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BILL ANALYSIS

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Senate Bills 1427, 1429, 1430, and 1431 (as introduced 6-26-08)

Sponsor: Senator Valde Garcia (S.B. 1427)
Senator Martha G. Scott (S.B. 1429)
Senator Gilda Z. Jacobs (S.B. 1430)
Senator Bill Hardiman (S.B. 1431)

Committee: Families and Human Services

Date Completed: 9-9-08

CONTENT

Senate Bill 1427 would amend the Revised Judicature Act (RJA) to do the following:

- Remove a requirement that \$10 of the fees paid in custody, support, and parenting time cases be deposited in the Child Support Bench Warrant Enforcement Fund.
- Increase from \$1.50 to \$3.50 the monthly fee for services that are not reimbursable under Title IV-D of the Social Security Act (dealing with child support and paternity), and allocate the additional \$2 to the county general fund.
- Specify the party responsible for paying certain fees in a proceeding in the circuit court.
- Specify that certain provisions regarding record retention would apply only to records filed with the court and maintained by the court clerk or register.

Senate Bill 1429 would amend the divorce Act to delete a requirement under which a person ordered to pay spousal or child support must pay a \$2 monthly service fee, which is credited to the county general fund.

Senate Bill 1430 would amend the Paternity Act to do the following:

- Permit the Friend of the Court (FOC) to be designated, by a written

agreement by the chief judge of the circuit court, the prosecuting attorney for the county, and the county board of commissioners, to perform duties that otherwise would be performed by the prosecuting attorney under the Act.

- Require the agreement to provide that if a case became contested, the prosecuting attorney or other designated attorney would perform duties involving court appearances.

The bill also would repeal Section 19 of the Act, which requires the court to order a person ordered to pay support, to pay a service fee of \$2 per month, which is credited to the county general fund.

Senate Bill 1431 would amend the Family Support Act to do the following:

- Permit a support order to include expenses of health care, child care, and education, expenses connected with the mother's confinement and pregnancy, and the expense of genetic testing.
- Prohibit a child support order from being retroactive before the date that the complaint for support was filed, except under certain circumstances.
- Provide for the abatement of any remaining unpaid confinement and pregnancy expenses if the father

married the mother after the birth of the child or if the father and mother were married at the time of the child's birth or conception and reconciled on terms the court considered appropriate.

- Permit the FOC to be designated, by a written agreement by the chief judge of the circuit court, the prosecuting attorney for the county, and the county board of commissioners, to perform duties that otherwise would be performed by the prosecuting attorney under the Act.**
- Require the agreement to provide that if a case became contested, the prosecuting attorney or other designated attorney would perform duties involving court appearances.**

The bill also would repeal Section 7 of the Act, which requires the court to order a person ordered to pay support, to pay a fee of \$2 per month, which is credited to the county general fund.

Each Act requires the Department of Human Services (DHS), the State Disbursement Unit (SDU), and each office of the FOC to cooperate in the transition to the centralized receipt and disbursement of support and fees. An FOC office must continue to receive support and fees through the transition, based on the schedule developed as required under the Office of Child Support Act, and modifications to that schedule as the DHS considers necessary. Each of the bills would delete those provisions in the respective Act, and allow an FOC office to continue to receive support and fees.

Senate Bill 1427 is tie-barred to Senate Bills 1429, 1430, and 1431, each of which is tie-barred to Senate Bill 1427. The bills are described in detail below.

Senate Bill 1427

Allocation of Fees

Under the RJA, before a final judgment or order is entered in an action in which the custody or parenting time of minor children is determined or modified, the party submitting the judgment or order must pay a fee of \$80. In an action in which the support of minor children is determined or

modified, the party submitting the judgment or order must pay a fee of \$40.

At the end of each month, for each fee collected under those provisions, the court clerk must transfer \$10 to the State Treasurer for deposit in the Child Support Bench Warrant Enforcement Fund. The balance of the fees in custody and parenting time cases must be paid to the county treasurer and deposited into the FOC fund, to be used to fund services that are not Title IV-D services. The balance of the fees in child support actions must be paid to the county treasurer and deposited into the FOC fund.

The bill would remove the requirement that \$10 be transferred to the State Treasurer for deposit in the Child Support Bench Warrant Enforcement Fund.

Increased Fee

For services that are not reimbursable under Title IV-D of the Social Security Act, every person required to pay support or maintenance to be collected by the FOC must pay a fee of \$1.50 per month for each month or portion of a month that support or maintenance is required to be paid. The fee must be paid monthly, quarterly, or semiannually as required by the FOC. The bill would increase that fee to \$3.50.

Currently, the FOC or the SDU must transmit, for each fee, \$0.25 to the appropriate county treasurer for deposit into the county's general fund. The bill would increase that amount to \$2.25.

A court could hold a person who failed or refused to pay a service fee ordered under these provisions in contempt.

Responsibility for Fees

Under the RJA, before the filing of a claim of appeal or a motion for leave to appeal from the district court, the probate court, a municipal court, or an administrative tribunal or agency, \$150 must be paid to the clerk of the circuit court. The bill would require that amount to be paid by the appellant or moving party.

The RJA requires \$20 to be paid to the clerk when a motion is filed. Under the bill, the

moving party would have to pay that amount.

Upon appeal to the Court of Appeals or the Supreme Court, the appellant would have to pay the \$25 fee currently required under the RJA.

The RJA requires a \$15 service fee for each writ of garnishment, attachment, execution, or judgment, and each judgment debtor discovery subpoena issued. The bill would require the applicant or requesting party to pay that fee.

Record Retention, Reproduction

The RJA provides for the retention of court records for specified periods of time, provides for copies to be made of certain court records, and permits the disposal or destruction of the records after the specified retention time has elapsed.

Specifically, a circuit court may order the destruction of its files and records in a case in which action has not been taken during the preceding 25 years.

In a county or probate court district in which the county board or boards of commissioners pass a resolution under the Records Reproduction Act, the probate judge may have the probate court records reproduced in accordance with that resolution. A copy must be kept in a building outside the probate office and a copy kept in the probate office with any suitable equipment for displaying the record. The probate judge then may order a record destroyed.

If a public officer reproduces records kept by him or her under the Records Reproduction Act, the officer may offer the original records to the Department of History, Arts, and Libraries for placement in the State Archives. If the Department does not accept the offer within 30 days, the court may dispose of or destroy the records as provided under the Management and Budget Act.

A reproduction of a record in a medium under the Records Reproduction Act, or a reproduction consisting of a printout or other output readable by sight from such a medium, made as provided by law, has the same force and effect as the original and

must be treated as an original for the purpose of admissibility of evidence. A duly certified or authenticated copy of the reproduction must be admitted into evidence equally with the original reproduction.

The bill specifies that those provisions would apply only to records filed with the court and maintained by the court clerk or register.

Senate Bill 1429

The divorce Act provides for the collection of a service fee to reimburse the county for the cost of enforcing a spousal or child support order or a parenting time order. The court must order the payment of a service fee of \$2 per month, payable semiannually on each January 2 and July 2. The service fee must be paid by the person ordered to pay the spousal or child support. The service fee must be computed from the beginning date of the support order and must continue while the support order is operative. The service fee must be turned over to the county treasurer and credited to the county general fund.

The bill would delete those provisions.

Senate Bill 1430

Designated Duties of FOC

Under the Paternity Act, the prosecuting attorney or an attorney employed by the county must initiate and conduct proceedings under the Act under the following circumstances:

- The DHS of the county in which the mother or alleged father resides first determines that he or she has physical possession of the child and is eligible for public assistance or without means to employ an attorney.
- The DHS is the complainant.
- The mother, alleged father, or child is receiving services under Title IV-D of the Social Security Act.

Under the bill, by written agreement of the chief judge of the circuit court, the prosecuting attorney for the county, and the county board of commissioners, the FOC could be designated to perform the duties designated under the Act to be performed by the prosecuting attorney. The agreement would have to provide that if the case

became contested, the prosecuting attorney, a designated assistant prosecuting attorney, or an attorney employed by the county under Public Act 15 of 1941 would perform duties involving appearances in court. (Public Act 15 authorizes a county board of commissioners to employ attorneys to represent the county or county officers in civil matters.)

The Paternity Act requires the prosecuting attorney to use the child support formula developed under the FOC Act as a guideline for petitioning for child support. Under the bill, that provision also would apply to the FOC.

Repeal

The bill would repeal Section 19 of the Paternity Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court must order the payment of a service fee of \$2 per month, payable semiannually on each January 2 and July 2. The service fee must be paid by the person ordered to pay the spousal or child support. The service fee must be computed from the beginning date of the support order and continue while the support order is operative. The service fee must be turned over to the county treasurer and credited to the county general fund.

Senate Bill 1431

Support Order

Under the Family Support Act, if the custodial parent of a minor child is living separately from the noncustodial parent and is refused financial assistance to provide necessary shelter, food, care, and clothing for the child, the custodial parent may file a complaint with the circuit court for the county where either parent lives, seeking an order for support for himself or herself and the minor child or children. Subject to certain restrictions, the court also may order support for a child or children after they reach 18 years of age.

Upon hearing the complaint, the court may enter an order as it determines proper for the support of the petitioner and the minor child or children.

Under the bill, support ordered could include expenses of medical, dental, and other health care, child care, and education, necessary expenses incurred by or for the mother in connection with her confinement and pregnancy, and the expense of genetic testing. A child support obligation would be retroactive only to the date that the complaint for support was filed unless any of the following circumstances existed:

- The defendant was avoiding service of process.
- Through domestic violence or other means, the defendant threatened or coerced the complainant not to file a proceeding under the Act.
- The defendant otherwise delayed the imposition of a support obligation.

If a mother's confinement and pregnancy expenses had been paid under the Medicaid program, the court could not apportion confinement and pregnancy expenses to the mother. After the bill's effective date, based on the father's ability to pay and any other relevant factor, the court could apportion up to 100% of the reasonable and necessary confinement and pregnancy costs to the father. If those costs had not been paid under the Medicaid program, the court would have to require an itemized bill for the expenses upon request from the father before an apportionment was made.

An order entered under those provisions would have to state that if the father married the mother after the birth of the child and provided documentation of the marriage to the FOC, his obligation for payment of any remaining unpaid confinement and pregnancy expenses would be abated subject to reinstatement after notice and hearing for good cause shown, including dissolution of the marriage. The remaining unpaid amount of the confinement and pregnancy expenses owed by the father would be abated as of the date that documentation of the marriage was given to the FOC.

If the father and mother were married at the time of the child's birth or conception, the court could order that unpaid confinement and pregnancy expenses would abate if the father and mother reconciled on terms and conditions that the court considered appropriate.

Designated Duties of FOC

Under the Act, the prosecuting attorney must act as the attorney for a petitioner if the county DHS where the custodial parent or guardian resides determines the custodial parent or the children to be eligible for public or medial assistance, or if a complaint is being filed under Section 1b of the Act. (That section permits the DHS Director or the county DHS to initiate proceedings against the noncustodial parent for support of the custodial parent and child or children if the custodial parent or the child or children are being supported, in whole or in part, by public assistance.)

Under the bill, by written agreement of the chief judge of the circuit court, the prosecuting attorney for the county, and the county board of commissioners, the FOC could be designated to perform the duties designated under the Act to be performed by the prosecuting attorney. The agreement would have to provide that if the case became contested, the prosecuting attorney or a designated assistant prosecuting attorney would perform duties involving appearances in court.

The Act requires the prosecuting attorney to use the child support formula developed under the FOC Act as a guideline in petitioning for child support. Under the bill, that provision also would apply to the FOC.

Repeal

The bill would repeal Section 7 of the Family Support Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court must order a person ordered to pay spousal or child support under the Act to pay a service fee of \$2 per month, payable semiannually on each January 2 and July 2. The service fee must be computed from the beginning date of the support order and continue while the support order is operative. The service fee must be turned over to the county treasurer and credited to the county general fund.

MCL 600.2137 et al. (S.B. 1427)
552.23 & 552.24 (S.B. 1429)
722.714 & 722.729a (S.B. 1430)
552.452 et al. (S.B. 1431)

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 1427

The \$10 allocated to the Child Support Bench Warrant Enforcement Fund annually generates approximately \$360,000 to \$380,000. While up to 10% of the Fund may be used to administer the Fund, annual revenue has been allocated to counties. Eliminating the separate Child Support Bench Warrant Enforcement Fund allocation would streamline the collection of revenue and result in administrative savings.

The bill also would increase the monthly service fee from \$1.50 to \$3.50 and offset the elimination of the \$2 fee allocated to counties under the divorce Act, the Family Support Act, and the Paternity Act.

Senate Bill 1429

Revenue from the service fee imposed under the divorce Act would continue to be available to counties through a \$2 increase in a service fee under the Revised Judicature Act proposed in Senate Bill 1427. Senate Bill 1429 would have no fiscal impact on State or local government.

Senate Bill 1430

The bill would codify current practice in certain counties where Friend of the Court offices are designated to perform duties otherwise performed by the prosecuting attorney. Elimination of the \$2 monthly service fee required under the Paternity Act would be offset by the \$2 fee increase included in Senate Bill 1427.

Senate Bill 1431

The bill would make provisions in the Family Support Act consistent with the Paternity Act and therefore would have no fiscal impact.

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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.