

HOUSE BILL No. 4101

February 6, 1991, Introduced by Reps. Profit, Hunter, Brown and Perry Bullard and referred to the Committee on Social Services and Youth.

A bill to amend the title and sections 17c, 19, 19a, 19b, and 28 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 17c as added by Act No. 92 of the Public Acts of 1988, sections 19 and 19a as amended by Act No. 224 of the Public Acts

1 of 1988, section 19b as amended by Act No. 314 of the Public Acts
2 of 1990, and section 28 as amended by Act No. 73 of the Public
3 Acts of 1989, being sections 712A.17c, 712A.19, 712A.19a,
4 712A.19b, and 712A.28 of the Michigan Compiled Laws; and to add
5 sections 17d, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

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

7 Section 1. The title and sections 17c, 19, 19a, 19b, and 28
8 of chapter XIIIA of Act No. 288 of the Public Acts of 1939,
9 section 17c as added by Act No. 92 of the Public Acts of 1988,
10 sections 19 and 19a as amended by Act No. 224 of the Public Acts
11 of 1988, section 19b as amended by Act No. 314 of the Public Acts
12 of 1990, and section 28 as amended by Act No. 73 of the Public
13 Acts of 1989, being sections 712A.17c, 712A.19, 712A.19a,
14 712A.19b, and 712A.28 of the Michigan Compiled Laws, are amended
15 and sections 17d, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45
16 are added to read as follows:

17 **TITLE**

18 An act to revise and consolidate the statutes relating to
19 certain aspects of the organization and jurisdiction of the pro-
20 bate court of this state, the powers and duties of such court and
21 the judges and other officers thereof, certain aspects of the
22 statutes of descent and distribution of property, and the stat-
23 utes governing the change of name of adults and children, the
24 adoption of adults and children, and the jurisdiction of the
25 juvenile division of the probate court; to prescribe the powers
26 and duties of the juvenile division of the probate court, and the
27 judges and other officers thereof; to prescribe the manner and

1 time within which actions and proceedings may be brought in the
2 juvenile division of the probate court; to prescribe pleading,
3 evidence, practice, and procedure in actions and proceedings in
4 the juvenile division of the probate court; to provide for
5 appeals from the juvenile division of the probate court; to pre-
6 scribe the powers and duties of certain state departments, agen-
7 cies, and officers; TO CREATE A STATE CHILD ADVOCACY OFFICE AND
8 LOCAL CHILD ADVOCACY PROGRAMS; TO PRESCRIBE THE POWERS AND DUTIES
9 AND LIMIT THE LIABILITY OF CERTAIN PERSONS IN CONNECTION WITH
10 LOCAL CHILD ADVOCACY PROGRAMS; and to provide remedies and penal-
11 ties for the violation of this act.

12 CHAPTER XIIA

13 Sec. 17c. (1) In a proceeding under section 2(a) or (d) of
14 this chapter, the court shall advise the child that the child has
15 a right to an attorney at each stage of the proceeding.

16 (2) In a proceeding under section 2(a) or (d) of this chap-
17 ter, the court shall appoint an attorney to represent the child
18 if any 1 of the following applies:

19 (a) The child's parent refuses or fails to appear and par-
20 ticipate in the proceedings.

21 (b) The child's parent is the complainant or victim.

22 (c) The child and those responsible for his or her support
23 are financially unable to employ an attorney and the child does
24 not waive his or her right to an attorney.

25 (d) Those responsible for the child's support refuse or
26 neglect to employ an attorney for the child and the child does
27 not waive his or her right to an attorney.

1 (e) The court determines that the best interests of the
2 child or the public require appointment.

3 (3) Except as otherwise provided in this subsection, in a
4 proceeding under section 2(a) or (d) of this chapter, the child
5 may waive his or her right to an attorney. The waiver by a child
6 shall be made in open court, on the record, and shall not be made
7 unless the court finds on the record that the waiver was volun-
8 tarily and understandingly made. The child may not waive his or
9 her right to an attorney if the child's parent or guardian ad
10 litem objects or if the appointment is made pursuant to subsec-
11 tion (2)(e).

12 (4) In a proceeding under section 2(b) or (c) of this chap-
13 ter, the court shall advise the respondent at the respondent's
14 first court appearance of all of the following:

15 (a) The right to an attorney at each stage of the
16 proceeding.

17 (b) The right to a court-appointed attorney if the respon-
18 dent is financially unable to employ an attorney.

19 (c) If the respondent is not represented by an attorney, the
20 right to request and receive a court-appointed attorney at a
21 later proceeding.

22 (5) If it appears to the court in a proceeding under section
23 2(b) or (c) of this chapter that the respondent wants an attorney
24 and is financially unable to retain an attorney, the court shall
25 appoint an attorney to represent the respondent.

26 (6) Except as otherwise provided in this subsection, in a
27 proceeding under section 2(b) or (c) of this chapter, the

1 respondent may waive his or her right to an attorney. A
2 respondent who is a minor may not waive his or her right to an
3 attorney if the respondent's parent or guardian ad litem
4 objects.

5 (7) In a proceeding under section 2(b) or (c) of this chap-
6 ter, the court shall appoint an attorney to represent the child.
7 The child shall not waive the assistance of an attorney.

8 (8) IF THE PROCEEDING IS UNDER SECTION 2(B) OF THIS CHAPTER,
9 THE COURT MAY APPOINT EITHER THE STAFF ATTORNEY OF THE LOCAL PRO-
10 GRAM DESCRIBED IN SECTION 41 OF THIS CHAPTER OR AN ATTORNEY WHO
11 IS INDEPENDENT OF THE LOCAL PROGRAM TO REPRESENT THE CHILD. IF
12 THE COURT APPOINTS AN ATTORNEY WHO IS INDEPENDENT OF THE LOCAL
13 PROGRAM TO REPRESENT THE CHILD, THE COURT MAY FURTHER REQUIRE
14 THAT ATTORNEY TO FULFILL THE DUTIES OF A STAFF ATTORNEY PURSUANT
15 TO SECTION 41 OF THIS CHAPTER. IN ADDITION TO THE DUTIES OF
16 LEGAL REPRESENTATION, THE ATTORNEY APPOINTED UNDER SUBSECTION (7)
17 TO REPRESENT THE CHILD IN A PROCEEDING UNDER SECTION 2(B) OF THIS
18 CHAPTER SHALL FULFILL THE DUTIES OF A SPECIAL ADVOCATE DESCRIBED
19 IN SECTION 44 OF THIS CHAPTER. ATTORNEYS WHO REPRESENT CHILDREN
20 UNDER THIS SUBSECTION SHALL ATTEND TRAINING PROGRAMS PRESCRIBED
21 BY THE STATE COURT ADMINISTRATOR'S OFFICE.

22 (9) ~~(8)~~ If an attorney is appointed for a party under this
23 section, the court may enter an order assessing attorney costs
24 against the party or the person responsible for the support of
25 that party. An order assessing attorney costs may be enforced
26 through contempt proceedings.

1 (10) ~~-(9)-~~ An attorney appointed by the court under this
2 section shall serve until discharged by the court.

3 SEC. 17D. IN A PROCEEDING UNDER SECTION 2(B) OF THIS CHAP-
4 TER, THE COURT MAY APPOINT A LOCAL PROGRAM TO REPRESENT THE
5 CHILD.

6 Sec. 19. (1) Subject to section 20 of this chapter, if a
7 child remains under the jurisdiction of the court, a cause may be
8 terminated or an order may be amended or supplemented, within the
9 authority granted to the court in section 18 of this chapter, at
10 any time as the court considers necessary and proper. An amended
11 or supplemented order shall be referred to as a "supplemental
12 order of disposition".

13 (2) Except as otherwise provided in subsections (3), (5),
14 (6), (8), (9), and (10), if a child is placed in foster care, the
15 cause shall be reheard not more than 182 days after entry of the
16 order of disposition. The showing shall be recorded stenographi-
17 cally at a hearing held by the judge or referee. If the child
18 remains in foster care in the temporary custody of the court fol-
19 lowing the hearing, the cause shall be further reheard not more
20 than 182 days after the hearing. In conducting the review hear-
21 ing, the court shall review the performance of the child, the
22 child's parent, guardian, or custodian, the juvenile worker, and
23 other persons providing assistance to the child and his or her
24 family.

25 (3) If, in a proceeding under section 2(b) of this chapter,
26 a child is placed and remains in foster care, a review hearing
27 shall be held not more than 91 days after entry of the order of

1 disposition and every 91 days thereafter for the first year
2 following the entry of the order of disposition. After the first
3 year following the entry of the order of disposition, a review
4 hearing shall be held not more than 182 days after a permanency
5 planning hearing held pursuant to section 19a of this chapter.
6 Upon motion by any party or in the court's discretion, a review
7 hearing may be accelerated to review any element of the case
8 service plan prepared pursuant to section 18f of this chapter.

9 (4) Notice of a review hearing under subsection (2) or (3)
10 shall be served upon all of the following:

11 (a) The agency. The agency shall advise the child of the
12 hearing if the child is 11 years of age or older.

13 (b) The foster parent or custodian of the child.

14 (c) If the parental rights to the child have not been termi-
15 nated, the child's parents.

16 (d) If the child has a guardian, the guardian for the
17 child.

18 (e) If the child has a guardian ad litem, the guardian ad
19 litem for the child.

20 (f) If tribal affiliation has been determined, the elected
21 leader of the Indian tribe.

22 (g) The attorney for the child.

23 (h) If the child is 11 years of age or older, the child.

24 (I) IF THE CHILD HAS A SPECIAL ADVOCATE, THE SPECIAL ADVO-
25 CATE FOR THE CHILD.

26 (J) ~~(i)~~ Other persons as the court may direct.

1 (5) At a review hearing under subsection (3), the court
2 shall review on the record the compliance with the case service
3 plan prepared pursuant to section 18f of this chapter in the fol-
4 lowing areas:

5 (a) Services provided or offered to the child and his or her
6 parent, guardian, or custodian and whether the parent, guardian,
7 or custodian has complied with and benefited from those
8 services.

9 (b) Visitation with the child. If visitation did not occur
10 or was infrequent, the court shall determine why visitation did
11 not occur or was infrequent.

12 (6) After review of the case service plan, the court shall
13 determine the extent of progress made toward alleviating or miti-
14 gating the conditions that caused the child to be placed in
15 foster care or that caused the child to remain in foster care.
16 The court may modify any part of the case service plan including,
17 but not limited to, the following:

18 (a) Prescribing additional services that are necessary to
19 rectify the conditions that caused the child to be placed in
20 foster care or to remain in foster care.

21 (b) Prescribing additional actions to be taken by the
22 parent, guardian, or custodian to rectify the conditions that
23 caused the child to be placed in foster care or to remain in
24 foster care.

25 (7) At a review hearing under subsection (2) or (3), the
26 court shall determine the continuing necessity and
27 appropriateness of the child's placement and shall order the

1 return of the child to the custody of the parent, continue the
2 dispositional order, modify the dispositional order, or enter a
3 new dispositional order.

4 (8) If in a proceeding under section 2(b) of this chapter a
5 child is placed in foster care, the court shall determine at the
6 dispositional hearing and each review hearing whether the cause
7 should be reviewed before the next review hearing required by
8 subsection (3). In making this determination, the court shall
9 consider, but not be limited to, both of the following:

10 (a) The parent's ability and motivation to make necessary
11 changes to provide a suitable environment for the child.

12 (b) Whether there is a reasonable likelihood that the child
13 may be returned to his or her home prior to the next review hear-
14 ing required by subsection (3).

15 (9) Unless waived, if not less than 7 days' notice is given
16 to all parties prior to the return of a child to his or her home,
17 and no party requests a hearing within the 7 days, the court may
18 issue an order without a hearing permitting the agency to return
19 the child to his or her home.

20 (10) An agency report filed with the court shall be accessi-
21 ble to all parties to the action and shall be offered into
22 evidence.

23 Sec. 19a. (1) If a child remains in foster care and paren-
24 tal rights to the child have not been terminated, the court shall
25 conduct a permanency planning hearing not more than 364 days
26 after entry of the order of disposition and every 364 days
27 thereafter during the continuation of the child's placement in

1 foster care. A permanency planning hearing may be combined with
2 a review hearing held under section 19(3) of this chapter.

3 (2) A permanency planning hearing shall be conducted to
4 review the status of the child and the progress being made toward
5 the child's return home or to show why the child should not be
6 placed in the permanent custody of the court.

7 (3) Not less than 14 days before a permanency planning hear-
8 ing, notice of the hearing and a statement of the purposes of the
9 hearing shall be served upon all of the following:

10 (a) The agency. The agency shall advise the child of the
11 hearing if the child is 11 years of age or older.

12 (b) The foster parent or custodian of the child.

13 (c) If the parental rights to the child have not been termi-
14 nated, the child's parents.

15 (d) If the child has a guardian, the guardian for the
16 child.

17 (e) If the child has a guardian ad litem, the guardian ad
18 litem for the child.

19 (f) If tribal affiliation has been determined, the elected
20 leader of the Indian tribe.

21 (g) The attorney for the child.

22 (h) If the child is 11 years of age or older, the child.

23 (I) IF THE CHILD HAS A SPECIAL ADVOCATE, THE SPECIAL ADVO-
24 CATE FOR THE CHILD.

25 (J) ~~(i)~~ Other persons as the court may direct.

26 (4) If parental rights to the child have not been terminated
27 and the court determines at a permanency planning hearing that

1 the return of the child to his or her parent would not cause a
2 substantial risk of harm to the child's life, physical health, or
3 mental well-being, the court shall order the child returned to
4 his or her parent. In determining whether the return of the
5 child would cause a substantial risk of harm to the child, the
6 court shall view the failure of the parent to substantially
7 comply with the terms and conditions of the case service plan
8 prepared under section 18f of this chapter as evidence that
9 return of the child to his or her parent would cause a substan-
10 tial risk of harm to the child's life, physical health, or mental
11 well-being.

12 (5) If the court determines at a permanency planning hearing
13 that the child should not be returned to his or her parent, the
14 agency shall initiate proceedings to terminate parental rights to
15 the child not later than 42 days after the permanency planning
16 hearing, unless the agency demonstrates to the court that initi-
17 ating the termination of parental rights to the child is clearly
18 not in the child's best interests.

19 (6) If the agency demonstrates under subsection (5) that
20 initiating the termination of parental rights to the child is
21 clearly not in the child's best interests, then the court shall
22 order either of the following alternative placement plans:

23 (a) If the court determines that other permanent placement
24 is not possible, the child's placement in foster care shall con-
25 tinue for a limited period to be stated by the court.

1 (b) If the court determines that it is in the child's best
2 interests, the child's placement in foster care shall continue on
3 a long-term basis.

4 Sec. 19b. (1) Except as provided in subsection (4), if a
5 child remains in foster care in the temporary custody of the
6 court following a review hearing under section 19(3) of this
7 chapter or a permanency planning hearing under section 19a of
8 this chapter or if a child remains in the custody of a guardian
9 or limited guardian, upon petition of the prosecuting attorney,
10 child, guardian, custodian, or agency, the court shall hold a
11 hearing to determine if the parental rights to a child should be
12 terminated and, if all parental rights to the child are termi-
13 nated, the child placed in permanent custody of the court.

14 (2) Not less than 14 days before a hearing to determine if
15 the parental rights to a child should be terminated, notice of
16 the hearing shall be served upon all of the following:

17 (a) The agency. The agency shall advise the child of the
18 hearing if the child is 11 years of age or older.

19 (b) The foster parent or custodian of the child.

20 (c) The child's parents.

21 (d) If the child has a guardian, the guardian for the
22 child.

23 (e) If the child has a guardian ad litem, the guardian ad
24 litem for the child.

25 (f) If tribal affiliation has been determined, the elected
26 leader of the Indian tribe.

1 (g) The attorney for the child.

2 (h) If the child is 11 years of age or older, the child.

3 (i) The prosecutor.

4 (J) IF THE CHILD HAS A SPECIAL ADVOCATE, THE SPECIAL ADVO-
5 CATE FOR THE CHILD.

6 (3) The court may terminate the parental rights of a parent
7 to a child if the court finds, by clear and convincing evidence,
8 1 or more of the following:

9 (a) The child has been deserted under either of the follow-
10 ing circumstances:

11 (i) If the parent of a child is unidentifiable and has
12 deserted the child for 28 or more days and has not sought custody
13 of the child during that period. For the purposes of this sec-
14 tion, a parent is unidentifiable if the parent's identity cannot
15 be ascertained after reasonable efforts have been made to locate
16 and identify the parent.

17 (ii) The parent of a child has deserted the child for 91 or
18 more days and has not sought custody of the child during that
19 period.

20 (b) The child or a sibling of the child has suffered physi-
21 cal injury or physical or sexual abuse under either of the fol-
22 lowing circumstances:

23 (i) A parent's act caused the physical injury or physical or
24 sexual abuse and the court finds that there is a reasonable like-
25 lihood that the child will suffer from injury or abuse in the
26 foreseeable future if placed in the parent's home.

1 (ii) A parent who had the opportunity to prevent the
2 physical injury or physical or sexual abuse failed to do so and
3 the court finds that there is a reasonable likelihood that the
4 child will suffer injury or abuse in the foreseeable future if
5 placed in the parent's home.

6 (c) The parent was a respondent in a proceeding brought
7 under this chapter, 182 or more days have elapsed since the issu-
8 ance of an initial dispositional order, and the court, by clear
9 and convincing evidence, finds either of the following:

10 (i) The conditions that led to the adjudication continue to
11 exist and there is no reasonable likelihood that the conditions
12 will be rectified within a reasonable time considering the age of
13 the child.

14 (ii) Other conditions exist that cause the child to come
15 within the jurisdiction of the court, the parent has received
16 recommendations to rectify those conditions, the conditions have
17 not been rectified by the parent after the parent has received
18 notice, a hearing, and been given a reasonable opportunity to
19 rectify the conditions, and there is no reasonable likelihood
20 that the conditions will be rectified within a reasonable time
21 considering the age of the child.

22 (d) The parent of a child has placed the child in a limited
23 guardianship under section 424a of the revised probate code, Act
24 No. 642 of the public acts of 1978, being section 700.424a of the
25 Michigan Compiled Laws, and has substantially failed, without
26 good cause, to comply with a limited guardianship placement plan
27 described in section 424a of Act No. 642 of the Public Acts of

1 1978 regarding the child to the extent that such noncompliance
2 has resulted in a disruption of the parent-child relationship.

3 (e) The parent of a child who has a guardian under the
4 revised probate code, Act No. 642 of the Public Acts of 1978,
5 being sections 700.1 to 700.993 of the Michigan Compiled Laws,
6 has substantially failed, without good cause, to comply with a
7 court-structured plan described in section 424b or 424c of Act
8 No. 642 of the Public Acts of 1978, being sections 700.424b and
9 700.424c of the Michigan Compiled Laws, regarding the child to
10 the extent that such noncompliance has resulted in a disruption
11 of the parent-child relationship.

12 (f) The child has a guardian under the revised probate code,
13 Act No. 642 of the Public Acts of 1978, being sections 700.1 to
14 700.993 of the Michigan Compiled Laws, and both of the following
15 have occurred:

16 (i) The parent, having the ability to support or assist in
17 supporting the minor, has failed or neglected, without good
18 cause, to provide regular and substantial support for the minor
19 for a period of 2 years or more before the filing of the petition
20 or, if a support order has been entered, has failed to substan-
21 tially comply with the order for a period of 2 years or more
22 before the filing of the petition.

23 (ii) The parent, having the ability to visit, contact, or
24 communicate with the minor, has regularly and substantially
25 failed or neglected, without good cause, to do so for a period of
26 2 years or more before the filing of the petition.

1 (g) The parent, without regard to intent, fails to provide
2 proper care or custody for the child and there is no reasonable
3 expectation that the parent will be able to provide proper care
4 and custody within a reasonable time considering the age of the
5 child.

6 (h) The parent is imprisoned for such a period that the
7 child will be deprived of a normal home for a period exceeding 2
8 years, and the parent has not provided for the child's proper
9 care and custody, and there is no reasonable expectation that the
10 parent will be able to provide proper care and custody within a
11 reasonable time considering the age of the child.

12 (i) Parental rights to 1 or more siblings of the child have
13 been terminated due to serious and chronic neglect or physical or
14 sexual abuse, and prior attempts to rehabilitate the parents have
15 been unsuccessful.

16 (4) If a petition to terminate the parental rights to a
17 child is filed, the court may enter an order terminating parental
18 rights under subsection (3) at the initial dispositional
19 hearing.

20 Sec. 28. (1) Before June 1, 1988, the court shall maintain
21 records of all cases brought before it and as provided in the
22 juvenile diversion act, Act No. 13 of the Public Acts of 1988,
23 being sections 722.821 to 722.831 of the Michigan Compiled Laws.
24 The records shall be open only by order of the court to persons
25 having a legitimate interest except that diversion records shall
26 be open only as provided in Act No. 13 of the Public Acts of
27 1988.

1 (2) Beginning June 1, 1988, the court shall maintain records
2 of all cases brought before it and as provided in Act No. 13 of
3 the Public Acts of 1988. Except as otherwise provided in this
4 subsection AND SUBSECTION (3), records of a case brought before
5 the court shall be open to the general public. Diversion records
6 shall be open only as provided in Act No. 13 of the Public Acts
7 of 1988. Except as otherwise provided in section 49 of the crime
8 victim's rights act, Act No. 87 of the Public Acts of 1985, being
9 section 780.799 of the Michigan Compiled Laws, if the hearing of
10 a case brought before the court is closed pursuant to section 17
11 of this chapter, the records of that hearing shall be open only
12 by order of the court to persons having a legitimate interest.

13 (3) RECORDS AND INFORMATION ACQUIRED BY A SPECIAL ADVOCATE
14 AND REPORTS PREPARED BY A SPECIAL ADVOCATE SHALL BE DISCLOSED
15 ONLY PURSUANT TO COURT RULE OR AS PROVIDED BY LAW.

16 (4) ~~(3) Whenever~~ IF the court issues an order in respect
17 to payments by a parent under section 18(2) of this chapter, a
18 copy shall be mailed to the department of treasury. Action taken
19 against parents or adults shall not be released for publicity
20 unless the parents or adults are adjudged guilty of contempt of
21 court. The court shall furnish the department of social services
22 with reports of the administration of the juvenile division in a
23 form as shall be recommended by the Michigan association of pro-
24 bate and juvenile court judges. Copies of these reports shall,
25 upon request, be made available to other state departments by the
26 department of social services.

1 (5) ~~(4)~~ As used in subsections (1) and (2), "persons
2 having a legitimate interest" includes a member of a local foster
3 care review board established under Act No. 422 of the Public
4 Acts of 1984, being sections 722.131 to 722.139A of the Michigan
5 Compiled Laws.

6 SEC. 35. AS USED IN THIS CHAPTER:

7 (A) "LOCAL BOARD" MEANS A GOVERNING BODY ESTABLISHED PURSU-
8 ANT TO SECTION 38 OF THIS CHAPTER FOR A LOCAL PROGRAM.

9 (B) "LOCAL PROGRAM" MEANS A LOCAL CHILD ADVOCACY PROGRAM
10 ESTABLISHED AND ADMINISTERED UNDER THIS CHAPTER.

11 (C) "SPECIAL ADVOCATE" MEANS A COURT APPOINTED SPECIAL ADVO-
12 CATE DESCRIBED IN SECTION 42 OF THIS CHAPTER.

13 (D) "STATE BOARD" MEANS THE STATE CHILD ADVOCACY BOARD CRE-
14 ATED UNDER SECTION 36 OF THIS CHAPTER.

15 SEC. 36. (1) THE STATE CHILD ADVOCACY OFFICE IS CREATED AND
16 IS LOCATED IN THE STATE COURT ADMINISTRATIVE'S OFFICE FOR
17 ADMINISTRATION.

18 (2) THE STATE CHILD ADVOCACY OFFICE SHALL BE GOVERNED BY THE
19 STATE CHILD ADVOCACY BOARD. THE STATE BOARD CONSISTS OF 9 MEM-
20 BERS WHO REFLECT A GEOGRAPHIC CROSS-SECTION OF THE STATE, WHO ARE
21 FROM DIVERSE FIELDS SUCH AS EDUCATION, LAW, MEDICINE, PSYCHOLOGY,
22 AND SOCIAL WORK, AND WHO HAVE DEMONSTRATED AN INTEREST IN CHIL-
23 DREN AND THEIR WELFARE.

24 (3) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS SECTION,
25 THE SUPREME COURT SHALL APPOINT 3 STATE BOARD MEMBERS FOR 1-YEAR
26 TERMS, 3 STATE BOARD MEMBERS FOR 2-YEAR TERMS, AND 3 STATE BOARD
27 MEMBERS FOR 3-YEAR TERMS.

1 (4) THE STATE BOARD SHALL SUBSEQUENTLY APPOINT STATE BOARD
2 MEMBERS TO REPLACE THOSE WHOSE TERMS EXPIRE. STATE BOARD MEMBERS
3 MAY BE REAPPOINTED. AN APPOINTMENT UNDER THIS SUBSECTION IS FOR
4 A 3-YEAR TERM.

5 (5) THE STATE BOARD SHALL DO ALL OF THE FOLLOWING:

6 (A) PROMULGATE RULES AND POLICIES FOR AND OVERSEE THE OPERA-
7 TION OF THE STATE CHILD ADVOCACY OFFICE.

8 (B) APPOINT AND EVALUATE THE PERFORMANCE OF AN ADMINISTRATOR
9 WHO HAS EXPERIENCE IN BOTH LAW AND SOCIAL WORK AND HAS DEMON-
10 STRATED AN INTEREST IN CHILDREN AND THEIR WELFARE.

11 (C) PROMULGATE RULES AND POLICIES NECESSARY TO IMPLEMENT
12 LOCAL PROGRAMS, INCLUDING RULES AND POLICIES THAT FACILITATE THE
13 CREATION AND INCREASE THE EFFECTIVENESS OF LOCAL PROGRAMS AND
14 THAT ESTABLISH THE CRITERIA FOR A LOCAL BOARD'S ELIGIBILITY FOR
15 STATE FUNDS.

16 (D) FOR EACH LOCAL PROGRAM ESTABLISHED PURSUANT TO THE STATE
17 BOARD'S RULES AND POLICIES, APPOINT 3 LOCAL BOARD MEMBERS FOR
18 1-YEAR TERMS, 3 LOCAL BOARD MEMBERS FOR 2-YEAR TERMS, AND 3 LOCAL
19 BOARD MEMBERS FOR 3-YEAR TERMS CONSISTENT WITH SECTION 38 OF THIS
20 CHAPTER.

21 (E) REVIEW THE ADMINISTRATOR'S EVALUATION OF THE EFFECTIVE-
22 NESS OF LOCAL PROGRAMS.

23 (F) IDENTIFY EXISTING AND FUTURE NEEDS OF THE STATE AND
24 LOCAL CHILD ADVOCACY PROGRAMS.

25 (G) MONITOR AND EVALUATE CHILD SERVICES AND REPORT TO THE
26 LEGISLATURE ANNUALLY ON THE NEED FOR IMPROVED CHILD SERVICES.

1 SEC. 37. THE ADMINISTRATOR APPOINTED UNDER SECTION 36 OF
2 THIS CHAPTER SHALL DO ALL OF THE FOLLOWING:

3 (A) IMPLEMENT THE RULES AND POLICIES OF THE STATE BOARD.

4 (B) PROPOSE RULES TO THE STATE BOARD ESTABLISHING CRITERIA
5 FOR A LOCAL BOARD'S ELIGIBILITY FOR STATE FUNDS.

6 (C) CONSULT WITH AND ASSIST GROUPS INTERESTED IN ESTABLISH-
7 ING A LOCAL PROGRAM.

8 (D) REVIEW APPLICATIONS FOR FUNDS BY LOCAL PROGRAMS AND DIS-
9 TRIBUTE STATE FUNDS TO THOSE THAT QUALIFY.

10 (E) DEVELOP A SPECIAL ADVOCATE TRAINING MANUAL AND TRAINING
11 PROGRAM.

12 (F) APPROVE LOCAL SPECIAL ADVOCATE TRAINING PROGRAMS.

13 (G) EVALUATE AND REPORT TO THE STATE BOARD ON THE EFFECTIVE-
14 NESS OF LOCAL PROGRAMS.

15 SEC. 38. (1) AN INTERESTED GROUP MAY ESTABLISH A LOCAL PRO-
16 GRAM CONSISTENT WITH THE RULES AND POLICIES OF THE STATE BOARD.
17 EACH LOCAL PROGRAM SHALL BE GOVERNED BY A LOCAL BOARD INITIALLY
18 APPOINTED PURSUANT TO SECTION 36 OF THIS CHAPTER. A LOCAL BOARD
19 CONSISTS OF 9 MEMBERS FROM THE COMMUNITY SERVED BY THE LOCAL PRO-
20 GRAM WHO ARE FROM DIVERSE FIELDS SUCH AS EDUCATION, LAW, MEDI-
21 CINE, PSYCHOLOGY, AND SOCIAL WORK AND WHO HAVE DEMONSTRATED AN
22 INTEREST IN CHILDREN AND THEIR WELFARE. AT LEAST 1 LOCAL BOARD
23 MEMBER SHALL BE A PROBATE JUDGE OR HIS OR HER DESIGNEE.

24 (2) A LOCAL BOARD SHALL APPOINT LOCAL BOARD MEMBERS TO
25 REPLACE THOSE WHOSE TERMS EXPIRE. LOCAL BOARD MEMBERS MAY BE
26 REAPPOINTED. AN APPOINTMENT UNDER THIS SECTION IS FOR A 3-YEAR
27 TERM.

1 (3) A LOCAL BOARD SHALL DO ALL OF THE FOLLOWING:

2 (A) APPOINT AND EVALUATE THE PERFORMANCE OF A DIRECTOR WHO
3 HAS TRAINING AND EXPERIENCE IN CHILD DEVELOPMENT AND PERMANENCY
4 PLANNING FOR CHILDREN AND WHO IS FAMILIAR WITH THE PROBATE COURT,
5 CHILD WELFARE AGENCIES, AND OTHER COMMUNITY RESOURCES AVAILABLE.

6 (B) PROMOTE EFFECTIVE RELATIONSHIPS BETWEEN THE LOCAL PRO-
7 GRAM AND THE PROBATE COURT, LOCAL AGENCIES, AND THE COMMUNITY.

8 (C) ESTABLISH POLICIES FOR OPERATING THE LOCAL PROGRAM CON-
9 SISTENT WITH STATE LAW AND THE STATE BOARD RULES AND POLICIES.

10 (D) RAISE FUNDS TO SUPPLEMENT ALLOCATED STATE FUNDS.

11 (E) COOPERATE WITH THE STATE BOARD'S EFFORTS TO OBTAIN NEC-
12 ESSARY RESOURCES AND SERVICES FOR CHILDREN.

13 SEC. 39. A DIRECTOR APPOINTED PURSUANT TO SECTION 38 OF
14 THIS CHAPTER SHALL DO ALL OF THE FOLLOWING:

15 (A) ADMINISTER THE LOCAL PROGRAM.

16 (B) APPLY FOR STATE AND LOCAL FUNDS FOR WHICH THE LOCAL PRO-
17 GRAM IS ELIGIBLE.

18 (C) ESTABLISH LOCAL RULES AND POLICIES AS NECESSARY TO SUP-
19 PLEMENT THE STATE BOARD'S TRAINING MANUAL AND TRAINING PROGRAM.

20 (D) APPOINT AS NEEDED UNDER SECTION 41 OF THIS CHAPTER STAFF
21 ATTORNEYS WHO HAVE EXPERIENCE AND A PROVEN INTEREST IN CHILD
22 WELFARE.

23 (E) RECRUIT, SELECT, TRAIN, SUPERVISE, AND DISMISS SPECIAL
24 ADVOCATES. THE DIRECTOR SHALL MAKE ALL FINAL DETERMINATIONS
25 REGARDING A SPECIAL ADVOCATE'S PARTICIPATION IN THE LOCAL
26 PROGRAM. A PERSON QUALIFIED TO BE A SPECIAL ADVOCATE, HOWEVER,
27 SHALL NOT BE DISCRIMINATED AGAINST BASED ON AGE, ETHNIC ORIGIN,

1 MARITAL STATUS, RACE, RELIGION, GENDER, SEXUAL ORIENTATION, OR
2 SOCIOECONOMIC STATUS.

3 (F) ASSIGN A SPECIAL ADVOCATE TO EACH CASE PURSUANT TO
4 SECTION 43 OF THIS CHAPTER.

5 (G) EMPLOY CLERICAL STAFF AS REQUIRED.

6 SEC. 40. THE DIRECTOR MAY APPOINT 1 OR MORE COORDINATORS TO
7 ASSIST THE DIRECTOR IN RECRUITING, TRAINING, AND SUPERVISING SPE-
8 CIAL ADVOCATES. A COORDINATOR MAY BE A VOLUNTEER OR PAID STAFF
9 MEMBER.

10 SEC. 41. (1) EACH LOCAL PROGRAM SHALL HAVE AT LEAST 1 STAFF
11 ATTORNEY.

12 (2) A STAFF ATTORNEY MAY BE A VOLUNTEER OR MAY BE PAID.

13 (3) A STAFF ATTORNEY SHALL PROVIDE LEGAL CONSULTATION TO
14 SPECIAL ADVOCATES, THE DIRECTOR, AND THE LOCAL BOARD IN CONNEC-
15 TION WITH THE LOCAL PROGRAM AND SHALL ATTEND ALL HEARINGS AT
16 WHICH AN ASSIGNED SPECIAL ADVOCATE REQUIRES LEGAL ASSISTANCE.

17 SEC. 42. (1) A SPECIAL ADVOCATE IS A VOLUNTEER WHO IS AT
18 LEAST 21 YEARS OF AGE AND HAS A DEMONSTRATED INTEREST IN CHILDREN
19 AND THEIR WELFARE. A SPECIAL ADVOCATE MUST HAVE RELIABLE
20 TRANSPORTATION.

21 (2) TO DETERMINE HIS OR HER FITNESS FOR SPECIAL ADVOCATE
22 RESPONSIBILITIES, A SPECIAL ADVOCATE APPLICANT SHALL PARTICIPATE
23 IN INTERVIEWS WITH THE DIRECTOR OR COORDINATOR AND CONSENT TO A
24 CRIMINAL RECORD CHECK.

25 (3) A SPECIAL ADVOCATE SHALL COMMIT TO AT LEAST 1 YEAR OF
26 SERVICE.

1 (4) BEFORE ASSIGNMENT TO A CASE, A SPECIAL ADVOCATE MUST
2 SUCCESSFULLY COMPLETE THE TRAINING PROGRAM APPROVED BY THE
3 ADMINISTRATOR. THE SPECIAL ADVOCATE SHALL PARTICIPATE IN SUBSE-
4 QUENT TRAINING PRESCRIBED BY THE DIRECTOR.

5 (5) THE DIRECTOR OR A COORDINATOR IS THE SPECIAL ADVOCATE'S
6 SUPERVISOR. THE SPECIAL ADVOCATE SHALL CONFER REGULARLY WITH HIS
7 OR HER SUPERVISOR AND INFORM THE SUPERVISOR OF DEVELOPMENTS IN A
8 CASE. THE SPECIAL ADVOCATE SHALL SUBMIT ALL RECOMMENDATIONS AND
9 REPORTS TO THE SUPERVISOR FOR REVIEW BEFORE SUBMISSION TO THE
10 COURT.

11 SEC. 43. (1) IF THE COURT APPOINTS THE LOCAL PROGRAM TO
12 REPRESENT THE CHILD PURSUANT TO SECTION 17D OF THIS CHAPTER, THE
13 DIRECTOR SHALL ASSIGN AN INDIVIDUAL SPECIAL ADVOCATE TO THE
14 CASE. THE DIRECTOR SHALL CONSIDER THE SPECIAL ADVOCATE'S WISHES,
15 QUALIFICATIONS, CASELOAD, AND AVAILABILITY.

16 (2) THE ASSIGNED SPECIAL ADVOCATE IS A PARTY TO THE PROCEED-
17 ING AND IS ENTITLED TO NOTICE OF ALL HEARINGS AND SERVICE OF ALL
18 DOCUMENTS AS PROVIDED BY COURT RULES. THE SPECIAL ADVOCATE SHALL
19 FILE AN APPEARANCE IN THE PROCEEDING THAT CONTAINS A STATEMENT
20 DISCLOSING ANY INTEREST THE SPECIAL ADVOCATE HOLDS IN RELATION TO
21 THE CHILD, THE CHILD'S FAMILY, OR ANY OTHER PERSON IN THE PRO-
22 CEEDING, AND DISCLOSING OTHER MATTERS AS DIRECTED BY THE COURT.

23 (3) THE SPECIAL ADVOCATE'S APPOINTMENT TO A CASE CONTINUES
24 WHILE THE COURT HAS JURISDICTION OVER THE CHILD AND THROUGH ALL
25 APPEALS. THE COURT OR THE DIRECTOR MAY DISCHARGE THE SPECIAL
26 ADVOCATE AT ANY TIME, HOWEVER, AFTER WHICH THE DIRECTOR SHALL
27 APPOINT A REPLACEMENT.

1 SEC. 44. (1) A SPECIAL ADVOCATE ASSIGNED TO A CASE SHALL DO
2 ALL OF THE FOLLOWING:

3 (A) ASCERTAIN AND COMPETENTLY REPRESENT THE CHILD'S
4 INTERESTS. A CHILD 14 YEARS OF AGE OR OLDER IS PRESUMED CAPABLE
5 OF DETERMINING WHAT IS IN HIS OR HER OWN BEST INTERESTS, AND THE
6 SPECIAL ADVOCATE SHALL REPRESENT THE CHILD'S WISHES IN THOSE
7 CIRCUMSTANCES. IF THE CHILD IS LESS THAN 14 YEARS OF AGE, THE
8 SPECIAL ADVOCATE SHALL DETERMINE AND REPRESENT THE CHILD'S BEST
9 INTERESTS REGARDLESS OF WHETHER THE DETERMINATION REFLECTS THE
10 CHILD'S WISHES. THE CHILD'S WISHES, HOWEVER, ARE RELEVANT TO THE
11 SPECIAL ADVOCATE'S DETERMINATION OF THE CHILD'S INTERESTS OR BEST
12 INTERESTS, AND SHALL BE WEIGHED ACCORDING TO THE CHILD'S COMPE-
13 TENCE AND MATURITY.

14 (B) APPEAR AT ALL HEARINGS IN THE CASE.

15 (C) CONDUCT AN INDEPENDENT INVESTIGATION TO ASCERTAIN THE
16 FACTS AND CIRCUMSTANCES UNDERLYING THE ALLEGATION THAT THE CHILD
17 IS WITHIN THE COURT'S JURISDICTION UNDER SECTION 2(B) OF THIS
18 CHAPTER. THE INVESTIGATION SHALL INCLUDE INTERVIEWS WITH THE
19 CHILD, THE CHILD'S SIBLINGS, THE PARENTS, SOCIAL WORKERS, AND ALL
20 OTHER PERSONS NECESSARY FOR A PROPER DETERMINATION.

21 (D) SUBMIT WRITTEN REPORTS OF THE SPECIAL ADVOCATE'S FIND-
22 INGS AND RECOMMENDATIONS TO THE COURT AT ADJUDICATORY, DISPOSI-
23 TIONAL, AND REVIEW HEARINGS.

24 (E) URGE THE COURT TO ENTER SPECIFIC AND CLEAR ORDERS FOR
25 EVALUATION, ASSESSMENT, SERVICES, AND TREATMENT FOR THE CHILD AND
26 THE CHILD'S FAMILY.

1 (F) MONITOR THE IMPLEMENTATION OF CASE PLANS AND
2 DISPOSITIONAL ORDERS TO DETERMINE WHETHER SERVICES ORDERED BY THE
3 COURT FOR THE CHILD OR THE CHILD'S FAMILY ARE ACTUALLY PROVIDED
4 IN A TIMELY MANNER AND ARE ACCOMPLISHING THEIR PURPOSE. THE SPE-
5 CIAL ADVOCATE SHALL INFORM THE COURT IF THE SERVICES ARE NOT
6 BEING PROVIDED IN A TIMELY MANNER, IF THE FAMILY FAILS TO TAKE
7 ADVANTAGE OF THE SERVICES, OR IF THE SERVICES ARE NOT ACHIEVING
8 THEIR PURPOSE.

9 (G) IDENTIFY THE COMMON INTERESTS AMONG THE PARTIES AND ACT
10 AS A MEDIATOR TO THE EXTENT POSSIBLE TO PROMOTE A COOPERATIVE
11 RESOLUTION OF THE MATTER.

12 (H) CONSULT LIBERALLY WITH THE LOCAL PROGRAM STAFF AND OTHER
13 PROFESSIONALS TO IDENTIFY THE CHILD'S INTERESTS, CURRENT AND
14 FUTURE PLACEMENTS, AND NECESSARY SERVICES.

15 (I) ADVOCATE FOR THE CHILD'S INTERESTS IN THE MENTAL HEALTH,
16 EDUCATIONAL, JUVENILE JUSTICE, AND OTHER COMMUNITY SYSTEMS WHEN
17 RELATED TO THE CIRCUMSTANCES BRINGING THE CHILD WITHIN THE
18 COURT'S JURISDICTION UNDER SECTION 2(B) OF THIS CHAPTER.

19 (2) THIS SECTION DOES NOT REQUIRE OR PERMIT THE PRACTICE OF
20 LAW BY A SPECIAL ADVOCATE WHO IS NOT LICENSED TO PRACTICE LAW.

21 SEC. 45. THE STATE CHILD ADVOCACY OFFICE, THE STATE BOARD,
22 A LOCAL BOARD, A MEMBER OF THE STATE OR A LOCAL BOARD, THE ADMIN-
23 ISTRATOR, A DIRECTOR, A COORDINATOR, A STAFF ATTORNEY, OR A SPE-
24 CIAL ADVOCATE IS NOT CIVILLY LIABLE FOR AN ACT OR OMISSION IN
25 CONNECTION WITH THE OPERATION OF THE STATE CHILD ADVOCACY OFFICE
26 OR A LOCAL PROGRAM UNDER THIS CHAPTER IF THE BODY OR PERSON ACTS
27 IN GOOD FAITH AND IS NOT GUILTY OF GROSS NEGLIGENCE.