

SENATE BILL NO. 956

February 26, 1998, Introduced by Senator VAN REGENMORTER
and referred to the Committee on Families, Mental Health
and Human Services.

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

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) "CHILD-ATTORNEY" MEANS AN ATTORNEY APPOINTED BY THE
5 COURT TO REPRESENT THE CHILD'S BEST INTERESTS.

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

13 (E) ~~(c)~~ "Third person" means any individual other than a
14 parent.

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

21 (2) IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES
22 THAT THE BEST INTERESTS OF THE CHILD ARE OR MAY BE INADEQUATELY
23 REPRESENTED, THE COURT SHALL APPOINT A CHILD-ATTORNEY TO REPRE-
24 SENT THE BEST INTERESTS OF THE CHILD. A CHILD-ATTORNEY APPOINTED
25 UNDER THIS SECTION HAS AT LEAST ALL OF THE FOLLOWING POWERS AND
26 DUTIES:

1 (A) TO SERVE AS THE INDEPENDENT LEGAL REPRESENTATIVE OF THE
2 CHILD'S BEST INTERESTS. THE CHILD-ATTORNEY IS ENTITLED TO FULL
3 AND ACTIVE PARTICIPATION IN ALL ASPECTS OF THE PROCEEDING. THE
4 COURT SHALL GRANT THE CHILD-ATTORNEY ACCESS TO ALL RELEVANT
5 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, THE CHILD-ATTORNEY'S ROLE,
18 AND THOSE CIRCUMSTANCES UNDER WHICH THE CHILD-ATTORNEY MAY DIS-
19 CLOSE INFORMATION TO THE COURT.

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

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

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

1 THE CHILD-ATTORNEY'S DETERMINATION OF BEST INTERESTS, AND THE
2 CHILD-ATTORNEY SHALL WEIGH THE CHILD'S WISHES ACCORDING TO THE
3 CHILD'S COMPETENCE AND MATURITY. IN ANY EVENT, THE
4 CHILD-ATTORNEY SHALL INFORM THE COURT AS TO THE CHILD'S WISHES
5 AND PREFERENCES.

6 (H) IF, AFTER DISCUSSION BETWEEN THE CHILD AND THE
7 CHILD-ATTORNEY, THE CHILD-ATTORNEY DETERMINES THAT THE CHILD'S
8 INTERESTS AS IDENTIFIED BY THE CHILD ARE INCONSISTENT WITH THE
9 CHILD-ATTORNEY'S DETERMINATION OF THE CHILD'S BEST INTERESTS, THE
10 CHILD-ATTORNEY SHALL COMMUNICATE THE CHILD'S POSITION TO THE
11 COURT AND ASK THE COURT TO APPOINT LEGAL COUNSEL TO REPRESENT THE
12 CHILD.

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

14 (J) CONSISTENT WITH THE RULES OF PROFESSIONAL RESPONSIBILITY
15 FOR ATTORNEYS, TO IDENTIFY COMMON INTERESTS AMONG THE PARTIES
16 AND, TO THE EXTENT POSSIBLE, PROMOTE A COOPERATIVE RESOLUTION OF
17 THE MATTER.

18 (3) THE ATTORNEY-CLIENT OR ANY OTHER STATUTORY OR LEGALLY
19 RECOGNIZED PRIVILEGE SHALL NOT PREVENT THE CHILD-ATTORNEY FROM
20 SHARING ALL INFORMATION RELEVANT TO THE CHILD'S BEST INTERESTS
21 WITH THE COURT.

22 (4) A PARTY TO THE PROCEEDINGS SHALL NOT CALL THE
23 CHILD-ATTORNEY AS A WITNESS TO TESTIFY IN THE PROCEEDINGS, AND
24 THE FILE OF THE CHILD-ATTORNEY IS NOT DISCOVERABLE.

25 (5) A CHILD-ATTORNEY APPOINTED UNDER SUBSECTION (2) IS NOT
26 LIABLE IN A CIVIL ACTION FOR DAMAGES FOR AN ACT OR OMISSION OF
27 THE CHILD-ATTORNEY TAKEN IN FURTHERANCE OF THE APPOINTMENT,

1 UNLESS THE ACT OR OMISSION IS GROSSLY NEGLIGENT OR WILLFUL AND
2 WANTON.

3 (6) THE COURT MAY ASSESS ALL OR PART OF THE COSTS AND REA-
4 SONABLE FEES OF THE CHILD-ATTORNEY AGAINST 1 OR MORE OF THE PAR-
5 TIES INVOLVED IN THE PROCEEDINGS. A CHILD-ATTORNEY APPOINTED
6 UNDER THIS SECTION SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST
7 RECEIVES AND APPROVES THE FEE.