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CHILD'S ATTORNEY

Senate Bills 954-956 (Substitutes H-1)

Sponsor: Sen. William Van Regenmorter

Senate Bill 1032 (Substitute H-1)

Sponsor: Sen. George McManus

First Analysis (12-9-98)

House Committee: Human Services and Children

Senate Committee: Families, Mental Health and Human Services

THE APPARENT PROBLEM:

The American Bar Association appointed a "Working Group on the Unmet Legal Needs of Children and Their Families" in 1992. The group's goal was to plan an agenda for legal and political strategies to save America's children. It issued a report, "*America's Children at Risk*," which was, in effect, a call for each branch of government, the organized bar, and individual attorneys to work to reduce the number of children living in poverty and despair. The task force was formed in response to the National Commission on Children's (NCC) report, "*America's Children Beyond Rhetoric*," an assessment of the social, economic, and physical health of America's young people. The NCC report, issued in 1991, noted, in part:

" . . . at every age, among all races and income groups, and in communities nationwide, many children are in jeopardy . . .

The harshness of these children's lives and their tenuous hold on tomorrow cannot be countenanced by a wealthy nation, a caring people, or a prudent society. America's future depends on these children, too.

If we measure success not just by how well most children do, but by how poorly some fare, America falls far short. The evidence of that failure is everywhere one cares to look."

The State Bar of Michigan Children's Task Force was formed in 1993 in response to these reports, and focused on methods of improving the effect of the judicial system in areas where a child is a party or a

participant. A two-year exhaustive examination of this issue by the task force and its final recommendations were published in a final report (State Bar of Michigan Children's Task Force Final Report, September 21, 1995). One of these recommendations was the appointment of independent advocates for children. Specifically, the task force recommended that the court appoint a legal counsel, guardian ad litem, or other advisor in an action involving a question of custody, support or visitation. This should be arranged when requested by a child, upon motion of a party, upon the court's own motion, or in situations where the court had reason for special concern regarding a minor child's welfare. In addition, the report recommended that the court review the payment of fees. It is proposed that these recommendations be embodied in statute.

THE CONTENT OF THE BILLS:

Senate Bill 954 would amend the juvenile code (MCL 712A.13a et al.) to require the appointment of an attorney and a guardian ad litem for a child. A "child-attorney" would serve as a child's legal advocate in an abuse or neglect proceeding, or in a divorce case; and a guardian ad litem, who would not need to be an attorney, would be an individual appointed by the court to assist in determining a child's best interests. A lawyer-guardian ad litem, on the other hand, could also be appointed in situations where the court determined that a child's best interests were not being adequately represented. Senate Bills 955, 956, and 1032 would amend the Revised Probate Code (MCL 700.3 et al.), the Child Custody Act (MCL 722.22 et al.), and the Child Protection Law (MCL 722.622 et

Senate Bills 954, 955, 956 and 1032 (12-9-98)

al), respectively, to conform to the provisions of Senate Bill 954. Senate Bill 1032 would, in addition, specify that a written report, document, or photograph filed with the Family Independence Agency (FIA) for its central registry would be designated as confidential, unless made public as "specified information" in a Child Protective Services (CPS) record that related to substantiated reports of child abuse or neglect. The bills would each have an effective date of March 1, 1999.

Senate Bill 954 would amend the juvenile code to require the appointment of an attorney, a guardian ad litem, and a lawyer-guardian ad litem for a child in an abuse or neglect proceeding or in a divorce case in which the circuit court had waived jurisdiction to the family court; prescribe their powers and duties; require the court to appoint an attorney when the child and the lawyer-guardian ad litem disagreed as to the child's best interests; and permit a court to assess the costs of an attorney or lawyer-guardian ad litem against any of the parties involved in the proceedings. Among the bill's provisions are the following:

Attorney. The attorney would serve as the child's legal advocate in a traditional attorney-client relationship, as governed by the Michigan Rules of Professional Conduct. The same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes owed to an adult client would be expected for the child. For the purpose of a notice required under the provisions of the act, "attorney" would include a child's lawyer-guardian ad litem.

Guardian Ad Litem. The guardian ad litem would be appointed to assist the court in determining the child's best interests, and would not necessarily be an attorney. A guardian ad litem would be appointed in the same manner as an attorney is currently appointed for a child under the code.

Lawyer-Guardian Ad Litem. Currently, under the 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 the child. The bill would, instead, require the appointment of a lawyer-guardian ad litem, who would serve as an attorney appointed to represent the child, and whose powers and duties would be specified in Senate Bill 954. Under the code, if an attorney is appointed for a child, the court may enter an order assessing attorney costs against the party, or the person responsible for the party's

support. Under Senate Bill 954, this provision would apply if the court appointed an attorney or lawyer-guardian ad litem.

If a lawyer-guardian ad litem determined, after a discussion with the child, that the child's interests were inconsistent with the lawyer-guardian ad litem's determination, then he or she would have to communicate the child's position to the court. The court could then appoint an attorney for the child, who would serve in addition to the child's lawyer-guardian ad litem.

Case Service Plans. Currently, under the code, the agency responsible for a juvenile's care must prepare a case service plan before a court enters an order of disposition in a proceeding. Senate Bill 954 would require, in addition, that the Family Independence Agency (FIA) review a child's case with the child's attending physician of record during a hospitalization or with the child's primary care physician, but only if a physician had diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen syndrome by proxy, shaken baby syndrome, a bone fracture diagnosed as being the result of abuse or neglect, or drug exposure.

If a child were placed outside the home, the FIA would also have to review the child's case with a physician. Then, in a judicial proceeding to determine if the child were to be returned home, the court would have to allow one of the child's physicians to testify regarding the case service plan. The court would have to notify each physician of the hearing's time and place.

HOUSE COMMITTEE ACTION:

The House Human Services and Children Committee reported Substitute H-1 versions of the bills. The House substitute bills required the appointment of an attorney, a guardian ad litem, and a lawyer-guardian ad litem for a child, whereas the Senate-passed versions required only the appointment of a "child attorney" and a guardian ad litem.

BACKGROUND INFORMATION:

Most states authorize courts to appoint special legal representatives for children involved in custody proceedings by statute. In most of these jurisdictions the law specifies that this representative must be an attorney. In some states an attorney serving as guardian ad litem may be provided for the child; in

others, a guardian ad litem may be appointed, or representation of a child's interest may be provided by a friend of the court.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

In accordance with Michigan's move to the founding of one family court, the provisions of the bills would provide continuity in motions involving the interests of children. The State Bar of Michigan Children's Task Force Final Report, dated September, 1995, noted that there are situations when the interest of a child can be better served by the appointment of an independent advocate. Children usually do not understand the choices presented to them, and may be unable to express their desires regarding those choices. However, the guidelines for appointing independent advocates for children in current law are unclear. The attorneys or guardians ad litem appointed under the provisions of the bills would be able to cut through red tape, work out jurisdictional conflicts, and assist the court in determining a child's best interests. More important, a child's advocate would owe allegiance only to the child, and not to any other party.

Against:

Attorneys who currently represent children in child protective proceedings voice concerns regarding the provisions of the bills. Among other objections, these defenders point out that the appointment of a guardian ad litem for a child could create confusion, since current court rules only make allowance for the appointment of one when parents have emotional or developmental problems, or for children whose parents can or will not participate in the proceedings. Also, it is argued, the availability of qualified and capable advocates may present a challenge for many courts, since many experienced attorneys are discouraged from representing children because it is financially unrewarding.

POSITIONS:

The Lt. Governor's Office supports the bill. (12-8-98)

The Family Independence Agency (FIA) supports the bill. (12-8-98)

The Michigan Federation of Private Child and Family Agencies supports the bill. (12-8-98)

The Michigan County Social Services Association (MCSSA) supports the bill. (12-8-98)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.