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BILL



ANALYSIS

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Senate Bill 1312 (as introduced 9-25-12)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 11-27-12

CONTENT

The bill would amend the Child Custody Act to do the following:

- **Revise the definition of "best interests of the child" to include factors relating to child abuse or neglect and domestic violence.**
- **Require a court to apply the best interests determination to an adult living with a party to a custody action or parenting time dispute.**
- **Require a court to give additional weight to certain factors in determining custody or parenting time if a parent had abused the child.**
- **Require a court to consider whether domestic violence had occurred in determining whether to award joint custody.**
- **Establish a procedure for a court to interview a child to determine if he or she was old enough to express a preference about custody or parenting time.**
- **Establish procedures for the protection of a child witness who was under 16.**
- **Require a moving party to prove a change of circumstances before a court could modify a previous judgment or order in a child custody dispute.**
- **Specify that a presumption that it is in the best interests of the child to have a strong relationship with both parents would apply absent any form of abuse or danger to the child.**
- **Allow a parent who had been awarded sole custody to deviate from the Friend of the Court's**

suggested parenting time schedule for at least one week.

- **Require a court to give additional weight to certain factors in determining grandparenting time if it determined that a grandparent had abused the child.**

The amendatory act enacting the bill could be referred to as "Sean's Law".

Best Interests of the Child

Under the Act, if a child custody dispute is between the parents, between agencies, or between third parties, the best interests of the child control. The Act also requires parenting time to be granted in accordance with the best interests of the child. "Best interests of the child" means the sum total of specified factors to be considered, evaluated, and determined by the court. The bill would include in those factors child abuse or child neglect, including one or more of: physical abuse (nonaccidental injury to a child by the person responsible for the child's health and welfare); sexual abuse; maltreatment; mental injury; abandonment; emotional abuse; or medical neglect. The bill also would include patterns of behavior, including domestic violence or child abuse, in the best interests factors.

Currently, one of the best interests factors is the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. Under the bill, this factor would not apply if domestic violence were present.

In considering, evaluating, and determining the best interests of the child when making a custody decision, if the court determined that a parent had sexually, physically, mentally, or emotionally abused the child, the court would have to give additional weight to that fact and to the following factors in the definition of best interests of the child:

- The moral fitness of the parties involved.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

If an individual who was at least 18 years old lived with any party to a custody action or parenting time dispute, the court would have to apply the best interest of the child determination to that person as well as to the parties of the dispute. If the court determined that the person was unfit in accordance with the best interest of the child factors, he or she would have to comply with all treatment required by the court as if the person were a party to the action. If the person refused to comply, the court would have to order supervised visits whenever that person was present. If the parent with whom the individual lived did not comply with the court order, the court would have to order supervised visits for that parent with the child until all of the conditions of an order were met.

Lawyer-Guardian Ad Litem

Under the Act, if at any time in the child custody proceedings the court determines that the child's best interests are inadequately represented, it may appoint a lawyer-guardian ad litem to represent the child. The bill would require, rather than allow, the court to appoint a lawyer-guardian ad litem in that situation.

Joint Custody/Domestic Violence

In a custody dispute between parents, the Act requires the parents to be advised of joint custody. At the request of either parent, the court must consider an award of joint custody, and state on the record the reasons for granting or denying a request. In other cases, the court may consider joint custody. The court must determine whether

joint custody is in the best interest of the child by considering all of the factors in the definition of that term and whether the parents will be able to cooperate and generally agree concerning important decisions affecting the child's welfare. Under the bill, the court also would have to consider whether domestic violence had occurred.

If the parents agree on joint custody, the Act requires the court to award joint custody unless it determines on the record, based on clear and convincing evidence, that joint custody is not in the best interests of the child. Under the bill, if the court determined that domestic violence had occurred, it would have to make a determination that it was not in the child's best interest to award sole custody, joint custody, or physical custody to the perpetrator of the domestic violence.

Child's Preference & Protection of the Witness

The bill would allow the court to interview a child privately in a child custody or parenting time dispute to determine if the child was of sufficient age to express a preference regarding custody or parenting time and, if so, the child's reasonable preference. The court would have to focus the interview on these determinations, and the information received could be applied only to the reasonable preference factor.

If a court allowed the child's testimony to be taken in court, and the child were under 16, the procedures described below would apply.

If pertinent, the witness would have to be allowed to use dolls or mannequins, including anatomically correct dolls or mannequins, to assist him or her in testifying on direct and cross examinations.

The witness would have to be allowed to have a named support person sit with, accompany, or be in close proximity to him or her during the testimony. A notice of intent to use a support person would have to name that person, identify the relationship with the witness, and give notice to all parties to the proceeding that the witness could request the person to sit with him or her when he or she was called upon to testify during any stage of the proceeding. The notice of intent to use a named support

person would have to be filed with the court and be served upon all parties to the proceeding. The court would have to rule on a motion objecting to the use of a support person before the date on which the witness wished to use the support person.

If, on the motion of a party made before a hearing, the court found on the record that special arrangements were necessary to protect the welfare of the witness, the court would have to order those special arrangements. In determining whether it was necessary to protect the welfare of the witness, the court would have to consider all of the following:

- The witness's age.
- The nature of the conduct that would be the subject of the testimony.
- The desire of the witness or his or her parent, guardian, or other party to the action to have the testimony taken in a room closed to the public.

If the court determined on the record that it was necessary to protect the welfare of the witness, the court could order the following special arrangements:

- That all people not necessary to the proceeding be excluded from the courtroom during the witness's testimony.
- To protect the witness from directly viewing the defendant, that the courtroom be arranged so that a party was seated as far from the witness stand as was reasonable and not directly in front of the witness stand.

If the party were seated as far from the witness as was reasonable, his or her position would have to be located in a manner that allowed the party to hear and see the witness and be able to communicate with his or her attorney.

If, on the motion of a party or on the court's own motion, the court found on the record that the witness was or would be psychologically or emotionally unable to testify at a court proceeding, even with the benefit of the special arrangements described above, the court would have to order that a deposition of the witness's testimony be taken to be admitted into evidence instead of the witness's live testimony. The court could impose

restrictions on a deposition that it determined were necessary to protect the witness.

Any other protections or procedures afforded to the witness by law or court rule also could be provided.

Modification or Amendment of Order

Under the Act, if a child custody dispute has been submitted to the circuit court as an original action or has arisen incidentally from another action or an order or judgment of the circuit court, the court may take certain actions for the best interests of the child. The actions include modifying or amending the court's previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches the age of 18 (or until he or she reaches 19 years and six months of age, if regularly attending high school). Under the bill, before the court modified or amended a previous judgment or order, the moving party would have to prove that a change of circumstances had occurred.

Parenting Time

The Act provides that parenting time must be granted in accordance with the best interests of the child, and that it is presumed to be in the best interests of a child for the child to have a strong relationship with both parents. Under the bill, that presumption would apply absent any form of abuse or danger to the child. If the court determined that there was abuse or danger to the child, there would be a presumption that the child's safety was the best interest of the child.

The Act lists certain factors that a court may consider when determining the frequency, duration, and type of parenting time to be granted. The bill specifies that, in considering, evaluating, and determining the best interests of the child and considering the factors for determining parenting time, if the court determined that a parent had sexually, physically, mentally, or emotionally abused the child, the court would have to give additional weight to that fact and to the following best interests factors:

- The moral fitness of the parties involved.

- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- The reasonable likelihood of abuse or neglect of the child during parenting time.
- The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

The bill also specifies that, if a parent had been awarded sole custody under a court order that did not arise from an agreement of the parents, the custodial parent could deviate from the Friend of the Court's suggested parenting time schedule for any period that lasted one week or longer.

Grandparenting Time

Section 7b of the Act allows a child's grandparent to seek a grandparenting time order under certain circumstances. The court must consider whether it is in the best interests of the child to order grandparenting time, if a grandparent has met the standard for rebutting a presumption regarding a fit parent's decision to deny grandparenting time. In determining the best interests of the child under that provision, the court must consider certain factors.

Under the bill, in considering the best interests of the child under Section 7b, if the court determined that a grandparent had sexually, physically, mentally, or emotionally abused the child, the court would have to give additional weight to that fact and the following best interest factors:

- The grandparent's moral fitness.
- The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.
- Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.

MCL 722.22 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would mandate, as opposed to allow, the court to appoint a lawyer-guardian ad litem to represent the child at any time in a custody proceeding if the court determined that the child's best interests were inadequately represented. To the extent that this resulted in an increase in lawyer-guardian ad litem appointments, circuit courts would see additional costs in the event that the parties were determined not to have the ability to pay. The statute indicates that the funds for these services would come from money allocated from marriage license fees for family counseling services. Currently, the marriage license fee is \$20, of which \$15 is directed to the courts for family counseling services, and the remaining \$5 goes to the county general fund.

Fiscal Analyst: Dan O'Connor

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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.