarifying that, for spousal support only orders, the FOC is not required to provide enforcement services for those entered on or after 4/1/2009 unless the case is qualified for federally funded IV-D services.

6. Including medical and food assistance as well as foster care as “public assistance” for purposes of whether or not a domestic relations case can remain and FOC case.
7. Making technical changes in recognizing that the conversion to the state disbursement unit has been completed.
8. Clarifying that the requirement to enforce health care expenses is subject to any minimum threshold established by SCAO or the Supreme Court.
9. Replacing required Friend of the Court Domestic Relations Mediation of child custody and parenting time disputes with a requirement that each office establish Alternative Dispute Resolution Service plans in order to assist parties in voluntarily resolving child custody and parenting time disputes. Formal mediation would remain a major component of any dispute resolution plan. The proposed change will recognize limitations on resources available and that there are a number of means by which the office can assist parties in resolving disputes. Plans developed by the FOC must be approved by both the Chief Circuit Judge and the State Court Administrative Office.
10. Making technical updates to support review provisions and adding “order based on incorrect facts (i.e. many default orders)” as a reason for FOC conducting a review of the support order .
11. Requiring SCAO to coordinate FOC IV-D services with the state’s Office of Child Support.
12. Eliminating outdated language related to the now abandoned state funding of trial court services.
13. Revising data collection requirements by deleting specified information in favor of the SCAO determining what information shall be provided by FOC offices to the SCAO.

SB 100: This bill amends the Support and Parenting Time Enforcement Act by:

1. Including a labor organization as a “source of income.”
2. Clarifying that no further action is needed to reduce support to a final judgment.
3. Clarifying each party’s responsibility to keep the FOC advised of a current address to which notices and papers will be served. Clarifying information each party is required to provide to and maintain with the FOC. Clarifying that if mail is returned from the address last provided by the party to the FOC then the FOC may change the address under guidelines established by the SCAO or Supreme Court. Maintains current requirement that notification to the FOC from a party must be writing, but also permits notification by other means approved by the Supreme Court or SCAO. Further, clarifies that, unless otherwise required by federal law or regulation, the failure of the party to maintain a current mailing address with the FOC waives the party’s right to receive notices and papers until such time as they update the FOC. Permits the Court to impose

a fee set pursuant to SCAO or Supreme Court policy for failure of a party to comply with reporting requirements. These changes are intended to reinforce each party's individual responsibilities and to reduce costs attributed to sending notices and process to known bad addresses and to encourage greater personal responsibility of the parties to comply with statutory requirements.

4. Clarifies that MiSDU and MiCSES records are prima facie authentic in proceedings to enforce support and are thus admissible as evidence without need for further authentication.
5. Changes the twice per year surcharge assessment for past due support to be based in the future upon a court determination that the payer willfully failed to comply with the support order rather than an automatic assessment which becomes non-modifiable and is not based on any determination as to the facts and circumstances of non payment or ability of the party to pay..
6. Clarifying that a support order must specify a specific date of determination rather than reference to a graduation event.
7. Clarifying that if a payer is due a refund as a result of an abatement of support and there is undistributed money available, after applying the money to any other past due amount owed by the payer, any remainder is to be refunded to the payer and is not subject to the one month general holding requirement.
8. Clarifying provisions related to payment plans to provide greater flexibility in crafting such plans for payment of past due support.
9. Eliminating reference to an amnesty plan which was undertaken several years ago.
10. Eliminating sending a copy of the income withholding notice to the support recipient since the recipient is not permitted to object to such notices. This change will reduce processing and mailing expenses plus inquiry phone calls.
11. Limits employer withholding to a maximum of 50% of the payer's disposable income. Current law mirrors the federal consumer protection requirements which permits up to 65% to be withheld under certain conditions. Several states have adopted the lower 50% cap in order to facilitate employer compliance.
12. Requiring that labor organizations that assign a member to work shall forward a copy of an income withholding notice served on them to the actual employer.
13. Clarifying that the income withholding amounts also includes amounts for payment of fines, costs and sanctions.
14. Updating the tax offset provision to reflect current federal requirements. The ability for the FOC to make a supplemental referral is retained.

15. Making a technical correction to the requirements for notifying the payer of perfecting or levying of a lien.
16. Updating license suspension process to reflect the notice and objection process applicable to support review and imposition of other non incarceration sanctions. Provides for FOC issuance of a "compliance certification" to payer which permits reinstatement of a suspended license without the payer having to petition the court and obtain an order.
17. Permitting ordering "booting" of a vehicle owned by the payer as a possible contempt sanction.
18. Permitting placing a payer or respondent under FOC "supervision" with conditions of supervision as a possible contempt sanction for non payment or custody/parenting time order violation.
19. Clarifying that a sanction for contempt for non payment or a custody/parenting time order violation may include committing a payer to the county jail or "alternative to jail" to permit use of jail alternatives other than those operated by a county community corrections program.
20. Clarifying that if a respondent is arrested on a bench warrant in a custody or parenting time order violation proceeding, he/she may be released on bond if a hearing cannot be held immediately after arrest.
21. Making technical changes to recognize that the transition to the state disbursement unit has been completed.

SB 101: The Child Custody Act of 1970 is amended by:

1. Changing the reference from FOC domestic relations mediation to FOC alternative dispute resolution.

SB 102: The Michigan Vehicle Code is amended by:

1. Making technical changes to conform to the process changes made in the Support and Parenting Time Enforcement Act.

SB 103: The Revised Judicature Act of 1961 is amended by:

1. Clarifying that statutory records retention and reproduction provisions apply to records filed with the court and maintained by the Clerk or Register. It is the intention of this clarification to permit SCAO to provide separately for record maintenance standards for FOC offices and to facilitate FOC record imaging initiatives.
2. Redirecting \$10 of the custody, support or parenting time final judgment/order fee from the state bench warrant enforcement fund to counties for use by the FOC in

providing non IV-D services. Eliminates sending the money to the state for redistribution back to the county as is the current circumstance.

3. Incorporates and adds the \$2 per month service fee used to fund custody and parenting time enforcement activities of the FOC and assessed against the payer of support into the \$1.50 per month non iv-d services fee in section 2538. There is no resulting increase in the overall current fee of \$3.50 per month. The intent is to remove the monthly service fee provisions from the separate domestic relations laws (i.e. Divorce, Family Support Act, Paternity Act, etc.) and have the fee authorization in one location for consistency purposes. Also clarifies that a person who fails to pay the fee may be held in contempt of court.

4. Making technical changes recognizing that conversion to the state disbursement unit has been completed.

SB 104: The Office of Child Support Act is amended by:

1. Requiring OCS to coordinate with SCAO the provision of title IV-D services by the Friend of the Court.

2. Updating tax offset provision to recognize the current requirements of federal regulation which provide for automatic referral rather than case by case referral by the FOC.

3. Repealing language concerning the state bench warrant fund.

SB 105: The divorce laws are amended by:

1. Moving the \$2 per month service fee provision to the revised judicature act (RJA.)

2. Making technical changes recognizing that conversion to the state disbursement unit has been completed.

SB 106: The paternity act is amended by:

1. Updating provisions concerning determining and apportioning pregnancy and birth related medical expenses to comply with federal requirements.

2. Making technical changes recognizing that conversion to the state disbursement unit has been completed.

3. Moving the \$2 per month service fee provision to the RJA.

SB 107: The family support act is amended by:

1. Making service of the complaint and summons consistent with court rule requirements for civil actions.
2. Codifying pregnancy and birth related medical expense determination, apportionment, and abatement to be consistent with provisions in the paternity act.
3. Clarifying that an initial family support order is retroactive only to the date that the complaint for support was filed except under certain prescribed circumstances.
4. Making technical changes recognizing that conversion to the state disbursement unit has been completed.
5. Moving the \$2 per month service fee provision to the RJA.

Prepared by: Jeffrey S. Albaugh,
Friend of the Court Association of Michigan
January 28, 2009