

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 955 (Substitute S-1 as reported)
Sponsor: Senator William Van Regenmorter
Committee: Families, Mental Health and Human Services

CONTENT

The bill would amend the Revised Probate Code to provide for the appointment of a “child-attorney” to represent the best interests of a child in guardianship 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.

The 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, instead, the court could appoint a child-attorney. 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.

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.

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

MCL 700.3 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. The number of cases that could result in the appointment of a second attorney under the bill is not determinable.

Local county courts currently pay attorney costs in many of 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.

Date Completed: 4-21-98

Fiscal Analyst: B. Bowerman

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Analysis available @ <http://www.michiganlegislature.org>

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.