



**Senate Fiscal Agency**  
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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 587 (as passed by the Senate)  
Senate Bill 588 (Substitute S-2 as passed by the Senate)  
Senate Bill 589 (Substitute S-2 as passed by the Senate)  
Senate Bill 590 (Substitute S-2 as passed by the Senate)  
Senate Bill 592 (Substitute S-2 as passed by the Senate)  
Senate Bill 593 (Substitute S-1 as passed by the Senate)  
Senate Bill 594 (Substitute S-2 as passed by the Senate)  
Senate Bill 596 (Substitute S-3 as passed by the Senate)  
Senate Bill 597 (Substitute S-3 as passed by the Senate)  
Senate Bill 598 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Robert Geake (Senate Bills 587 and 588)  
Senator Joanne G. Emmons (Senate Bill 589)  
Senator Christopher D. Dingell (Senate Bills 590 and 598)  
Senator Michael J. Bouchard (Senate Bill 592)  
Senator Jon Cisky (Senate Bills 593 and 594)  
Senator Joel D. Gougeon (Senate Bill 596)  
Senator Loren Bennett (Senate Bill 597)  
Committee: Families, Mental Health and Human Services

Date Completed: 3-28-96

**RATIONALE**

In recent years, many people have voiced complaints about the Friend of the Court (FOC) system. While a number of concerns focus on the performance of the FOC itself, many others pertain to the failure of some divorced parents to live up to their responsibilities, particularly the duty to pay court-ordered child support. During the previous legislative session, the Senate Committee on Family Law, Mental Health and Corrections established a Subcommittee on Friend of the Court Operations to study the FOC system and make recommendations for reform. The subcommittee held 10 hearings in 1994 and submitted a report in August of that year.

The subcommittee's report included a number of findings regarding child support issues. Among other things, the subcommittee found that one of the single biggest problems facing the FOC is the issue of arrearage; that many people stated that their child support payments were not calculated on the true amount of the other parent's income because that parent was concealing income to keep the support obligation down; and that, according to the FOC, it does not have the resources to enforce bench warrants (which are issued when a party fails to appear for a show cause hearing for violating a support or visitation

order). Concerning custody and visitation (parenting time) issues, the subcommittee found that visitation is not adequately enforced, and that many times parents going through a custody battle file false reports of child abuse against the other parent. The subcommittee report contained specific recommendations to address these and other issues.

**CONTENT**

**Senate Bill 587 would amend the Michigan Penal Code to make it a felony for someone to fail or refuse to report income or to misrepresent income if judicially required to report for a determination of child support payments. The offense would be punishable by imprisonment for up to two years and/or a maximum fine of \$2,000.**

**Senate Bill 588 (S-2) would amend the Support and Visitation Enforcement Act to provide that, if an employed support payer were in arrears and were found in contempt of court, the court could order the payer to submit to an electronic tether confining the payer to his or her home except during hours of employment,**

or could commit the payer to the county jail but allow him or her to go to and from his or her place of employment. The bill also would allow the court to correct the amount of support retroactively, if an individual who was required by the court to report his or her income to the court or the Friend of the Court Office intentionally failed to report, refused to report, or knowingly misrepresented that income.

**Senate Bill 589 (S-2)** would amend the Revised Judicature Act to provide that, for an action to enforce a support order that was enforceable under the Support and Visitation Enforcement Act, the period of limitations would be 10 years from the date that the last support payment was due under the support order regardless of whether the last payment was made.

**Senate Bill 590 (S-2)** would amend the Support and Visitation Enforcement Act to specify that a child support recipient would have to use that support for the direct benefit of the child.

**Senate Bill 592 (S-2)** would amend the Friend of the Court Act to permit the FOC to report to a consumer reporting agency support information concerning any payer; and require the FOC to report a payer who was two or more months in arrears and had an arrearage of at least \$1,000. If the FOC Office made incorrect information available to a consumer reporting agency, the FOC would have to contact the consumer reporting agency within 14 days and correct the information.

**Senate Bill 593 (S-1)** would amend the Support and Visitation Enforcement Act to impose liability for court costs on someone subject to a show cause hearing for failure to obey a support order or for violation of a visitation order. **Senate Bill 594 (S-2)** would amend the Revised Judicature Act to require that one-half of the costs collected under Senate Bill 593 be deposited in a county's Friend of the Court fund and one-half be remitted to a law enforcement agency. The bills are tie-barred to each other.

**Senate Bills 596 (S-3) and 597 (S-3)** would amend the Child Protection Law and the Michigan Penal Code, respectively, to increase the penalty for making a false report of child

abuse or neglect, or a false report of child sexual abuse or physical or emotional abuse or neglect of a child. The bills are tie-barred to each other.

**Senate Bill 598 (S-1)** would amend the Child Custody Act to provide that, notwithstanding any other provision of law, a parent could not be denied access to records or information concerning his or her child because the parent was not the child's custodial parent, unless the parent were prohibited from having access to the records or information by a protective order. "Records or information" would include, but not be limited to, medical, dental, and school records, day care providers' records, and notification of meetings regarding the child's education.

All of the bills would take effect June 1, 1996. The following is a more detailed description of the bills, other than Senate Bills 589 (S-2) and 598 (S-1).

#### **Senate Bill 587**

Under the bill, an individual who was required by the court to report his or her income to the court or to an individual or entity designated by the court for determining child support payments, could not do either of the following:

- Knowingly and intentionally fail or refuse to report his or her income to the court or to that individual or entity.
- Knowingly misrepresent his or her income to the court or to that individual or entity.

"Income" would mean that term as defined in the Support and Visitation Enforcement Act (i.e., commissions, earnings, salaries, wages, and other income due or to be due in the future from a support payer's employer and successor employers; any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, unemployment compensation, supplemental unemployment benefits, and workers' compensation; and any amount of money that is due to the payer under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any Federal agency, this State or any political subdivision of this State, any other state or a political subdivision of another state, or any other legal entity that is indebted to the payer).

### **Senate Bill 588 (S-2)**

Currently, under the Support and Visitation Enforcement Act, a court may find a payer in contempt if the court finds that he or she is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order. Upon finding a payer in contempt under this provision, the court may enter an order committing the payer to the county jail; committing the payer to the county jail with the privilege of leaving for the purpose of going to and returning from employment; or committing the payer to a penal or correctional institution in this State that is not operated by the State Department of Corrections. Under the bill, these options would apply if the payer were not employed when the court made the finding of contempt; in addition, the payer could be committed to jail but allowed to go and return in order to seek employment.

If the payer were employed when the court made the finding of contempt, the court would have to inform the office of the Friend of the Court of the payer's place of employment, and could enter one of the following orders:

- An order committing the payer to the county jail with the privilege of leaving the jail, during the hours the court determined and under the supervision the court considered necessary, for the purpose of allowing the payer to go to and return from his or her place of employment.
- An order requiring the payer to submit to an electronic tether, which would allow the payer to be away from his or her residence only during the hours of his or her employment, and during the times required to travel to and from that place of employment.

The Act also provides that a court may find a payer in contempt if the court finds that the payer is in arrears and the court is satisfied that, by the exercise of diligence, the payer could have the capacity to pay all or some of the amount due under the support order and has failed or refused to do so. Upon finding a payer in contempt under this provision, the court may enter an order committing the payer to the county jail with the privilege of leaving in order to go to and return from his or her place of employment or to seek employment. Under the bill, the court could enter such an order if the payer were not employed when the court made the finding of contempt. If

the payer were employed at that time, the court would have to inform the Friend of the Court and could commit the payer to jail with the privilege of leaving the jail to go to and return from employment, or require the payer to submit to an electronic tether, as described above.

The bill would retain a requirement that a commitment continue until the amount ordered to be paid is paid, but would delete a provision that a commitment may not exceed 45 days for the first adjudication of contempt or 90 days for any subsequent adjudication of contempt.

Under the Act, if a payer is committed to jail and he or she violates the conditions of the court order, the court must commit the payer to the county jail without the privilege of attending or seeking employment for the balance of the period of commitment imposed by the court. The bill would extend this requirement to a payer who was committed to electronic tether and violated the conditions of the court order.

Currently, if a payer is committed to jail and fails to return within the time prescribed by the court, the payer is considered to have escaped from custody and is guilty of a misdemeanor, punishable by imprisonment for up to one year. Under the bill, this also would apply to a payer who was committed to electronic tether and failed to return to his or her residence as prescribed by the court order.

In addition, the bill would permit an order of income withholding or a modification of such an order to be served upon a source of income either by ordinary mail, as currently required, or by electronic means as agreed by the source of income and the Friend of the Court Office.

### **Senate Bill 590 (S-2)**

The bill provides that an individual who received support for a child that a payer was required to pay under a court order, would have to use that money for the direct benefit of the child, including, but not limited to, paying for the child's medical care, dental care, other health care, child care, education, shelter, food, clothing, and recreational necessities. If the payer's support payments were current and he or she had a reasonable belief that the individual receiving the support had not complied with this requirement, the payer could file a motion for a hearing on the issue. If the payer's employer paid employees on a regular schedule other than weekly, that fact would have to be

considered in a determination of whether the payer had been current.

If the court found that the individual had not complied with the bill's requirement and had the means to do so based upon the amount of support the payer actually paid, the court would have to order the individual to provide for the child those items listed above and file with the court an annual accounting that detailed expenditures the individual made on behalf of the child; the court would have to make the accounting available to the payer. If the court found that an individual had not complied because he or she had not had physical custody of the child, the court instead could order the individual to return the support paid for the time he or she did not have physical custody.

Based upon the same standard provided for a frivolous action or defense under Section 2591 of the Revised Judicature Act, the court could award costs and fees in the same manner as provided in that section to either the payer or the individual alleged to be in noncompliance. (Section 2591 provides for a court to award costs and fees to a prevailing party, and to assess the costs and fees against a nonprevailing party and his or her attorney, if the court finds that a civil action or defense was frivolous.)

### **Senate Bill 592 (S-2)**

Currently, the Friend of the Court may report to a credit reporting agency support information concerning all payers with a support arrearage of one or more months or an amount equal to at least \$1,000, whichever is reached first. Thereafter, the FOC must make the information available to the agency on a monthly basis. The bill, instead, would require the FOC to report support information, including the arrearage amount, concerning each payer with an arrearage of two or more months if the amount were at least \$1,000, and permit the FOC to make available support information concerning any other payer, on a monthly basis. The FOC could not make information available to a consumer reporting agency if the Office determined that the agency did not have sufficient capability "to systematically and timely make accurate use of the information" or if the agency did not furnish evidence satisfactory to the Office that the agency was a consumer reporting agency.

The Friend of the Court Act requires the FOC to give the payer notice of the proposed action; the

amount of the arrearage; the payer's right to a review, the date by which a request for a review must be made, and the grounds on which the payer may object; and that the payer may avoid the reporting by paying the entire arrearage within 21 days after the date notice was sent. The bill would delete a requirement that the payer also be notified that, if he or she is reported, support information will continue to be provided to the consumer reporting agency until the arrearage falls and remains below the applicable threshold for two years.

The FOC currently must give the payer a review to enable him or her to object to the reporting of the support information on the ground of a mistake of fact concerning the amount of the arrearage or the identity of the payer. This review must be provided if (a) before the initial reporting, the payer requests a review within 14 days after the date notice was sent, or (b) the payer requests a review within 30 days after notifying the FOC that he or she has been denied credit by a lender due in part to the reporting. The bill would delete those circumstances. The bill provides that, if the payer requested a review within the time specified in the notice, the FOC could not report the support information until after the time the review was scheduled to take place. The bill would delete a requirement that a review be held before a referee, the FOC, or an FOC employee who has not had prior involvement with the enforcement of a support obligation of the payer.

Under the Act, the FOC may not make support information available if (a) 21 days have not expired after the date the notice was sent, (b) the payer pays the entire arrearage within 21 days after the date the notice was sent, (c) the payer requests a review and two working days have not expired after the review, or (d) the payer pays the entire arrearage within two working days after the review. The bill would delete the latter two circumstances under which the FOC may not make support information available.

The bill also would delete provisions that do the following:

- Require the FOC to discontinue reporting support information regarding a payer and request deletion of information previously reported if the payer's arrearage has fallen and remained below the applicable threshold for two years.
- Provide that support information is not available if the support recipient has filed

with the FOC an agreement signed by the payer and the recipient, stipulating that information be made available only upon the recipient's request (unless the recipient receives public assistance or an arrearage is payable to the State).

- Permit the FOC to charge a consumer reporting agency a fee up to the FOC's actual cost of complying with these reporting requirements.

Currently, upon request of a consumer reporting agency, the FOC must make available to the agency current support information of an individual payer whose case is being reported to the agency. Under the bill, the FOC also would have to make information available to the agency upon request of a payer.

### **Senate Bill 593 (S-1)**

Under the Support and Visitation Enforcement Act, if a person has been ordered to pay support and fails or refuses to obey, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the Office of the Friend of the Court may commence a civil contempt proceeding by filing in the circuit court a petition for an order to show cause why the payer should not be held in contempt. If the payer fails to appear, the court may issue a bench warrant requiring the payer to be brought before the court. If the payer is arrested and cannot be brought before the court within 24 hours, he or she may "recognize for his or her appearance" by leaving with the sheriff a sum of money stated in the bench warrant, up to the amount of arrearage under the support order. If the payer fails to appear as required, the court must transmit the deposit to the FOC for payment to one or more support recipients.

Under the bill, if a court issued a bench warrant under these provisions, except for good cause shown on the record, the court would have to order the payer to pay the costs related to the hearing, issuance of the warrant, arrest, and further hearings. In addition, the amount that a payer left with the sheriff for personal recognizance could include costs that could be ordered if the payer failed to appear. The costs ordered pursuant to a bench warrant and for failure to appear would have to be transmitted to the county treasurer for distribution as provided in the RJA.

The Act also provides that, if the Office of the FOC determines that action should be taken to resolve

a visitation dispute, the FOC must commence a civil contempt proceeding by filing with the circuit court a petition for an order to show cause why either parent who has violated a visitation order should not be held in contempt. The bill provides that, if a party failed to appear in response to a show cause order, the court could issue a bench warrant requiring that the party be brought before the court without unnecessary delay to show cause why he or she should not be held in contempt. Except for good cause shown on the record, the court also would have to order the party to pay the costs of the hearing, issuance of the warrant, arrest, and further hearings. Those costs would have to be transmitted to the county treasurer for distribution as provided in the RJA.

Under the Act, if the court finds that either parent has violated a visitation order, the court must find the parent in contempt and may do one or more of the following: require additional terms and conditions consistent with the court's visitation order; modify the order to meet the best interests of the child; order that make-up visitation time be provided for the noncustodial parent; order the parent to pay a fine of up to \$100; commit the parent to the county jail; or commit the parent to the county jail with the privilege of leaving to go to and return from employment. The bill would require the court to order one or more of these sanctions, or state on the record the reason it was not doing so. The bill also would replace references to "visitation" with references to "parenting time".

### **Senate Bill 594 (S-2)**

In any judicial circuit, the bill would require that one-half of the costs collected under Senate Bill 593 be deposited in the county's Friend of the Court fund. In a judicial circuit in which circuit court employees are not employees of the State Judicial Council (that is, other than in the Third Circuit Court in Wayne County), money transmitted for a show cause hearing for failure to pay support would have to supplement and not supplant other money appropriated by the county for FOC functions as measured by amounts the county appropriated for those functions in previous and current fiscal years.

In any circuit, the county treasurer would have to remit one-half of the costs actually paid by a payer as ordered under Senate Bill 593 to the law enforcement agency that executed the bench warrant issued for the payer's arrest.

### **Senate Bills 596 (S-3) and 597 (S-3)**

The Child Protection Law requires certain individuals to report an instance of suspected child abuse or neglect, and prescribes penalties for various violations, including knowingly and maliciously making a false report of child abuse or neglect under the Law. Currently, that offense is a misdemeanor. Under Senate Bill 596 (S-3), a person who intentionally made a false report under the Law knowing or having reason to know that the report was false, would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of up to \$2,000.

The Michigan Penal Code provides that it is a misdemeanor, punishable by imprisonment for up to 90 days and/or a maximum fine of \$100, for a person willfully and knowingly to make a false report of a crime to a law enforcement officer. Senate Bill 597 (S-3) would retain this penalty but create a separate penalty for false reports of child abuse. Under the bill, a person who intentionally made a false report of child sexual abuse or physical or emotional abuse or neglect of a child to a peace officer, court, prosecuting attorney, agency having jurisdiction over these matters, or person required to act on the report pursuant to the Child Protection Law, knowing or having reason to know that the report was false, would be guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000. That penalty also would apply to a person who intentionally made a false report of a domestic dispute or an incident involving domestic violence for which a peace officer would be required to prepare a domestic violence report under the Code of Criminal Procedure.

Proposed MCL 750.145d (S.B. 587)

MCL 552.633 et al. (S.B. 588)

MCL 600.5809 (S.B. 589)

Proposed MCL 552.640 (S.B. 590)

MCL 552.512 (S.B. 592)

MCL 552.631 et al. (S.B. 593)

MCL 600.2530 (S.B. 594)

MCL 722.633 (S.B. 596)

MCL 750.411a (S.B. 597)

Proposed MCL 722.30 (S.B. 598)

### **BACKGROUND**

Public Act 19 of 1996 will rename the Support and Visitation Enforcement Act, the "Support and Parenting Time Enforcement Act". Public Acts 3 through 18, 25, and 144 amend various other laws, including the Friend of the Court Act, to replace

references to "visitation" with references to "parenting time". These amendments will take effect on June 1, 1996.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The timely and accurate reporting of income is essential to appropriate determinations of child support obligations. According to the Senate Subcommittee on Friend of the Court Operations, however, some parents conceal income to keep their support obligation down. Reportedly, this particularly applies to self-employed payers and independent contractors. By establishing a criminal penalty for the failure to report income or the misrepresentation of income, Senate Bill 587 would encourage people to comply with reporting requirements. Also, by ensuring the accuracy of support obligations, the bill would improve the ability of support recipients to remain self-sufficient.

#### **Supporting Argument**

Several of these bills would address the failure of individuals to pay court-ordered support. In particular, under Senate Bill 588 (S-2), a court could subject a delinquent payer to an electronic tether confining the payer to his or her home except during hours of employment, or could commit the payer to jail with the privilege of leaving to go to and from employment or to seek employment. These options would enable a payer to comply with his or her support obligation, while punishing the payer for failure to pay. At the same time, the threat of confinement at home or in jail could induce some individuals to comply voluntarily.

Currently, under the Revised Judicature Act, the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this State, from the time the judgment or decree was rendered. By specifying that the deadline for bringing an action to enforce a support order would be 10 years after the time the last support payment was due, Senate Bill 589 (S-2) would codify current law as articulated in 1992 by the Michigan Court of Appeals: that for child support payments, the 10-year period of limitations begins to run when each installment becomes due (*Ewing v Bolden*, 194 Mich App 95).

Senate Bill 592 (S-2) would expand the reporting of support information to consumer reporting agencies, by permitting the FOC to report information on any payer and requiring the FOC to report a payer who was two or more months in arrears and had an arrearage of at least \$1,000. These changes would give financial institutions and other credit-granting entities greater access to information about an individual's payment history and enable them to consider the support obligations of people who apply for credit. Since the FOC could report information on all payers, the information would not necessarily be of a negative nature, but could serve to enhance the credit rating of a payer who faithfully complied with a child support order. According to the Friend of the Court Association, this bill would greatly reduce the administrative hurdles to reporting, and thus significantly reduce the cost of reporting.

In addition, Senate Bills 593 (S-1) and 594 (S-2) would improve the ability of the FOC to enforce support orders, as well as parenting time orders, by imposing liability for court costs on an individual subject to a show cause hearing for failure to obey an order. If someone fails to appear in response to a show cause order, it is the individual, rather than the taxpayers, who should be financially liable for the costs of a bench warrant, arrest, and hearing. This bill would ensure that FOC offices and law enforcement agencies had the resources necessary to execute bench warrants.

#### **Supporting Argument**

According to the Senate Subcommittee on Friend of the Court Operations, noncustodial parents have expressed concern that child support money is not used appropriately, and stated that they would be more willing to pay if they knew that the money was going to the child. Senate Bill 590 (S-2) would address this concern by providing that a child support recipient would have to use that money for the direct benefit of the child; allowing a payer whose payments were current to move for a hearing on the recipient's noncompliance; requiring a court to order that a noncomplying recipient file an annual accounting, which would be available to the payer; and permitting a court to award costs and fees for a frivolous action or defense. These provisions would give payers a means to ensure that their support payments were not being misused, and would increase their incentive to make the payments.

#### **Supporting Argument**

Senate Bills 596 (S-3) and 597 (S-3) recognize that when parents are falsely accused of abuse or

neglect, the parents as well as their children can suffer emotional, psychological, and financial damage. According to the Senate Subcommittee on FOC Operations, many times parents going through a custody battle file false reports of child abuse against the other parent. A parent who makes a false accusation might be attempting to influence the FOC's custody, visitation, or support recommendation, or might simply be feeling vindictive and wishing to inflict damage on the estranged partner. According to testimony on behalf of the National Congress for Fathers and Children, once an allegation is made and the system is set in motion, an investigation typically will take between six months and two years to complete. "[D]uring this entire period of time the relationship between the parent and the child is strained if not destroyed by the polarization created by the charging and accusatory person. Furthermore, during this time the minor children are subjected to repeated interviews frequently causing the children to be so indoctrinated by the perception that something abusive has occurred that they are permanently render[ed] unable to distinguish fact from fantasy, reality from fiction."

Although the law currently contains misdemeanor penalties for false reports of child abuse or neglect that are made knowingly and maliciously or willfully, the bills would establish a felony penalty for someone who intentionally made a false report knowing or having reason to know that it was false. This standard would ensure that only the most serious and damaging cases were prosecuted.

#### **Supporting Argument**

Senate Bill 598 (S-1) would help address the concern that FOC offices, as well as many parents, frequently overlook the importance of parenting time. A person does not lose his or her status as a parent simply because he or she is not the primary care-giver. The ability to play a meaningful role in the life of a child, however, is predicated on the parent's having sufficient information to assist in making major decisions about the child's welfare. The bill recognizes that it is essential for noncustodial as well as custodial parents to have records and information regarding their children's medical, dental, educational, and day care status. According to the Friend of the Court Association, this bill restates existing law as currently enforced on a daily basis by FOC offices.

#### **Opposing Argument**

The threat of criminal prosecution for failure to report income would only add to the stress and trauma experienced by the parties to a divorce

and their children. The State already has a statute under which individuals can be prosecuted for nonpayment of support (MCL 750.161 and 750.162); according to the Friend of the Court Association, there is very little criminal prosecution in this area. Senate Bill 587 does not address the willingness or ability of local prosecuting attorneys to pursue criminal convictions, or the issue of who would investigate an alleged violation. In addition, there already are discovery procedures to get income information (e.g., depositions, interrogatories, and subpoenas), and there already exist sanctions for individuals who refuse or fail to respond or who knowingly misrepresent information. Adding another layer of possible sanctions would have no positive effect upon the domestic relations process. As an alternative, a representative of the FOC Association has suggested that, if a court found that a party had incurred cost in attempting to obtain income information, a multiple of the actual cost could be assessed against the violating party. Furthermore, rather than increasing the self-sufficiency of support recipients, the bill could decrease a payer's ability to make support payments if he or she were incarcerated or fined for concealing income.

#### **Opposing Argument**

Senate Bill 588 (S-2) does not address the cost of the proposed tether program for delinquent payers. According to the Department of Social Services (DSS), county jails would need increased staff time to monitor individuals on tethers, and incarceration should be used as an enforcement remedy only if other remedies are not effective.

#### **Opposing Argument**

Senate Bill 588 (S-2) would continue to allow, if not promote, the use of incarceration without proof of an individual's ability to pay. The law permits a court to find a payer in contempt of court if he or she is in arrears and has the capacity to pay all or some of the amount due out of currently available resources. The court must *presume* that the payer has currently available resources equal to four weeks of payments unless the payer introduces proofs to the contrary. A court may not find that a payer has currently available resources of more than four weeks of payments without proof by the FOC or the recipient. The bill at least should require the FOC or the recipient to prove these resources by clear and convincing evidence. Also, a payer should not have to bear the burden of disproving the availability of up to four weeks of payments. Presuming someone's ability to pay

infringes on the individual's basic right to freedom from wrongful imprisonment.

Furthermore, a payer should not be committed to jail or subjected to an electronic tether without first being notified of his or her right to independent legal counsel, and FOC employees should not be considered independent. According to the Michigan Parents for Children Coalition, most individuals incarcerated under this provision have little education, are seldom advised of their right to an attorney, and almost never receive competent legal counsel. The coalition also reports that the existing practice of many judges to appoint attorneys employed by the FOC is inadequate and improper representation, and results in individuals' being prosecuted and defended by the same agency.

#### **Opposing Argument**

Senate Bill 590 (S-2) would put a child support recipient within the control of the payer even though the parties' relationship had ended. In many cases, an individual has been abusive to his or her former spouse. According to testimony on behalf of Legal Services of Eastern Michigan, an essential part of physical or mental abuse is maintaining control over the person being abused. Once the relationship is severed and the parties are living separately, the abuser will search for other ways to control or harass the former partner. When an abusive payer requested an accounting under this bill, the request would likely be motivated by a desire to maintain control, rather than a genuine concern for the child's welfare. By forcing a recipient to respond to recurring hearing requests and demands for accounting, the bill would give power back to the payer. Furthermore, payers and recipients are unlikely to agree on the way child support is spent. If they could agree on such issues, the relationship might not have broken down in the first place.

**Response:** A court could impose costs and fees on a payer who requested a hearing for purposes of harassment. Also, a payer could not request a hearing unless his or her support payments were current.

#### **Opposing Argument**

Requiring a child support recipient to provide an accounting of how support was spent could be intrusive and uneconomical for an entire family, particularly in situations in which a recipient had children from different support payers. If a recipient had to give an accounting of how support was spent for one child but not another, the



recipient could be forced to give preferential treatment to the child for whom the accounting was required. Also, to show how support was being used for a specific child, a recipient would have to separate resources instead of pooling them to be used in the most economic and effective manner for the whole family. Determining an annual accounting of expenditures made for a specific child also could be problematic, according to the DSS, since child support, earnings, and other income and resources are combined to meet the total financial needs of a family unit, including shelter, utilities, and insurance.

Legislative Analyst: S. Margules

### **FISCAL IMPACT**

#### **Senate Bill 587**

There are no data available on the number of parents who misrepresent their income; however, any person found guilty of that crime would under the bill be charged with a felony, which would require criminal proceedings against him or her. The cost to the court would depend on the number of individuals who were found guilty of misrepresenting their income times the cost of each felony proceeding. The cost of a felony proceeding depends on the length of time it takes to dispose of the case. This cost can range from \$400 to \$2,300 per case.

The bill could result in increased costs to the Department of Corrections depending on the number of additional felony convictions and prison sanctions. An increase in five annual prison commitments, with average minimum sentences of one year, could increase costs ranging from \$50,000 to \$75,000 annually.

#### **Senate Bill 588 (S-2)**

The bill would have no fiscal impact on the court. The procedures outlined in the bill are currently executed.

The bill would have an indeterminate fiscal impact on local jails and no impact on the Department of Corrections. The added provisions for allowing violators to be placed on electronic tether could result in increased local supervision, equipment, and monitoring costs depending on the number of offenders involved, and the type of tether system used (i.e., leased, owned and operated, contracted, etc.). These costs could be offset by participant fee collections, if imposed by the judge.

For example, electronic tether participants (for the most part felons) supervised by the Department of Corrections are generally expected to pay \$6.50 per day for tether participation.

#### **Senate Bill 589 (S-2)**

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

#### **Senate Bill 590 (S-2)**

This bill could cause an increase in caseload for the Friend of the Court, but it is indeterminate as to how large the increase would be. It is likely that the bill would cause a greater increase in caseload at the outset. Because the court could award cost and fees if the court found that an action was frivolous, it is possible that the number of hearings requested by a payer would eventually be minimal.

#### **Senate Bill 592 (S-2)**

The bill would reduce some administrative cost to the Friend of the Court Office. The impact would be minimal.

#### **Senate Bills 593 (S-1) and 594 (S-2)**

It is indeterminate how the bills would affect the counties, because court costs may differ with each bench warrant issued. If a court were able to collect related costs for each bench warrant issued, there could be some additional revenues for the Friend of the Court offices and law enforcement agencies. This amount is not expected to be significant.

#### **Senate Bills 596 (S-3) and 597 (S-3)**

The bills would have an indeterminate impact on State and local government.

Given that the false reporting of child abuse under current law is a misdemeanor, changing this violation to a felony could result in increased prison commitments, and a corresponding decrease in local fines and jail sanctions. There are, however, no data available on the projected number of annual violations, or the expected average number of prison sentences as a result of those violations. An increase of five annual prison commitments, each receiving an average one-year prison sentence, could result in increased costs to the Department of Corrections of approximately \$50,000 to \$65,000 annually.

**Senate Bill 598 (S-1)**

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

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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.