



Rep. Jil Tracy

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09700HB5544ham001

LRB097 18385 AJ0 67579 a

1 AMENDMENT TO HOUSE BILL 5544

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5544 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Section 506 as follows:

6 (750 ILCS 5/506) (from Ch. 40, par. 506)

7 Sec. 506. Representation of child.

8 (a) Duties. In any proceedings involving the support,  
9 custody, visitation, education, parentage, property interest,  
10 or general welfare of a minor or dependent child, the court  
11 may, on its own motion or that of any party, appoint an  
12 attorney to serve in one of the following capacities to address  
13 the issues the court delineates:

14 (1) Attorney. The attorney shall provide independent  
15 legal counsel for the child and shall owe the same duties  
16 of undivided loyalty, confidentiality, and competent

1 representation as are due an adult client.

2 (2) Guardian ad litem. The guardian ad litem shall file  
3 an appearance. The guardian ad litem shall testify or  
4 submit a written report to the court regarding his or her  
5 recommendations in accordance with the best interest of the  
6 child. The report shall be made available to all parties.  
7 The guardian ad litem may be deposed no later than 30 days  
8 before trial or as otherwise ordered by the court. At  
9 trial, the ~~The~~ guardian ad litem may be called as a witness  
10 for purposes of cross-examination regarding the guardian  
11 ad litem's report or recommendations. The guardian ad litem  
12 may be deemed an opinion witness, subject to a motion to  
13 exclude witnesses. The guardian ad litem may, as  
14 practicable, be called to testify first, after which  
15 testimony the guardian ad litem may be discharged. This  
16 provision shall not be interposed to preclude a guardian ad  
17 litem from being called as a rebuttal witness. The guardian  
18 ad litem shall investigate the facts of the case and  
19 interview the child and the parties.

20 (3) Child representative. The child representative  
21 shall advocate what the child representative finds to be in  
22 the best interests of the child after reviewing the facts  
23 and circumstances of the case. The child representative  
24 shall meet with the child and the parties, investigate the  
25 facts of the case, and encourage settlement and the use of  
26 alternative forms of dispute resolution. The child

1 representative shall have the same authority and  
2 obligation to participate in the litigation as does an  
3 attorney for a party and shall possess all the powers of  
4 investigation as does a guardian ad litem. The child  
5 representative shall consider, but not be bound by, the  
6 expressed wishes of the child. A child representative shall  
7 have received training in child advocacy or shall possess  
8 such experience as determined to be equivalent to such  
9 training by the chief judge of the circuit where the child  
10 representative has been appointed. The child  
11 representative shall not disclose confidential  
12 communications made by the child, except as required by law  
13 or by the Rules of Professional Conduct. The child  
14 representative shall not render an opinion,  
15 recommendation, or report to the court and shall not be  
16 called as a witness, but shall offer evidence-based legal  
17 arguments. The child representative shall disclose the  
18 position as to what the child representative intends to  
19 advocate in a pre-trial memorandum that shall be served  
20 upon all counsel of record prior to the trial. The position  
21 disclosed in the pre-trial memorandum shall not be  
22 considered evidence. The court and the parties may consider  
23 the position of the child representative for purposes of a  
24 settlement conference.

25 (a-3) Additional appointments. During the proceedings the  
26 court may appoint an additional attorney to serve in the

1 capacity described in subdivision (a)(1) or an additional  
2 attorney to serve in another of the capacities described in  
3 subdivision (a)(2) or (a)(3) on the court's own motion or that  
4 of a party only for good cause shown and when the reasons for  
5 the additional appointment are set forth in specific findings.

6 (a-5) Appointment considerations. In deciding whether to  
7 make an appointment of an attorney for the minor child, a  
8 guardian ad litem, or a child representative, the court shall  
9 consider the nature and adequacy of the evidence to be  
10 presented by the parties and the availability of other methods  
11 of obtaining information, including social service  
12 organizations and evaluations by mental health professions, as  
13 well as resources for payment.

14 In no event is this Section intended to or designed to  
15 abrogate the decision making power of the trier of fact. Any  
16 appointment made under this Section is not intended to nor  
17 should it serve to place any appointed individual in the role  
18 of a surrogate judge.

19 A party is entitled to one substitution of a particular  
20 attorney, guardian ad litem, or child representative if he or  
21 she makes a written request for substitution within 7 days  
22 after the appointment of a particular attorney, guardian ad  
23 litem, or child representative. A party may request a  
24 substitution once.

25 (b) Fees and costs. The court shall enter an order as  
26 appropriate for costs, fees, and disbursements, including a

1     retainer, when the attorney, guardian ad litem, or child's  
2     representative is appointed. This shall be done by the court at  
3     the outset of the appointment, taking into consideration the  
4     financial circumstances of the parties and the prevailing rates  
5     in the community for attorneys with comparable experience and  
6     expertise in family law. The parties shall have an opportunity  
7     to be heard on the fees set and on any further petitions for  
8     interim fees. The court may, in appropriate circumstances, make  
9     the appointment pro bono, provided that the person so appointed  
10    may decline the appointment. Any person appointed under this  
11    Section shall file with the court within 90 days of his or her  
12    appointment, and every subsequent 90-day period thereafter  
13    during the course of his or her representation, a detailed  
14    invoice for services rendered with a copy being sent to each  
15    party. Failure to submit a detailed invoice for each 90-day  
16    period in the required time period precludes collection of  
17    costs, fees, and disbursements for services rendered in that  
18    90-day period. An attorney, guardian ad litem, or child  
19    representative may not bill the parties for preparation or  
20    presentation of his or her invoice. The court shall review the  
21    invoice submitted and approve the fees, if they are reasonable  
22    and necessary. If a party files a motion to reconsider approval  
23    of these fees, that motion must be heard by the designated  
24    supervising judge for domestic relations cases or, in circuits  
25    in which no such judge is designated, by the chief judge of the  
26    circuit. Subject to a rebuttable presumption that the parents

1 are jointly and severally liable for payment of said reasonable  
2 and necessary fees, the court shall enter an order approving  
3 the fees, setting forth with specificity the terms of payment  
4 ~~by Any order approving the fees shall require payment by~~ either  
5 or both parents, ~~by any other party or source,~~ or from the  
6 marital estate or the child's separate estate. The court may  
7 not award lump sum fees to the attorney, guardian ad litem, or  
8 child representative that are not properly itemized. The  
9 attorney, guardian ad litem, or child's representative must  
10 file a petition for setting final fees and costs within 30 days  
11 following the entry of a final order, an order of voluntary  
12 dismissal, or within any court-ordered extension of this time.  
13 The parties shall have an opportunity to be heard on this  
14 petition. If a party files a motion to reconsider the approval  
15 of these fees, that motion must be heard by the designated  
16 supervising judge for domestic relations cases or, in circuits  
17 in which no such judge is designated, by the chief judge of the  
18 circuit. ~~The court may not order payment by the Department of~~  
19 ~~Healthcare and Family Services in cases in which the Department~~  
20 ~~is providing child support enforcement services under Article X~~  
21 ~~of the Illinois Public Aid Code. Unless otherwise ordered by~~  
22 ~~the court at the time fees and costs are approved, all fees and~~  
23 ~~costs payable to an attorney, guardian ad litem, or child~~  
24 ~~representative under this Section are by implication deemed to~~  
25 ~~be in the nature of support of the child and are within the~~  
26 ~~exceptions to discharge in bankruptcy under 11 U.S.C.A. 523.~~

1 The relevant provisions of Sections 501 and 508 of this Act  
2 shall apply to fees and costs for attorneys appointed under  
3 this Section.

4 (Source: P.A. 94-640, eff. 1-1-06; 95-331, eff. 8-21-07.)".