

SUBSTITUTE FOR
SENATE BILL NO. 956

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2, 4, and 7 (MCL 722.22, 722.24, and
722.27), section 2 as amended by 1990 PA 245 and sections 4 and 7
as amended by 1996 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 ~~-(a) "Child" means minor child and children. Subject to~~
3 ~~section 4a, for purposes of providing support, child includes a~~
4 ~~child and children who have reached 18 years of age.~~

5 (A) ~~-(b)-~~ "Agency" means any legally authorized ~~—~~ public
6 or private organization, or governmental unit or official,
7 whether of this state or of another state or country, concerned
8 in the welfare of minor children, including a licensed child
9 placement agency.

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

2

1 (B) "CHILD" MEANS MINOR CHILD AND CHILDREN. SUBJECT TO
2 SECTION 4A, FOR PURPOSES OF PROVIDING SUPPORT, CHILD INCLUDES A
3 CHILD AND CHILDREN WHO HAVE REACHED 18 YEARS OF AGE.

4 (C) "LEGAL COUNSEL" MEANS AN ATTORNEY WHO SERVES AS THE
5 CHILD'S LEGAL ADVOCATE IN A TRADITIONAL ATTORNEY-CLIENT RELATION-
6 SHIP WITH THE CHILD, AS GOVERNED BY THE MICHIGAN RULES OF PROFES-
7 SIONAL CONDUCT. THE CHILD'S LEGAL COUNSEL OWES THE SAME DUTIES
8 OF UNDIVIDED LOYALTY, CONFIDENTIALITY, AND ZEALOUS REPRESENTATION
9 OF THE CHILD'S EXPRESSED WISHES AS HE OR SHE WOULD TO AN ADULT
10 CLIENT.

11 (D) ~~(c)~~ "Third person" means any individual other than a
12 parent.

13 Sec. 4. (1) In all actions ~~now pending or hereafter filed~~
14 ~~in a circuit court~~ involving dispute of A MINOR CHILD'S custody,
15 ~~of a minor child,~~ the court shall declare the CHILD'S inherent
16 rights ~~of the child~~ and establish the rights and duties as to
17 THE CHILD'S custody, support, and parenting time ~~of the child~~
18 in accordance with this act.

19 (2) IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES
20 THAT THE BEST INTERESTS OF THE CHILD ARE INADEQUATELY REPRESENT-
21 ED, THE COURT MAY APPOINT A GUARDIAN AD LITEM TO REPRESENT THE
22 BEST INTERESTS OF THE CHILD. A GUARDIAN AD LITEM APPOINTED UNDER
23 THIS ACT MUST BE AN ATTORNEY, AND THE GUARDIAN AD LITEM'S DUTY IS
24 TO THE CHILD, TO REPRESENT THE CHILD AND THE CHILD'S BEST
25 INTERESTS. SUBJECT TO THE OTHER PROVISIONS OF THIS ACT, A GUARD-
26 IAN AD LITEM APPOINTED UNDER THIS SECTION HAS AT LEAST ALL OF THE
27 FOLLOWING POWERS AND DUTIES:

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

3

1 (A) TO SERVE AS THE INDEPENDENT LEGAL REPRESENTATIVE OF THE
2 CHILD'S BEST INTERESTS. THE GUARDIAN AD LITEM IS ENTITLED TO
3 FULL AND ACTIVE PARTICIPATION IN ALL ASPECTS OF THE PROCEEDING.
4 THE COURT SHALL GRANT THE GUARDIAN AD LITEM ACCESS TO ALL RELE-
5 VANT INFORMATION REGARDING THE CHILD.

6 (B) TO DETERMINE THE FACTS OF THE CASE BY CONDUCTING AN
7 INDEPENDENT INVESTIGATION INCLUDING INTERVIEWING THE CHILD,
8 SOCIAL WORKERS, FAMILY MEMBERS, AND OTHERS AS NECESSARY, AND BY
9 REVIEWING REPORTS AND OTHER INFORMATION.

10 (C) BEFORE EACH STAGE OF THE PROCEEDINGS, TO MEET WITH AND
11 OBSERVE THE CHILD, ASSESS THE CHILD'S NEEDS AND WISHES WITH
12 REGARD TO THE REPRESENTATION AND THE ISSUES IN THE CASE, REVIEW
13 THE AGENCY CASE FILE, AND CONSISTENT WITH THE RULES OF PROFES-
14 SIONAL RESPONSIBILITY, TO CONSULT WITH THE CHILD'S PARENTS,
15 GUARDIANS, AND CASEWORKERS.

16 (D) TO EXPLAIN TO THE CHILD, ACCORDING TO THE CHILD'S ABIL-
17 ITY TO UNDERSTAND, THE PROCEEDINGS AND THE GUARDIAN AD LITEM'S
18 ROLE.

19 (E) TO FILE ALL NECESSARY PLEADINGS AND PAPERS AND INDEPEN-
20 DENTLY CALL WITNESSES ON THE CHILD'S BEHALF.

21 (F) TO ATTEND ALL HEARINGS AND SUBSTITUTE COUNSEL ONLY WITH
22 COURT APPROVAL.

23 (G) TO MAKE A DETERMINATION AS TO THE CHILD'S BEST INTERESTS
24 AND ADVOCATE FOR THE BEST INTERESTS AS THE GUARDIAN AD LITEM SEES
25 THEM, REGARDLESS OF WHETHER THE GUARDIAN AD LITEM'S DETERMINATION
26 REFLECTS THE CHILD'S WISHES. THE CHILD'S WISHES ARE RELEVANT TO
27 THE GUARDIAN AD LITEM'S DETERMINATION OF BEST INTERESTS, AND THE

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

4

1 GUARDIAN AD LITEM SHALL WEIGH THE CHILD'S WISHES ACCORDING TO THE
2 CHILD'S COMPETENCE AND MATURITY. CONSISTENT WITH THE LAW GOVERN-
3 ING ATTORNEY-CLIENT PRIVILEGE, THE GUARDIAN AD LITEM SHALL INFORM
4 THE COURT AS TO THE CHILD'S WISHES AND PREFERENCES.

5 (H) IF, AFTER DISCUSSION BETWEEN THE CHILD AND THE GUARDIAN
6 AD LITEM, THE GUARDIAN AD LITEM DETERMINES THAT THE CHILD'S
7 INTERESTS AS IDENTIFIED BY THE CHILD ARE INCONSISTENT WITH THE
8 GUARDIAN AD LITEM'S DETERMINATION OF THE CHILD'S BEST INTERESTS,
9 THE GUARDIAN AD LITEM SHALL COMMUNICATE THE CHILD'S POSITION TO
10 THE COURT. IF THE COURT CONSIDERS THE APPOINTMENT APPROPRIATE
11 CONSIDERING THE CHILD'S AGE AND MATURITY AND THE NATURE OF THE
12 INCONSISTENCY BETWEEN THE CHILD'S AND THE GUARDIAN AD LITEM'S
13 IDENTIFICATION OF THE CHILD'S INTERESTS, THE COURT MAY APPOINT
14 LEGAL COUNSEL FOR THE CHILD. A LEGAL COUNSEL APPOINTED UNDER
15 THIS SUBSECTION SERVES IN ADDITION TO THE CHILD'S GUARDIAN AD
16 LITEM.

17 (I) TO MONITOR THE IMPLEMENTATION OF EACH COURT ORDER.

18 (J) CONSISTENT WITH THE RULES OF PROFESSIONAL RESPONSIBILITY
19 FOR ATTORNEYS, TO IDENTIFY COMMON INTERESTS AMONG THE PARTIES
20 AND, TO THE EXTENT POSSIBLE, PROMOTE A COOPERATIVE RESOLUTION OF
21 THE MATTER.

22 (K) TO REQUEST AUTHORIZATION BY THE COURT TO PURSUE ISSUES
23 ON THE CHILD'S BEHALF THAT DO NOT ARISE SPECIFICALLY FROM THE
24 COURT APPOINTMENT.

25 (3) THE GUARDIAN AD LITEM SHALL FILE A WRITTEN REPORT AND
26 RECOMMENDATION. THE JUDGE MAY READ THE REPORT AND
27 RECOMMENDATION. UNLESS STIPULATED BY BOTH PARTIES, THE REPORT

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

5

1 AND RECOMMENDATION SHALL NOT BE ADMITTED INTO EVIDENCE. THE
2 REPORT AND RECOMMENDATION MAY, HOWEVER, BE USED FOR PURPOSES OF A
3 SETTLEMENT CONFERENCE.

4 (4) A PARTY TO THE PROCEEDINGS SHALL NOT CALL THE GUARDIAN
5 AD LITEM AS A WITNESS TO TESTIFY IN THE PROCEEDINGS, AND THE FILE
6 OF THE GUARDIAN AD LITEM IS NOT DISCOVERABLE.

7 (5) AFTER A DETERMINATION OF ABILITY TO PAY, THE COURT MAY
8 ASSESS ALL OR PART OF THE COSTS AND REASONABLE FEES OF THE GUARD-
9 IAN AD LITEM AGAINST 1 OR MORE OF THE PARTIES INVOLVED IN THE
10 PROCEEDINGS OR AGAINST THE MONEY ALLOCATED FROM MARRIAGE LICENSE
11 FEES FOR FAMILY COUNSELING SERVICES UNDER SECTION 3 OF 1887 PA
12 128, MCL 551.103. A GUARDIAN AD LITEM APPOINTED UNDER THIS SEC-
13 TION SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST RECEIVES AND
14 APPROVES THE FEE.

15 Sec. 7. (1) If a child custody dispute has been submitted
16 to the circuit court as an original action under this act or has
17 arisen incidentally from another action in the circuit court or
18 an order or judgment of the circuit court, for the best interests
19 of the child the court may do 1 or more of the following:

20 (a) Award the custody of the child to 1 or more of the par-
21 ties involved or to others and provide for payment of support for
22 the child, until the child reaches 18 years of age. Subject to
23 section 4a, the court may also order support as provided in this
24 section for a child after he or she reaches 18 years of age. The
25 court may require that support payments shall be made through the
26 friend of the court or COURT clerk. ~~of the court.~~

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

6

1 (b) Provide for reasonable parenting time of the child by
2 the parties involved, BY the maternal or paternal grandparents,
3 or by others, by general or specific terms and conditions.
4 Parenting time of the child by the parents ~~shall be~~ IS governed
5 by section 7a.

6 (c) Modify or amend its previous judgments or orders for
7 proper cause shown or because of change of circumstances until
8 the child reaches 18 years of age ~~—~~ and, subject to section 4a,
9 until the child reaches 19 years and 6 months of age. The court
10 shall not modify or amend its previous judgments or orders or
11 issue a new order so as to change the established custodial envi-
12 ronment of a child unless there is presented clear and convincing
13 evidence that it is in the best interest of the child. The cus-
14 todial environment of a child is established if over an apprecia-
15 ble time the child naturally looks to the custodian in that envi-
16 ronment for guidance, discipline, the necessities of life, and
17 parental comfort. The age of the child, the physical environ-
18 ment, and the inclination of the custodian and the child as to
19 permanency of the relationship shall also be considered.

20 (d) Utilize the community resources in behavioral sciences
21 and other professions in the investigation and study of custody
22 disputes and consider their recommendations for the resolution of
23 the disputes.

24 ~~(e) Appoint a guardian ad litem or counsel for the child~~
25 ~~and assess the costs and reasonable fees against 1 or more par-~~
26 ~~ties involved, totally or partially.~~

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

7

1 (E) ~~-(f)-~~ Take any other action considered to be necessary
2 in a particular child custody dispute.

3 (F) ~~-(g)-~~ Upon petition consider the reasonable grandparent-
4 ing time of maternal or paternal grandparents AS PROVIDED IN SEC-
5 TION 7B and, if denied, make a record of such denial.

6 (2) Except as otherwise provided in this section, the court
7 shall order support in an amount determined by application of the
8 child support formula developed by the state friend of the court
9 bureau. The court may enter an order that deviates from the for-
10 mula if the court determines from the facts of the case that
11 application of the child support formula would be unjust or inap-
12 propriate and sets forth in writing or on the record all of the
13 following:

14 (a) The support amount determined by application of the
15 child support formula.

16 (b) How the support order deviates from the child support
17 formula.

18 (c) The value of property or other support awarded in lieu
19 of the payment of child support, if applicable.

20 (d) The reasons why application of the child support formula
21 would be unjust or inappropriate in the case.

22 (3) Subsection (2) does not prohibit the court from entering
23 a support order that is agreed to by the parties and that devi-
24 ates from the child support formula, if the requirements of sub-
25 section (2) are met.

26 (4) Beginning January 1, 1991, each support order entered,
27 modified, or amended by the court shall provide that each party

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

8

1 shall keep the office of the friend of the court informed of both
2 of the following:

3 (a) The name and address of his or her current source of
4 income. As used in this subdivision, "source of income" means
5 that term as defined in section 2 of the support and parenting
6 time enforcement act, ~~Act No. 295 of the Public Acts of 1982,~~
7 ~~being section 552.602 of the Michigan Compiled Laws~~ 1982 PA 295,
8 MCL 552.602.

9 (b) Any health care coverage that is available to him or her
10 as a benefit of employment or that is maintained by him or her;
11 the name of the insurance company, health care organization, or
12 health maintenance organization; the policy, certificate, or con-
13 tract number; and the names and birth dates of the persons for
14 whose benefit he or she maintains health care coverage under the
15 policy, certificate, or contract.

16 (5) For the purposes of this act, "support" may include pay-
17 ment of the expenses of medical, dental, and other health care,
18 child care expenses, and educational expenses. The court shall
19 require 1 or both parents of a child who is the subject of a
20 petition under this section to obtain or maintain any health care
21 coverage that is available to them at a reasonable cost, as a
22 benefit of employment, for the benefit of the child. If a parent
23 is self-employed and maintains health care coverage, the court
24 shall require the parent to obtain or maintain dependent coverage
25 for the benefit of the child, if available at a reasonable cost.

26 (6) A judgment or order entered under this act providing for
27 the support of a child is enforceable as provided in ~~Act No. 295~~

SB 956, As Passed Senate, May 14, 1998

Senate Bill No. 956

9

1 ~~of the Public Acts of 1982, being sections 552.601 to 552.650 of~~
2 ~~the Michigan Compiled Laws~~ THE SUPPORT AND PARENTING TIME
3 ENFORCEMENT ACT, 1982 PA 295, MCL 552.601 TO 552.650.