



# SENATE BILL No. 133

January 13, 1993, Introduced by Senator EMMONS and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend the title and section 13a of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

section 13a as added by Act No. 224 of the Public Acts of 1988, being section 712A.13a of the Michigan Compiled Laws; and to add section 13b.

SENATE BILL No. 133

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. The title and section 13a of chapter XIIIA of Act  
2 No. 288 of the Public Acts of 1939, section 13a as added by Act  
3 No. 224 of the Public Acts of 1988, being section 712A.13a of the  
4 Michigan Compiled Laws, are amended and section 13b is added to  
5 read as follows:

6 TITLE

7 An act to revise and consolidate the statutes relating to  
8 certain aspects of the organization and jurisdiction of the pro-  
9 bate court of this state, the powers and duties of ~~such~~ THAT  
10 court, and the judges and other officers ~~thereof~~ OF THAT COURT,  
11 certain aspects of the statutes of descent and distribution of  
12 property, and the statutes governing the change of name of adults  
13 and children, the adoption of adults and children, and the juris-  
14 diction of the juvenile division of the probate court; to pre-  
15 scribe the powers and duties of the juvenile division of the pro-  
16 bate court, and the judges and other officers ~~thereof~~ OF THE  
17 JUVENILE DIVISION; to prescribe the manner and time within which  
18 actions and proceedings may be brought in the juvenile division  
19 of the probate court; to prescribe pleading, evidence, practice,  
20 and procedure in actions and proceedings in the juvenile division  
21 of the probate court; TO PROVIDE FOR WARRANTLESS ARREST FOR VIO-  
22 LATIONS OF CERTAIN ORDERS OF THE JUVENILE DIVISION OF THE PROBATE  
23 COURT; to provide for appeals from the juvenile division of the  
24 probate court; to prescribe the powers and duties of certain  
25 state departments, agencies, and officers; and to provide  
26 remedies and penalties for the violation of this act.

## CHAPTER XIIIA

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Sec. 13a. (1) As used in this section and sections 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(b) "Foster care" means care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, or care provided to a child in a relative's home pursuant to an order by the juvenile division of the probate court.

(2) If a child is alleged to come within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The petition may be authorized upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter.

(3) If a petition under subsection (2) is authorized, the court may release the child in the custody of either of the child's parents, OR THE CHILD'S guardian — or custodian, under ~~such~~ THOSE reasonable terms and conditions as are necessary for either the physical health or mental well-being of the child.

(4) IF A PETITION ALLEGING ABUSE BY A PARENT, GUARDIAN, CUSTODIAN, OR OTHER PERSON RESIDING IN THE HOME IS AUTHORIZED UNDER SUBSECTION (2), AND THE COURT AFTER HEARING FINDS PROBABLE CAUSE

1 TO BELIEVE THAT THE PARENT, GUARDIAN, CUSTODIAN, OR OTHER PERSON  
2 COMMITTED THE ABUSE, THE COURT MAY ORDER THAT PARENT, GUARDIAN,  
3 CUSTODIAN, OR OTHER PERSON TO LEAVE THE HOME AND RELEASE THE  
4 CHILD TO THE OTHER PARENT OR TO ANOTHER GUARDIAN OR CUSTODIAN IF  
5 THE COURT DETERMINES THAT ALL OF THE FOLLOWING CONDITIONS EXIST:

6 (A) THE PRESENCE IN THE HOME OF THE PERSON WHO IS ALLEGED TO  
7 HAVE COMMITTED THE ABUSE PRESENTS A SUBSTANTIAL RISK OF HARM TO  
8 THE CHILD'S LIFE, PHYSICAL HEALTH, OR MENTAL WELL-BEING AND NO  
9 PROVISION OF SERVICES OR OTHER ARRANGEMENT EXCEPT REMOVAL OF THE  
10 ALLEGED PERPETRATOR CAN ADEQUATELY SAFEGUARD THE CHILD FROM THE  
11 RISK.

12 (B) THE CONDITIONS OF CUSTODY WITH THE REMAINING PARENT OR  
13 OTHER GUARDIAN OR CUSTODIAN ARE ADEQUATE TO SAFEGUARD THE CHILD  
14 FROM THE RISK AND IT IS IN THE BEST INTEREST OF THE CHILD FOR THE  
15 CHILD TO REMAIN IN THE HOME.

16 (C) NO PRIOR CONFLICTING CIRCUIT COURT ORDER ESTABLISHING  
17 POSSESSION OF THE HOME HAS BEEN ISSUED IN AN ACTION FOR DIVORCE  
18 OR SEPARATE MAINTENANCE.

19 (5) ~~(4)~~ If a petition under subsection (2) is authorized,  
20 the court may order placement of the child with someone other  
21 than a parent if the court after hearing determines that both of  
22 the following conditions exist:

23 (a) Custody of the child with a parent, guardian, or custo-  
24 dian presents a substantial risk of harm to the child's life,  
25 physical health, or mental well-being and no provision of service  
26 or other arrangement except removal of the child is reasonably

1 available to adequately safeguard the child from ~~such~~ THE  
2 risk.

3 (b) Conditions of custody of the child away from a parent,  
4 guardian, or custodian are adequate to safeguard the child's  
5 health and welfare.

6 (6) ~~(5)~~ If the court orders placement of the child outside  
7 the child's home, the court shall inform the parties of the  
8 following:

9 (a) That the agency has the responsibility to prepare an  
10 initial services plan within 30 days of the child's placement.

11 (b) The general elements of an initial services plan as  
12 required by the rules promulgated pursuant to Act No. 116 of the  
13 Public Acts of 1973.

14 (c) That without a court order participation in an initial  
15 services plan is voluntary.

16 (7) ~~(6)~~ In determining placement of a child pending trial,  
17 the court shall order the child placed in the most family-like  
18 setting available consistent with the needs of the child.

19 (8) ~~(7)~~ Unless visitation, even if supervised, would be  
20 harmful to the child, the child's parent shall be permitted to  
21 visit frequently with the child.

22 (9) ~~(8)~~ Upon the motion of any party, the court shall  
23 review custody and placement orders and initial services plans  
24 pending trial and may modify those orders and plans as the court  
25 considers pursuant to this section are in the best interests of  
26 the child.

1 SEC. 13B. (1) A PEACE OFFICER, WITHOUT A WARRANT, MAY  
2 ARREST AND TAKE INTO CUSTODY A PERSON IF THE PEACE OFFICER HAS  
3 REASONABLE CAUSE TO BELIEVE THAT ALL OF THE FOLLOWING ARE TRUE:

4 (A) AN ORDER HAS BEEN ISSUED BY THE PROBATE JUDGE, OR HAS  
5 BEEN ISSUED BY THE ATTORNEY REFEREE AND REVIEWED AND SIGNED BY  
6 THE PROBATE JUDGE PURSUANT TO SECTION 13A(4), STATING ON ITS FACE  
7 THE PERIOD OF TIME FOR WHICH THE ORDER IS VALID.

8 (B) A TRUE COPY AND PROOF OF SERVICE OF THE ORDER HAVE BEEN  
9 FILED WITH THE LAW ENFORCEMENT AGENCY HAVING JURISDICTION OF THE  
10 AREA IN WHICH THE PERSON HAVING CUSTODY OF THE CHILD PURSUANT TO  
11 SECTION 13A(4) RESIDES.

12 (C) THE PERSON NAMED IN THE ORDER HAS RECEIVED NOTICE OF THE  
13 ORDER.

14 (D) THE PERSON NAMED IN THE ORDER IS ACTING IN VIOLATION OF  
15 THE ORDER.

16 (E) THE ORDER STATES ON ITS FACE THAT A VIOLATION OF ITS  
17 TERMS SUBJECTS THE PERSON TO CRIMINAL CONTEMPT OF COURT AND, IF  
18 FOUND GUILTY, THE PERSON MAY BE IMPRISONED FOR NOT MORE THAN 90  
19 DAYS OR FINED NOT MORE THAN \$500.00, OR BOTH.

20 (2) IF A PEACE OFFICER ARRESTS A PERSON PURSUANT TO THIS  
21 SECTION, THE PEACE OFFICER SHALL DO ALL OF THE FOLLOWING:

22 (A) PREPARE A COMPLAINT OF VIOLATION OF CHILD PROTECTIVE  
23 ORDER SUBSTANTIALLY IN THE FOLLOWING FORMAT:

24 COMPLAINT OF VIOLATION OF CHILD PROTECTIVE ORDER

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26 I \_\_\_\_\_ AM A PEACE OFFICER. I HAVE DETERMINED BY:  
27 (NAME)

1 \_\_\_\_\_ L.E.I.N. AND VERIFICATION WITH THE POLICE AGENCY HOLDING  
2 THE ORDER

3 \_\_\_\_\_ CERTIFIED OR TRUE COPY OF ORDER

4 \_\_\_\_\_ OTHER (DESCRIBE) \_\_\_\_\_

5 THAT \_\_\_\_\_ PROBATE ORDERED \_\_\_\_\_  
6 (COURT) (NAME)

7 NOT TO ENTER THE FOLLOWING PREMISES:  
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10 I HAVE REASONABLE CAUSE TO BELIEVE THAT ON \_\_\_\_\_  
11 (DATE)

12 AT \_\_\_\_\_ THE PERSON SUBJECT TO THE ORDER VIOLATED THE ORDER  
13 (TIME)

14 AS FOLLOWS:

15 (STATE VIOLATIONS)  
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(SIGNATURE OF OFFICER)

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(DATE)

23 (B) PROVIDE 1 COPY OF THE COMPLAINT TO THE PERSON SUBJECT TO  
24 THE ORDER, THE ORIGINAL AND 1 COPY TO THE COURT THAT IMPOSED THE  
25 CONDITIONS, AND 1 COPY TO EACH ATTORNEY OF RECORD IN THE CASE FOR  
26 WHICH THE ORDER WAS ENTERED. THE LAW ENFORCEMENT AGENCY SHALL  
27 RETAIN 1 COPY OF THE COMPLAINT.

28 (3) THE COURT SHALL DO EACH OF THE FOLLOWING:

29 (A) SET A TIME CERTAIN FOR A HEARING BEFORE THE PROBATE

30 JUDGE ON THE ALLEGED VIOLATION OF THE ORDER WITHIN 72 HOURS AFTER

1 ARREST, UNLESS EXTENDED BY THE COURT ON THE MOTION OF THE  
2 ARRESTED PERSON.

3 (B) SET A REASONABLE BOND PENDING A HEARING OF THE ALLEGED  
4 VIOLATION OF THE ORDER.

5 (C) NOTIFY THE PERSON HAVING CUSTODY OF THE CHILD PURSUANT  
6 TO SECTION 13A(4) AND DIRECT THAT PERSON TO APPEAR AT THE HEARING  
7 AND GIVE EVIDENCE ON THE CHARGE OF CONTEMPT.

8 (4) FOR PURPOSES OF THIS SECTION, THE PROBATE JUDGE HAS ALL  
9 THE POWERS TO ARRAIGN, TO TAKE PLEAS, AND TO SENTENCE FOR CRIMI-  
10 NAL CONTEMPT THAT THE CIRCUIT COURT HAS IN OTHER CRIMINAL CASES.

11 (5) IF THE PROBATE JUDGE IS NOT PRESENT OR AVAILABLE WITHIN  
12 24 HOURS AFTER ARREST, A PERSON ARRESTED PURSUANT TO THIS SECTION  
13 SHALL BE TAKEN BEFORE THE DISTRICT COURT WITHIN 24 HOURS AFTER  
14 ARREST, AT WHICH TIME THE DISTRICT COURT SHALL ORDER THE PERSON  
15 TO APPEAR BEFORE THE PROBATE JUDGE WHO ENTERED THE ORDER FOR A  
16 HEARING ON THE CHARGE. THE DISTRICT COURT SHALL SET BOND FOR THE  
17 PERSON.

18 (6) UPON RECEIPT OF A TRUE COPY OF AN ORDER AND PROOF OF  
19 SERVICE PURSUANT TO THIS SECTION, THE LAW ENFORCEMENT AGENCY  
20 SHALL ENTER THE ORDER INTO THE LAW ENFORCEMENT INFORMATION NET-  
21 WORK AS PROVIDED BY THE L.E.I.N. POLICY COUNCIL ACT OF 1974, ACT  
22 NO. 163 OF THE PUBLIC ACTS OF 1974, BEING SECTIONS 28.211 TO  
23 28.216 OF THE MICHIGAN COMPILED LAWS.

24 (7) IF AN ORDER PURSUANT TO THIS SECTION IS RESCINDED, THE  
25 COURT SHALL IMMEDIATELY ORDER THE LAW ENFORCEMENT AGENCY TO  
26 REMOVE THE ORDER FROM THE LAW ENFORCEMENT INFORMATION NETWORK.