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SFA**BILL ANALYSIS**

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Senate Bills 954, 955, and 956 (as introduced 2-26-98)
Senate Bill 1032 (as introduced 3-24-98)
Sponsor: Senator William Van Regenmorter (Senate Bills 954-956)
Senator George A. McManus, Jr. (Senate Bill 1032)
Committee: Families, Mental Health and Human Services

Date Completed: 3-25-98

CONTENT

Senate Bills 954, 955, 956, and 1032 would amend the juvenile code, the Revised Probate Code, the Child Custody Act, and the Child Protection Law, respectively, to require the appointment of a child-attorney to represent the best interests of a child in certain proceedings; prescribe the powers and duties of a child-attorney; provide for the appointment of legal counsel for a child if a child attorney and the child disagreed as to the child's best interests; and permit a court to assess the costs and fees of a child-attorney against any of the parties involved in the proceedings. Senate Bill 1032 is tie-barred to Senate Bill 954.

The bills would define "child-attorney" as an attorney appointed by the court to represent the child's best interests. Under all of the bills, an appointed child-attorney would have at least all of the powers and duties described below.

The child-attorney would have to serve as the independent representative for the child's best interests, and would be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child. The child-attorney would have to determine the facts of the case by conducting an independent investigation, including interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information.

Before each proceeding or hearing, the child-attorney would have to meet with and observe the child, assess his or her needs and wishes with regard to the representation and the issues in the case, review the agency case file, and, consistent with the rules of professional responsibility, consult with the child's parents, foster care providers, and caseworkers. The child-attorney would have to explain to the child, taking into account his or her ability to understand the proceedings, the child-attorney's role, and those circumstances under which the child-attorney could disclose information to the court.

The child-attorney would have to file all necessary pleadings and papers, independently call witnesses on the child's behalf, attend all hearings, and substitute representation for the child only with court approval.

The child-attorney would have to make a determination regarding the child's best interests and advocate for those best interests according to the child-attorney's understanding of them, regardless of whether his or her determination reflected the child's wishes. The bills specify that the child's wishes would be relevant to the child-attorney's determination of the child's best interests, and the child-attorney would have to weigh the child's wishes according to his or her competence and

maturity. In any event, the child-attorney would have to inform the court as to the child's wishes and preferences.

If the child-attorney determined, after a discussion with the child, that the child's interests as identified by the child were inconsistent with the child-attorney's determination of the child's best interests, the child-attorney would have to communicate the child's position to the court and ask the court to appoint a legal counsel to represent the child. ("Legal counsel" would mean "an attorney who serves as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct". The bills specify that the child's legal counsel would owe the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as he or she would to an adult client.)

The child-attorney would have to monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family were being provided in a timely manner and were accomplishing their purpose. The child-attorney would have to inform the court if the services were not being provided in a timely manner, if the family failed to take advantage of the services, or if the services were not accomplishing their intended purpose.

Consistent with the rules of professional responsibility, the child-attorney would have to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter.

The child-attorney could not allow the attorney-client privilege or any other statutory or legally recognized privilege to prevent the child-attorney from sharing with the court all information relevant to the child's best interests.

The court or another party to the case could not call a child-attorney as a witness to testify regarding matters related to the case. The child-attorney's file of the case would not be discoverable.

A child-attorney would not be liable in a civil action for damages for acts or omissions of the child-attorney in furtherance of his or her appointment, unless the acts or omissions were grossly negligent or willful and wanton.

Senate Bill 954

Under the juvenile code, the family court must appoint an attorney to represent the child in an abuse or neglect proceeding or in a divorce case in which the circuit court has waived jurisdiction over a child to the family court. The bill, instead, would require the appointment of a child-attorney.

Currently, an appointed attorney must observe and, depending upon the child's age and capability, interview the child. If the child is placed in foster care, the attorney must review the agency case file and consult with the foster parents and the caseworker, before representing the child in each subsequent proceeding or hearing. The attorney must be present at all hearings concerning the child and may not substitute counsel unless the court approves. The bill would delete these provisions.

Under the code, if an attorney is appointed for a party, the court may enter an order assessing attorney costs against the party or the person responsible for the support of that party. Under the bill, this provision would apply if the court appointed an attorney, child-attorney, or legal counsel.

The code provides that an appointed attorney must serve until discharged by the court. The bill would include a child-attorney in this provision. Currently, in an abuse or neglect case, the court may not discharge the attorney for the child as long as the child is subject to the jurisdiction, control,

or supervision of the court, or of the Michigan Children's Institute or other agency, unless the court discharges the attorney for good cause; if the child remains subject to the jurisdiction, control, or supervision of the court, the Children's Institute, or another agency, the court must immediately appoint another attorney to represent the child. Under the bill, these provisions would apply to a child-attorney, rather than an attorney for the child.

Senate Bill 955

The Revised Probate Code contains provisions for the appointment and removal of a guardian for a minor. The Code permits the court to appoint an attorney to represent the minor if, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented. Under the bill, the court would be required to appoint a child-attorney under those circumstances. The child-attorney would have the powers and duties described above.

The bill provides that the court could assess all or part of the costs and reasonable fees of the child-attorney against one or more of the parties involved in the proceedings. A child-attorney could not be paid a fee unless the court first received and approved the fee.

In addition, the Code provides for the removal of a guardian appointed for a ward, and permits the court to appoint an attorney to represent the minor if the court determines, at any time in the proceeding, that the ward's interests are or may be inadequately represented. The bill would require the court to appoint a child-attorney under those circumstances.

Senate Bill 956

Under the Child Custody Act, in all actions involving dispute of a minor child's custody, the court must declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time. The bill provides that if, at any time in the proceeding, the court determined that the best interests of the child were or could be inadequately represented, the court would have to appoint a child-attorney to represent the child's best interests.

The court could assess all of part of the costs and reasonable fees of the child-attorney against one or more of the parties involved in the proceedings. An appointed child-attorney could not be paid a fee unless the court first received and approved the fee.

Senate Bill 1032

In each case filed under the Child Protection Law in which judicial proceedings are necessary, the court must appoint legal counsel to represent the child. The bill, instead, would require that the court appoint a child-attorney or legal counsel, or both, for the child, in the same manner as a child-attorney or legal counsel would be appointed for a child under Senate Bill 954.

Senate Bill 1032 would delete a requirement that the legal counsel be charged, generally, with the representation of the child's best interests. The deleted provision also requires that the counsel make further investigation, as he or she considers necessary to ascertain the facts, interview witnesses, examine witnesses, make recommendations to the court, and participate in the proceedings to represent the child competently. The bill, instead, specifies that a child-attorney or legal counsel would have the same powers and duties as an attorney appointed to the same position under Senate Bill 954.

MCL 712A.13a et al. (S.B. 954)
700.3 et al. (S.B. 955)
722.22 & 722.24 (S.B. 956)
722.627 & 722.630 (S.B. 1032)

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

The number of cases that would require the appointment of a second attorney under the bills is not determinable.

Local county courts currently pay attorney costs in these cases. Reimbursement for attorneys is controlled by the local units and reimbursement rates vary. Ingham County reports that costs for appointment of attorneys for children average \$250,000 annually in Ingham County.

Provisions of these bills may contain mandated costs on local units of government pursuant to Article IX, Section 29 of the State Constitution of 1963.

Fiscal Analyst: B. Bowerman

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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.