

HOUSE BILL NO. 4182

February 09, 2021, Introduced by Reps. O'Neal, Brixie, Thanedar, Liberati, Ellison, Brenda Carter, Aiyash, Hope, Sowerby, Tyrone Carter, Steckloff, Cavanagh, Stone, Garza, Koleszar, Morse and Rabhi and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 13a of chapter XIIIA (MCL 712A.13a), as amended
by 2016 PA 191.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIIA

Sec. 13a. (1) As used in this section and sections 2, 6b, 13b,
17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization,

1 institution, or facility that is performing the functions under
2 part D of title IV of the social security act, 42 USC 651 to 669b,
3 or that is responsible under court order or contractual arrangement
4 for a juvenile's care and supervision.

5 (b) "Agency case file" means the current file from the agency
6 providing direct services to the child, that can include the child
7 protective services file if the child has not been removed from the
8 home or the department or contract agency foster care file as
9 provided under 1973 PA 116, MCL 722.111 to 722.128.

10 (c) "Attorney" means, if appointed to represent a child in a
11 proceeding under section 2(b) or (c) of this chapter, an attorney
12 serving as the child's legal advocate in a traditional attorney-
13 client relationship with the child, as governed by the Michigan
14 rules of professional conduct. An attorney defined under this
15 subdivision owes the same duties of undivided loyalty,
16 confidentiality, and zealous representation of the child's
17 expressed wishes as the attorney would to an adult client. For the
18 purpose of a notice required under these sections, attorney
19 includes a child's lawyer-guardian ad litem.

20 (d) "Case service plan" means the plan developed by an agency
21 and prepared under section 18f of this chapter that includes
22 services to be provided by and responsibilities and obligations of
23 the agency and activities, responsibilities, and obligations of the
24 parent. The case service plan may be referred to using different
25 names than case service plan including, but not limited to, a
26 parent/agency agreement or a parent/agency treatment plan and
27 service agreement.

28 (e) "Foster care" means care provided to a juvenile in a
29 foster family home, foster family group home, or child caring

1 institution licensed or approved under 1973 PA 116, MCL 722.111 to
2 722.128, or care provided to a juvenile in a relative's home under
3 a court order.

4 (f) "Guardian ad litem" means an individual whom the court
5 appoints to assist the court in determining the child's best
6 interests. A guardian ad litem does not need to be an attorney.

7 (g) "Lawyer-guardian ad litem" means an attorney appointed
8 under section 17c of this chapter. A lawyer-guardian ad litem
9 represents the child, and has the powers and duties, as set forth
10 in section 17d of this chapter. The provisions of section 17d of
11 this chapter also apply to a lawyer-guardian ad litem appointed
12 under each of the following:

13 (i) Section 5213 or 5219 of the estates and protected
14 individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

15 (ii) Section 4 of the child custody act of 1970, 1970 PA 91,
16 MCL 722.24.

17 (iii) Section 10 of the child protection law, 1975 PA 238, MCL
18 722.630.

19 (h) "Nonparent adult" means a person who is 18 years of age or
20 older and who, regardless of the person's domicile, meets all of
21 the following criteria in relation to a child over whom the court
22 takes jurisdiction under this chapter:

23 (i) Has substantial and regular contact with the child.

24 (ii) Has a close personal relationship with the child's parent
25 or with a person responsible for the child's health or welfare.

26 (iii) Is not the child's parent or a person otherwise related to
27 the child by blood or affinity to the third degree.

28 (i) "Permanent foster family agreement" means an agreement for
29 a child 14 years old or older to remain with a particular foster

1 family until the child is 18 years old under standards and
2 requirements established by the department, which agreement is
3 among all of the following:

4 (i) The child.

5 (ii) If the child is a temporary ward, the child's family.

6 (iii) The foster family.

7 (iv) The child placing agency responsible for the child's care
8 in foster care.

9 (j) "Relative" means an individual who is at least 18 years of
10 age and related to the child **within the fifth degree** by blood,
11 marriage, or adoption. ~~, as grandparent, great-grandparent, great-~~
12 ~~great-grandparent, aunt or uncle, great-aunt or great-uncle, great-~~
13 ~~great-aunt or great-great-uncle, sibling, stepsibling, nephew or~~
14 ~~niece, first cousin or first cousin once removed,~~ **Relative includes**
15 **a step relationship** and the spouse of any of the above, **a relative,**
16 even after the marriage has ended by death or divorce. A
17 stepparent, ex-stepparent, or the parent who shares custody of a
18 half-sibling ~~shall be considered~~ **is** a relative for the purpose of
19 placement. Notification to the stepparent, ex-stepparent, or the
20 parent who shares custody of a half-sibling is required as
21 described in section 4a of the foster care and adoption services
22 act, 1994 PA 203, MCL 722.954a. A child may be placed with the
23 parent of a man whom the court has found probable cause to believe
24 is the putative father if there is no man with legally established
25 rights to the child. A placement with the parent of a putative
26 father under this subdivision is not a finding of paternity and
27 does not confer legal standing on the putative father.

28 (k) "Sex offenders registration act" means the sex offenders
29 registration act, 1994 PA 295, MCL 28.721 to 28.736.

1 (1) "Sibling" means a child who is related **to another**
2 **individual** through birth or adoption by at least 1 common parent **or**
3 **a stepsibling**. Sibling includes that term as defined by the
4 American Indian or Alaskan native child's tribal code or custom.

5 (2) If a juvenile is alleged to be within the provisions of
6 section 2(b) of this chapter, the court may authorize a petition to
7 be filed at the conclusion of the preliminary hearing or inquiry.
8 The court may authorize the petition upon a showing of probable
9 cause that 1 or more of the allegations in the petition are true
10 and fall within the provisions of section 2(b) of this chapter. If
11 a petition is before the court because the department is required
12 to submit the petition under section 17 of the child protection
13 law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on
14 the petition within 24 hours or on the next business day after the
15 petition is submitted, at which hearing the court shall consider at
16 least the matters governed by subsections (4) and (5).

17 (3) Except as provided in subsections (5) and (6), if a
18 petition under subsection (2) is authorized, the court may release
19 the juvenile in the custody of either of the juvenile's parents or
20 the juvenile's guardian or custodian under reasonable terms and
21 conditions necessary for either the juvenile's physical health or
22 mental well-being.

23 (4) The court may order a parent, guardian, custodian,
24 nonparent adult, or other person residing in a child's home to
25 leave the home and, except as the court orders, not to subsequently
26 return to the home if all of the following take place:

27 (a) A petition alleging abuse of the child by the parent,
28 guardian, custodian, nonparent adult, or other person is authorized
29 under subsection (2).

1 (b) The court after a hearing finds probable cause to believe
2 the parent, guardian, custodian, nonparent adult, or other person
3 committed the abuse.

4 (c) The court finds on the record that the presence in the
5 home of the person alleged to have committed the abuse presents a
6 substantial risk of harm to the child's life, physical health, or
7 mental well-being.

8 (5) If a petition alleges abuse by a person described in
9 subsection (4), regardless of whether the court orders the alleged
10 abuser to leave the child's home under subsection (4), the court
11 shall not leave the child in or return the child to the child's
12 home or place the child with a person not licensed under 1973 PA
13 116, MCL 722.111 to 722.128, unless the court finds that the
14 conditions of custody at the placement and with the individual with
15 whom the child is placed are adequate to safeguard the child from
16 the risk of harm to the child's life, physical health, or mental
17 well-being.

18 (6) If a court finds a parent is required by court order to
19 register under the sex offenders registration act, the department
20 may, but is not required to, make reasonable efforts to reunify the
21 child with the parent. The court may order reasonable efforts to be
22 made by the department.

23 (7) In determining whether to enter an order under subsection
24 (4), the court may consider whether the parent who is to remain in
25 the juvenile's home is married to the person to be removed or has a
26 legal right to retain possession of the home.

27 (8) An order entered under subsection (4) may also contain 1
28 or more of the following terms or conditions:

29 (a) The court may require the alleged abusive parent to pay

1 appropriate support to maintain a suitable home environment for the
2 juvenile during the duration of the order.

3 (b) The court may order the alleged abusive person, according
4 to terms the court may set, to surrender to a local law enforcement
5 agency any firearms or other potentially dangerous weapons the
6 alleged abusive person owns, possesses, or uses.

7 (c) The court may include any reasonable term or condition
8 necessary for the juvenile's physical or mental well-being or
9 necessary to protect the juvenile.

10 (9) The court may order placement of the child in foster care
11 if the court finds all of the following conditions:

12 (a) Custody of the child with the parent presents a
13 substantial risk of harm to the child's life, physical health, or
14 mental well-being.

15 (b) No provision of service or other arrangement except
16 removal of the child is reasonably available to adequately
17 safeguard the child from risk as described in subdivision (a).

18 (c) Continuing the child's residence in the home is contrary
19 to the child's welfare.

20 (d) Consistent with the circumstances, reasonable efforts were
21 made to prevent or eliminate the need for removal of the child.

22 (e) Conditions of child custody away from the parent are
23 adequate to safeguard the child's health and welfare.

24 (10) If the court orders placement of the juvenile outside the
25 juvenile's home, the court shall inform the parties of the
26 following:

27 (a) That the agency has the responsibility to prepare an
28 initial services plan within 30 days of the juvenile's placement.

29 (b) The general elements of an initial services plan as

1 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
2 722.128.

3 (c) That participation in the initial services plan is
4 voluntary without a court order.

5 (11) Before or within 7 days after a child is placed in a
6 relative's home, the department shall perform a criminal record
7 check and central registry clearance. If the child is placed in the
8 home of a relative, the court shall order a home study to be
9 performed and a copy of the home study to be submitted to the court
10 not more than 30 days after the placement.

11 (12) In determining placement of a juvenile pending trial, the
12 court shall order the juvenile placed in the most family-like
13 setting available consistent with the juvenile's needs.

14 (13) If a juvenile is removed from the parent's custody at any
15 time, the court shall permit the juvenile's parent to have regular
16 and frequent parenting time with the juvenile. Parenting time
17 between the juvenile and his or her parent shall not be less than 1
18 time every 7 days unless the court determines either that exigent
19 circumstances require less frequent parenting time or that
20 parenting time, even if supervised, may be harmful to the
21 juvenile's life, physical health, or mental well-being. If the
22 court determines that parenting time, even if supervised, may be
23 harmful to the juvenile's life, physical health, or mental well-
24 being, the court may suspend parenting time until the risk of harm
25 no longer exists. The court may order the juvenile to have a
26 psychological evaluation or counseling, or both, to determine the
27 appropriateness and the conditions of parenting time.

28 (14) Reasonable efforts ~~shall~~**must** be made to ~~de~~**ensure** the
29 following **placement and visitation criteria are met:**

1 ~~(a) Place siblings removed from their home in the same foster~~
2 ~~care, kinship guardianship, or adoptive placement, unless the~~
3 ~~supervising agency documents that a joint placement would be~~
4 ~~contrary to the safety or well-being of any of the siblings.~~

5 **(a) Siblings removed from their home, who are entering foster**
6 **care at or near the same time, must be placed in the same foster**
7 **care, kinship guardianship, or adoptive placement, unless the**
8 **supervising agency documents that 1 or more of the following apply:**

9 **(i) One of the siblings has exceptional needs that can be met**
10 **only in a specialized program or facility.**

11 **(ii) One of the siblings is placed in an independent living**
12 **arrangement.**

13 **(iii) Placing the siblings together is not in the best interest**
14 **of 1 or more of the siblings.**

15 **(iv) Placement resources are not available to place the**
16 **siblings together, notwithstanding diligent efforts to do so.**

17 **(b) In the case of siblings ~~removed from their home~~ entering**
18 **foster care at or near the same time** who are not jointly placed,
19 provide for visitation, at least monthly, or other ongoing
20 interaction between the siblings, unless the supervising agency
21 documents that visitation ~~, at least monthly,~~ or other ongoing
22 interaction would be contrary to the safety or well-being of any of
23 the siblings.

24 (15) If the supervising agency documents that visitation or
25 other contact is contrary to the safety or well-being of any of the
26 siblings and temporarily suspends visitation or contact, the
27 supervising agency shall report its determination to the court for
28 consideration at the next review hearing.

29 (16) If the supervising agency temporarily suspends visitation

1 or contact, the court shall review the decision and determine
2 whether sibling visitation or contact will be beneficial to the
3 siblings. If so, the court shall order sibling visitation or
4 contact to the extent reasonable.

5 (17) Upon the motion of any party, the court shall review
6 custody and placement orders and initial services plans pending
7 trial and may modify those orders and plans as the court considers
8 under this section are in the juvenile's best interests.

9 (18) The court shall include in an order placing a child in
10 foster care an order directing the release of information
11 concerning the child in accordance with this subsection. If a child
12 is placed in foster care, within 10 days after receipt of a written
13 request, the agency shall provide the person who is providing the
14 foster care with copies of all initial, updated, and revised case
15 service plans and court orders relating to the child and all of the
16 child's medical, mental health, and education reports, including
17 reports compiled before the child was placed with that person.

18 (19) In an order placing a child in foster care, the court
19 shall include both of the following:

20 (a) An order that the child's parent, guardian, or custodian
21 provide the supervising agency with the name and address of each of
22 the child's medical providers.

23 (b) An order that each of the child's medical providers
24 release the child's medical records. The order may specify
25 providers by profession or type of institution.

26 (20) As used in this section, "abuse" means 1 or more of the
27 following:

28 (a) Harm or threatened harm by a person to a juvenile's health
29 or welfare that occurs through nonaccidental physical or mental

1 injury.

2 (b) Engaging in sexual contact or sexual penetration as
3 defined in section 520a of the Michigan penal code, 1931 PA 328,
4 MCL 750.520a, with a juvenile.

5 (c) Sexual exploitation of a juvenile, which includes, but is
6 not limited to, allowing, permitting, or encouraging a juvenile to
7 engage in prostitution or allowing, permitting, encouraging, or
8 engaging in photographing, filming, or depicting a juvenile engaged
9 in a listed sexual act as defined in section 145c of the Michigan
10 penal code, 1931 PA 328, MCL 750.145c.

11 (d) Maltreatment of a juvenile.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.