

(3) All invoices, bills of lading, sales receipts, or other documents related to cigarette sales conducted through the internet, by telephone, or in a mail-order transaction shall contain the current seller's valid Michigan sales tax registration number, business name and address of the seller, and a statement as to whether all sales taxes and taxes levied under this act have been paid. All packages of cigarettes shipped from a cigarette seller to purchasers who reside in Michigan shall clearly print or stamp the package with the word "CIGARETTES" on the outside of all sides of the package so it is clearly visible to the shipper. In addition, the package shall contain an externally visible and clearly legible notice located on the same side of the package as the address to which the package is delivered, as follows:

**"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."**

If an order is made as a result of advertisement over the internet, the tobacco retailer shall request the electronic mail address of the purchaser and shall receive payment by credit card or check before shipping. This subsection and subsection (2) do not apply to sales by wholesalers and unclassified acquirers.

(4) The deliverer of the cigarettes is required to obtain proof from a valid government-issued document that the person signing for the cigarettes is the purchaser.

(5) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and services licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Internet" means the connection to the world wide web through the use of a computer, a computer network, or a computer system.

(h) “Sale conducted through the internet” means a sale of, a solicitation to sell, a purchase of, or an offer to purchase cigarettes conducted all or in part by accessing an internet website.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 475]**

**(SB 1444)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending sections 13a, 13b, 17d, and 18 of chapter XIIA (MCL 712A.13a, 712A.13b, 712A.17d, and 712A.18), section 13a as amended by 2000 PA 55, section 13b as amended by 2000 PA 46, section 17d as added by 1998 PA 480, and section 18 as amended by 2004 PA 221.

*The People of the State of Michigan enact:*

CHAPTER XIIA

**712A.13a Definitions; petition; release of juvenile; order removing abusive person from home; placement of child; duty of court to inform parties; criminal record check and central registry clearance; family-like setting; parenting time; review and modification of orders and plans; release of information; information included with order; “abuse” defined.**

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, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile’s care and supervision.

(b) “Agency case file” means the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been

removed from the home or the family independence agency or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.

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

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

(e) “Foster care” means care provided to a juvenile in a foster family home, foster family group home, or child caring institution licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a juvenile in a relative’s home under a court order.

(f) “Guardian ad litem” means an individual whom the court appoints to assist the court in determining the child’s best interests. A guardian ad litem does not need to be an attorney.

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

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

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

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

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

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

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

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

(i) “Permanent foster family agreement” means an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the family independence agency, which agreement is among all of the following:

(i) The child.

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

(iii) The foster family.

(iv) The child placing agency responsible for the child’s care in foster care.

(j) “Relative” means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent,

aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.

(2) If a juvenile is alleged to be 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 court may authorize the petition 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. If a petition is before the court because the family independence agency is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

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

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

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

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

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

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

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

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

(a) The court may require the alleged abusive parent to pay appropriate support to maintain a suitable home environment for the juvenile during the duration of the order.

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

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

(8) If the court orders placement of the juvenile outside the juvenile's home, the court shall inform the parties of the following:

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

(b) The general elements of an initial services plan as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

(11) If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

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

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

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

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

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

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

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

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

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

(d) Maltreatment of a juvenile.

**712A.13b Change in foster care placement.**

Sec. 13b. (1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

(a) The person providing the foster care requests or agrees to the change.

(b) Even though the person providing the foster care objects to a proposed change in placement, 1 of the following applies:

(i) The court orders the child returned home.

(ii) The change in placement is less than 30 days after the child's initial removal from his or her home.

(iii) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.

(iv) The change in placement is in accordance with other provisions of this section.

(2) Except as provided in subsections (1) and (7), before a change in foster care placement takes effect, the agency shall do all of the following:

(a) Notify the state court administrative office of the proposed change in placement.

(b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.

(3) Upon receipt of an appeal from foster parents under subsection (2) or (7), the foster care review board shall investigate the change in foster care placement within 7 days and shall report its findings and recommendations within 3 days after completion of the investigation to the court or, if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, to the foster care parents, to the parents, and to the agency.

(4) If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

(5) If after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. The agency shall not return a child to a placement from which the child was removed under subsection (7) unless the court orders that placement's restoration under subsection (6) or the MCI superintendent approves that placement's restoration under this subsection. The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the board's and agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case. The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to a hearing required by this subsection. Within 14 days after notification under this subsection, the MCI superintendent shall make a decision regarding the child's placement and shall inform each interested party what the decision is.



(6) After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.

(7) If the agency has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, he or she may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.

(8) At the time of or immediately following a child's removal under subsection (7), the agency shall inform the foster parents about the removal and that, if they disagree with the decision, they may appeal within 3 days to a foster care review board in the manner provided in subsection (7). The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

#### **712A.17d Lawyer-guardian ad litem; powers and duties.**

Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.

(d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:

(i) Before the pretrial hearing.

(ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.

(iii) Before a dispositional review hearing.

(iv) Before a permanency planning hearing.

(v) Before a post-termination review hearing.

(vi) At least once during the pendency of a supplemental petition.

(vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.

(e) The court may allow alternative means of contact with the child if good cause is shown on the record.

(f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(h) To attend all hearings and substitute representation for the child only with court approval.

(i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.

(l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.

**712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in MCL 28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order; costs; remittance.**

Sec. 18. (1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this



chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile's parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the juvenile on probation, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in this subdivision, "related" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile. The court may order that the juvenile participate in a juvenile drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. The court also shall order, as a condition of probation or supervision, that the juvenile shall pay the minimum state cost prescribed by section 18m of this chapter.

(c) If a juvenile is within the court's jurisdiction under section 2(a) of this chapter, or under section 2(h) of this chapter for a supplemental petition, place the juvenile in a suitable foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available.

Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items the court determines are necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by this subdivision, it may dismiss the petition under this chapter.

(i) Order the juvenile to engage in community service.

(j) If the court finds that a juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29 of this chapter.

(k) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.

(l) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

(i) Placement in a juvenile boot camp will benefit the juvenile.

(ii) The juvenile is physically able to participate in the program.

(iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.

(iv) The juvenile will not be a danger to other juveniles in the boot camp.

(v) There is an opening in a juvenile boot camp program.

(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program.

(m) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under sections 115f to 115m of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, the amount shall not exceed the amount of the support subsidy. The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from

care outside the juvenile's own home and under state, county juvenile agency, or court supervision. Twenty-five percent of all amounts collected under an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected under an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision. The court may also collect from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(3) An order of disposition placing a juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of this chapter and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may require in an order entered under this section that the juvenile, parent, guardian, or custodian reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court, shall create guidelines that the court may use in determining the ability of the juvenile, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines shall take into account both the income and resources of the juvenile, parent, guardian, or custodian.

(7) If the court finds that a juvenile comes under section 30 of this chapter, the court shall order the juvenile or the juvenile's parent to pay restitution as provided in sections 30 and 31 of this chapter and in sections 44 and 45 of the crime victim's rights act, 1985 PA 87, MCL 780.794 and 780.795.

(8) If the court imposes restitution as a condition of probation, the court shall require the juvenile to do either of the following as an additional condition of probation:

(a) Engage in community service or, with the victim's consent, perform services for the victim.

(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

(9) If the court finds that the juvenile is in intentional default of the payment of restitution, a court may, as provided in section 31 of this chapter, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a juvenile who is ordered to

engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

(10) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of 1925 PA 289, MCL 28.241a, or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken and forwarded as required by section 3 of 1925 PA 289, MCL 28.243, and as required by the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's fingerprints can be taken and forwarded.

(b) Order the juvenile committed to the sheriff's custody for taking and forwarding the juvenile's fingerprints.

(11) Upon final disposition, conviction, acquittal, or dismissal of an offense within the court's jurisdiction under section 2(a)(1) of this chapter, using forms approved by the state court administrator, the clerk of the court entering the final disposition, conviction, acquittal, or dismissal shall immediately advise the department of state police of that final disposition, conviction, acquittal, or dismissal as required by section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition or sentence imposed.

(12) If the court enters an order of disposition based on an act that is a juvenile offense as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act. If the court enters a judgment of conviction under section 2d of this chapter for an offense that is a felony, serious misdemeanor, or specified misdemeanor as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act.

(13) If the court has entered an order of disposition or a judgment of conviction for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court, the family independence agency, or the county juvenile agency shall register the juvenile or accept the juvenile's registration as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(14) If the court enters an order of disposition placing a juvenile in a juvenile boot camp program, or committing a juvenile to a county juvenile agency for placement in a juvenile boot camp program, and the court receives from the family independence agency a report that the juvenile has failed to perform satisfactorily in the program, that the juvenile does not meet the program's requirements or is medically unable to participate in the program for more than 25 days, that there is no opening in a juvenile boot camp program, or that the county juvenile agency is unable to place the juvenile in a juvenile boot camp program, the court shall release the juvenile from placement or commitment and enter an alternative order of disposition. A juvenile shall not be placed in a juvenile boot camp under an order of disposition more than once, except that a juvenile returned to the court for a medical condition, because there was no opening in a juvenile boot camp program, or because the county juvenile agency was unable to place the juvenile in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected, an opening becomes available, or the county juvenile agency is able to place the juvenile.

(15) If the juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a listed offense as defined in section 2(e)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an

individual who is less than 18 years of age. If so, the order of disposition is for a listed offense as defined in section 2(e)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the order of disposition.

(16) The court shall not impose a sentence of imprisonment in the county jail under subsection (1)(m) unless the present county jail facility for the juvenile's imprisonment would meet all requirements under federal law and regulations for housing juveniles. The court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.

(17) In a proceeding under section 2(h) of this chapter, this section only applies to a disposition for a violation of a personal protection order and subsequent proceedings.

(18) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, the court shall order the juvenile to pay costs as provided in section 18m of this chapter.

(19) A juvenile who has been ordered to pay the minimum state cost as provided in section 18m of this chapter as a condition of probation or supervision and who is not in willful default of the payment of the minimum state cost may petition the court at any time for a remission of the payment of any unpaid portion of the minimum state cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum state cost due or modify the method of payment.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 476]**

**(SB 1441)**

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties," by amending section 19c of chapter XIIA (MCL 712A.19c), as amended by 2000 PA 46.

*The People of the State of Michigan enact:*

CHAPTER XIIA

**712A.19c Review hearing of child's placement after termination of parental rights; applicability of section.**

Sec. 19c. (1) Except as provided in section 19(4) and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court



shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

- (a) The appropriateness of the permanency planning goal for the child.
- (b) The appropriateness of the child's placement.
- (c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

(2) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 477]**

**(SB 1440)**

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in



the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending section 19 of chapter XIIA (MCL 712A.19), as amended by 1998 PA 530.

*The People of the State of Michigan enact:*

#### CHAPTER XIIA

### **712A.19 Termination of cause; supplemental order of disposition; review hearing; notice of review hearing; factors to be reviewed; modification of plan; determination as to placement; order; determination as to review; issuance of order without hearing; access to agency report; agency report and other information as evidence.**

Sec. 19. (1) Subject to section 20 of this chapter, if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a “supplemental order of disposition”. If the agency becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a supplemental petition with the court.

(2) Except as provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court’s discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(3) Except as otherwise provided in subsection (4), if, in a proceeding under section 2(b) of this chapter, a child is subject to the jurisdiction of the court and removed from his or her home, a review hearing shall be held not more than 182 days after the child’s removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court’s discretion, a review hearing

may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(4) If a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon the motion of any party or at the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

(5) Written notice of a review hearing under subsection (2), (3), or (4) shall be served upon all of the following:

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

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

(c) If the parental rights to the child have not been terminated, the child's parents.

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

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

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

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

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

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

(j) Other persons as the court may direct.

(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be

placed in foster care or that caused the child to remain in foster care. The court may modify any part of the case service plan including, but not limited to, the following:

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

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

(8) At a review hearing under subsection (2), (3), or (4), the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

(9) If in a proceeding under section 2(b) of this chapter a child is placed in foster care, the court shall determine at the dispositional hearing and each review hearing whether the cause should be reviewed before the next review hearing required by subsection (2), (3), or (4). In making this determination, the court shall consider at least all of the following:

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

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by subsection (2), (3), or (4).

(10) Unless waived, if not less than 7 days' notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.

(11) An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 478]**

**(SB 773)**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 145c (MCL 750.145c), as amended by 2002 PA 629.

*The People of the State of Michigan enact:*

**750.145c Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.**

Sec. 145c. (1) As used in this section:

(a) “Appears to include a child” means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(i) It was created using a depiction of any part of an actual person under the age of 18.

(ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) “Child” means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) “Commercial film or photographic print processor” means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) “Computer technician” means a person who installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.

(e) “Contemporary community standards” means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(f) “Erotic fondling” means touching a person’s clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(g) “Erotic nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, “lascivious” means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(h) “Listed sexual act” means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(i) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person’s own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(j) “Passive sexual involvement” means an act, real or simulated, that exposes another person to or draws another person’s attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing

any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(k) “Prurient interest” means a shameful or morbid interest in nudity, sex, or excretion.

(l) “Child sexually abusive activity” means a child engaging in a listed sexual act.

(m) “Child sexually abusive material” means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(n) “Sadomasochistic abuse” means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(o) “Sexual excitement” means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(p) “Sexual intercourse” means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be

expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, a commercial film or photographic print processor acting pursuant to subsection (8), or a computer technician acting pursuant to subsection (9).

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to a law enforcement agency having jurisdiction; or keeps the film, photograph, movie film, videotape, negative, or slide according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) If a computer technician reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of an electronic visual image, computer-generated image or picture or sound recording depicting a person that the computer technician has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of that image, picture, or sound recording to the law enforcement agency; or keeps the image, picture, or sound recording according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the computer technician shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the computer technician acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(10) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(11) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 479]**

**(HB 4788)**

AN ACT to establish the Michigan housing and community development fund in the department of treasury; to provide for the administration of the fund; to provide for the deposit of certain money in that fund; to provide for the distribution of the money in that fund and to limit the use of the money in that fund; and to prescribe the powers and duties of certain state officials.

*The People of the State of Michigan enact:*

**125.2821 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan housing and community development fund act".

**125.2822 Definitions.**

Sec. 2. As used in this act:

(a) "Authority" means the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421.

(b) "Department" means the department of treasury.



(c) “Eligible applicant” means that term as defined in section 58 of the Michigan state housing development authority act of 1966, 1966 PA 346, MCL 125.1458.

(d) “Low income household”, “very low income household”, and “extremely low income household” mean those terms as defined in section 58 of the Michigan state housing development authority act of 1966, 1966 PA 346, MCL 125.1458.

(e) “Michigan housing and community development fund” or “fund” means the Michigan housing and community development fund created in section 3.

### **125.2823 Michigan housing and community development fund; creation as separate fund; administration; amounts credited to fund; investment; availability of funds for disbursement.**

Sec. 3. (1) The Michigan housing and community development fund is created as a separate fund in the department.

(2) The fund shall be administered by the authority, and money in the fund shall be expended only as provided in this act.

(3) The department shall credit to the fund all amounts appropriated for the purposes under this act and any money received as contributions for purposes under this act.

(4) The state treasurer shall invest the money in the fund and credit the earnings from the investments to the fund.

(5) Money appropriated or money received as a contribution to the fund shall be available for disbursement upon appropriation.

### **125.2824 Disposition of amounts.**

Sec. 4. Notwithstanding another allocation or disbursement, an amount equal to the cumulative contribution made to the fund, less an amount appropriated to the department for the purpose of implementing this act, shall be deposited in the fund and shall be appropriated annually solely for the purpose of the fund.

### **125.2825 Allocation of funds to eligible applicants for housing projects; conditions.**

Sec. 5. (1) Money in the fund shall be allocated to eligible applicants for housing projects if the eligible applicant has conducted a market study or review to ensure that there is a demand and need for the housing project proposed.

(2) Housing developed with money from the fund shall be consistent in nature with housing already provided in the area to be developed.

(3) The authority shall encourage housing projects that are part of a planned community revitalization strategy.

### **125.2826 Use of funds.**

Sec. 6. (1) Money from the fund shall be used to provide grants, mortgage loans, and other loans including, but not limited to, construction loans, bridge loans, and predevelopment loans to provide housing for low income, very low income, and extremely low income households.

(2) Money from the fund may be used to provide single-family or multifamily housing.

(3) A portion of the allocation each year, as determined by the authority, shall be used to provide housing for all of the following:

(a) Homeless persons.

(b) Persons with physical and mental disabilities.

(c) Persons living in distressed or rural areas.

(4) Money in the fund may be used according to the provisions of section 58c(1) of the Michigan state housing development authority act of 1966, 1966 PA 346, MCL 125.1458c.

### **125.2827 Priorities.**

Sec. 7. (1) The authority shall develop annual priorities based on the allowable purposes under section 6 and allocate the money in the fund based upon those priorities.

(2) Each year, the authority shall hold public hearings in at least 3 separate locations throughout this state on the priorities and draft allocation plan for the upcoming year.

### **125.2828 Allocation plan; formula.**

Sec. 8. (1) The authority shall develop an allocation plan each year based on the annual priorities developed under section 7 that includes, but is not limited to, how the authority will identify, select, and make financing available to applicants to develop fundable projects. The plan shall include how the authority will allocate money to provide technical assistance to eligible applicants.

(2) The allocation plan shall include all of the following:

(a) A list of the organizations and types of organizations eligible to receive money from the fund.

(b) Any preference for identified special population groups.

(c) Any geographic targeting in designated revitalization areas including, but not limited to, the authority's neighborhood preservation program areas, renaissance zones, federally designated empowerment and enterprise zones, and community or homeownership zones.

(d) The allocation funding formula as prescribed in subsection (3).

(3) The authority shall determine a formula for allocating money throughout the state using all of the following factors:

(a) The number of persons in poverty in a geographic area.

(b) The level of housing distress in a geographic area.

(c) Any other factor that supports the need for affordable housing as determined by the authority and included in the allocation plan.

### **125.2829 Availability of remaining balance in fund.**

Sec. 9. Any balance remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall remain in the fund and continue to be available for the purposes authorized in this act.

### **Conditional effective date.**

Enacting section 1. This act does not take effect unless House Bill No. 4787 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 480]****(HB 4787)**

AN ACT to amend 1966 PA 346, entitled “An act to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments in lieu of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act,” (MCL 125.1401 to 125.1499e) by amending the title, as amended by 1984 PA 215, and by adding chapter 3A.

*The People of the State of Michigan enact:*

## TITLE

An act to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to create certain other funds and provide for the expenditure of certain funds; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments instead of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act.

## CHAPTER 3A

**125.1458 Definitions.**

Sec. 58. (1) The definitions in section 11 apply to this chapter unless otherwise provided in this chapter.

(2) As used in this chapter:

- (a) “Adjusted household income” means that term as defined in rules of the authority.
- (b) “Affordable housing” means residential housing that is occupied by low income, very low income, or extremely low income households, and results in monthly housing costs equal to no more than approximately 1/3 of the adjusted household income of the occupying household.
- (c) “Eligible applicant” means a not-for-profit corporation, a for-profit corporation, or a partnership that is approved by the authority and that is organized for the purpose of developing and supporting affordable housing for low income, very low income, or extremely low income households.
- (d) “Extremely low income household” means a person, a family, or unrelated persons living together whose adjusted household income is not more than 25% of the median income, as determined by the authority.

(e) “Fund” means the Michigan housing and community development fund created in section 58a.

(f) “Low income household” means a person, a family, or unrelated persons living together whose adjusted household income is more than 50% but not more than 60% of the median income, as determined by the authority.

(g) “Multifamily housing” means a building or buildings providing housing to 2 or more households, none of which is owner occupied.

(h) “Very low income household” means a person, a family, or unrelated persons living together whose adjusted household income is more than 25% but not more than 50% of the median income, as determined by the authority.

**125.1458a Michigan housing and community development fund; creation; administration; credit of revenues; carrying over balances from end of fiscal year.**

Sec. 58a. (1) The Michigan housing and community development fund is created in the department of treasury. The fund shall be administered by the authority and shall be expended only as provided in this chapter.

(2) The state treasurer shall credit to the fund all of the following:

(a) All receipts, including, but not limited to, dividends and interest on the investment of money in the fund and principal and interest payments from loans or agreements made from the fund.

(b) All proceeds of assets received by the authority as a result of the default of loans or agreements made under this chapter.

(c) All appropriations, grants, or gifts of money or property made to the fund.

(d) All fees or charges collected by the authority pursuant to activities authorized under this chapter.

(e) Other revenue as provided by law.

(3) All balances in the fund at the end of a fiscal year shall be carried over as a part of the fund and shall not revert to the general fund of the state.

**125.1458b Michigan housing and community development program; creation and implementation; purpose; availability of financing to eligible applicants; rules; annual plan; public hearings; annual report.**

Sec. 58b. (1) The authority shall create and implement the Michigan housing and community development program for the purpose of developing and coordinating public and private resources to meet the affordable housing needs of low income, very low income, and extremely low income households in this state.

(2) The authority shall identify, select, and make financing available to eligible applicants from money in the fund or from money secured by the fund for affordable housing for low income, very low income, and extremely low income households. This subsection does not preclude the authority from using other resources in conjunction with the fund for a purpose authorized under this chapter.

(3) The authority shall promulgate rules according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, providing for the terms and conditions under which assistance made under this chapter shall be recaptured.

(4) The authority shall develop an annual plan providing for the allocation of money from the fund, according to all of the following:

(a) The allocation plan shall contain a formula for distributing money throughout the state based on the number of persons experiencing poverty and housing distress in various regions of the state.

(b) The allocation plan shall identify eligible applicants, preference for special population groups described in section 58c(2), and preference for geographic targeting in designated revitalization areas including, but not limited to, neighborhood preservation areas, state renaissance zones, core communities, and federally-designated enterprise community or homeownership zones.

(c) Not less than 25% of the fund shall be earmarked for rental housing projects that do not qualify under preferences for special population groups, geographic preferences, or other preferences contained in the allocation plan.

(d) Not less than 30% of the fund shall be earmarked for projects that target extremely low income households and include at a minimum both of the following activities:

(i) Developing housing for the homeless, transitional housing, and permanent housing.

(ii) Providing security deposits, supportive services, and technical assistance to eligible applicants.

(e) A rental housing project assisted by the fund must provide affordable housing for households earning no more than 60% of the median income.

(f) A home ownership project assisted by the fund must provide affordable housing for households earning no more than 60% of the median income.

(g) Money that has not been committed at the end of a fiscal year shall not be carried over in the category to which the money had been allocated during that fiscal year, but shall be reallocated for the next fiscal year according to the next fiscal year's allocation plan.

(5) Each year, the authority shall hold public hearings in at least 3 separate locations throughout this state on the priorities and draft allocation plan for the upcoming year. After the public hearings, the authority may make minor modifications to the allocation plan necessary to facilitate the administration of the Michigan housing and community development program or to address unforeseen circumstances.

(6) The authority shall issue an annual report to the governor and the legislature summarizing the expenditures of the fund for the prior fiscal year including at a minimum a description of the eligible applicants that received funding, the number of housing units that were produced, and the income levels of the households that were served.

(7) In addition to the rules promulgated under subsection (3), the authority shall promulgate rules according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this chapter.

### **125.1458c Expenditures; purposes.**

Sec. 58c. (1) The authority shall expend money in the fund to make grants, mortgage loans, or other loans to eligible applicants as provided in this section to enable eligible applicants to finance any of the following with respect to housing or home ownership for low income, very low income, and extremely low income households:

(a) Acquisition of land and buildings.

(b) Rehabilitation.

(c) New construction.

(d) Development and predevelopment costs.

(e) Preservation of existing housing.

(f) Infrastructure improvements, economic development projects, or community facilities that support housing development.

(g) Insurance.

(h) Operating and replacement reserves.

(i) Down payment assistance.

(j) Security deposit assistance.

(k) Supportive services.

(2) The authority shall expend a portion of the fund for housing for special needs populations including, but not limited to, the homeless, persons with physical or mental handicaps, and persons living in rural or distressed areas.

(3) The authority may make a loan to an eligible applicant from the fund at no interest or at below market interest rates, with or without security, and may make a loan for predevelopment financing.

(4) The authority may provide assistance for housing units for very low income or extremely low income households within multifamily housing that is occupied partly by very low income or extremely low income households and partly by households that do not qualify as very low income or extremely low income households, subject to the rules promulgated by the authority.

(5) The authority may provide funding for projects with 50 units or less and provide incentives to encourage project feasibility and mixed income housing projects that respond to community priorities.

### **125.1458d Housing assistance; conditions.**

Sec. 58d. The authority shall not provide assistance for housing under this chapter unless both of the following circumstances exist:

(a) If the housing is multifamily housing, the owner or manager agrees in writing not to evict a tenant without just cause, as defined in section 44a of 1933 (Ex Sess) PA 18, MCL 125.694a.

(b) The housing is sold or rented with a deed restriction, agreement, or other legal document that provides for the recapture of some or all of the assistance provided under this chapter upon terms and conditions specified in rules of the authority promulgated under section 58b(3).

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 481]**

**(SB 1450)**

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the

affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending section 3705 (MCL 700.3705).

*The People of the State of Michigan enact:*

**700.3705 Duty of personal representative; information to heirs and devisees; notice to attorney general; notice of spouse’s right to election; notice to friend of the court.**

Sec. 3705. (1) Not later than 28 days after a personal representative’s appointment or other time specified by court rule, the personal representative, except a special personal representative, shall give notice of the appointment to the decedent’s heirs and devisees, except those who have executed a written waiver of notice, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative and to the trustee of a trust described in section 7501(1) as to which the decedent was settlor. The personal representative shall give the notice by personal service or by ordinary first-class mail to each person required to receive notice under this subsection whose address is reasonably available to the personal representative. However, the personal representative is not required to notify a person who was adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice required under this subsection must be in a form approved by the supreme court and must include all of the following information:

(a) That the court will not supervise the personal representative. This statement shall not be included if the appointment is made in a supervised proceeding under part 5 of this article.

(b) That, unless a person files a written objection to the appointment of the person named as personal representative in the notice or files a demand that bond or higher bond be posted, the person named in the notice is the personal representative without bond or with bond in the amount shown in the notice. This statement shall not be included if the personal representative is appointed in a formal appointment proceeding.

(c) The name and address of the person appointed as the estate’s personal representative.

(d) That, during the course of administering the estate, the personal representative must provide all interested persons with all of the following:

(i) A copy of the petition for the personal representative’s appointment and a copy of the will, if any, with the notice.

(ii) A copy of the inventory.

(iii) A copy of the settlement petition or of the closing statement.

(iv) Unless waived, a copy of the account, including, but not limited to, fiduciary fees and attorney fees charged to the estate.

(e) That an interested person may petition the court for a court hearing on any matter at any time during the estate’s administration, including, but not limited to, distribution of assets and expenses of administration.

(f) That federal and Michigan estate taxes, if any, must be paid within 9 months after the date of the decedent’s death or another time period specified by law, to avoid penalties.



(g) That, if the estate is not settled within 1 year after the personal representative's appointment, within 28 days after the anniversary of the appointment, the personal representative must file with the court and send to each interested person a notice that the estate remains under administration and must specify the reason for the continuation of settlement proceedings. If such a notice is not received, an interested person may petition the court for a hearing on the necessity for continued administration or for closure of the estate.

(h) The identity and location of the court where papers relating to the estate are on file.

(2) The personal representative's failure to give the information required by subsection (1) is a breach of the personal representative's duty to the persons concerned, but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary first-class mail.

(3) A personal representative shall also give notice that includes the information described in subsection (1) to the attorney general, public administration division, under any of the following circumstances:

(a) It appears from the petition that the decedent died intestate without leaving a known heir.

(b) In the administration of an intestate estate, it appears that the decedent did not leave a known heir.

(c) In the administration of a testate estate, it appears that devisees of the purported will would not be entitled to share in the estate but for the terms of the will and that the decedent died without leaving a known heir.

(4) If notice is required to be given to the attorney general under subsection (3), the attorney general, representing the state, has all the rights of an heir to be heard and to contest the validity of a claim, the appointment of a personal representative, an action of the personal representative, an order, an appointment, or an instrument purporting to be a decedent's contract or will, and has all the rights granted or accruing to an heir, representative, or creditor by a law relating to the settlement of a testate or intestate estate in court, or by way of rehearing or appeal.

(5) Within 28 days after the personal representative's appointment or another time specified by court rule, the personal representative, except a special personal representative, shall notify the decedent's surviving spouse, if any, of the spouse's right to election under part 2 of article II and of the time within which the election must be exercised.

(6) Except as otherwise provided in this subsection, at the same time the notice required by subsection (1) is given, the personal representative shall give notice to the friend of the court for the county in which the estate is being administered, which notice identifies the decedent's surviving spouse and the individuals who are, for a testate estate, the devisees or, for an intestate estate, the heirs. The personal representative is not required to notify the friend of the court of a devise to a trustee of an existing trust or to a trustee under the will. A personal representative incurs no obligation or liability to the friend of the court or to another person for an error or omission made in good faith compliance with this subsection.

### **Effective date.**

Enacting section 1. This amendatory act takes effect October 1, 2005.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1447 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**Compiler's note:** Senate Bill No. 1447, referred to in enacting section 2, was filed with the Secretary of State December 28, 2004, and became P.A. 2004, No. 484, Eff. Jan. 1, 2006.

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**[No. 482]****(SB 1449)**

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation;

to repeal acts and parts of acts; and to provide penalties for the violation of this act,” (MCL 500.100 to 500.8302) by adding section 418.

*The People of the State of Michigan enact:*

**500.418 Identification of payers subject to child support arrearages; “title IV-D agency” defined.**

Sec. 418. (1) An insurer may voluntarily cooperate with a title IV-D agency and the child support lien network in identifying payers subject to child support arrearages who may be entitled to money to be paid under a liability insurance policy or the liability coverage portion of a multiperil insurance policy.

(2) As used in this section, “title IV-D agency” means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 483]**

**(SB 1448)**

AN ACT to amend 1982 PA 295, entitled “An act to provide for and to supplement statutes that provide for the provisions and enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody and support, and spousal support; to prescribe and authorize certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts,” (MCL 552.601 to 552.650) by adding section 24b.

*The People of the State of Michigan enact:*

**552.624b Notification to child support lien network and additional clearinghouses of payer with support arrearage.**

Sec. 24b. The title IV-D agency shall notify the child support lien network, and may notify 1 or more additional national child support information clearinghouses, of each payer who has a support arrearage in an amount that exceeds 2 times the monthly amount of periodic support payments payable under the payer’s support order.

**Effective date.**

Enacting section 1. This amendatory act takes effect October 1, 2005.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 484]****(SB 1447)**

AN ACT to amend 1982 PA 295, entitled “An act to provide for and to supplement statutes that provide for the provisions and enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody and support, and spousal support; to prescribe and authorize certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts,” by amending sections 25a, 25b, 25c, 25d, 25e, 25f, 25g, 25h, and 25i (MCL 552.625a, 552.625b, 552.625c, 552.625d, 552.625e, 552.625f, 552.625g, 552.625h, and 552.625i), sections 25a and 25b as amended and sections 25c, 25d, 25e, 25f, 25g, 25h, and 25i as added by 2002 PA 565.

*The People of the State of Michigan enact:*

**552.625a Lien; creation; effect; full faith and credit to liens created in other states; priority; notice; exceptions to creation of lien; effect of lien on itemized amount in redemption order; definitions.**

Sec. 25a. (1) The amount of past due support that accrues under a judgment as provided in section 3 or under the law of another state constitutes a lien in favor of the recipient of support against the real and personal property of a payer, including, but not limited to, money to be paid as a distribution from a decedent’s estate; as the result of a claim for negligence, personal injury, or death; under an arbitration award; under a settlement of or judgment issued in a civil action; or as compensation under a worker’s compensation order, settlement, redemption order, or voluntary payment. The lien is effective at the time that the support is due and unpaid and shall continue until the amount of past due support is paid in full or the lien is terminated by the title IV-D agency.

(2) Liens that arise in other states shall be accorded full faith and credit when the requirements of section 25b or 25c are met.

(3) A lien created under subsection (1) is subordinate to a prior perfected lien. All liens that arise under subsection (1) and described in subsection (2) have equal priority.

(4) Before a lien is perfected or levied under this act, the title IV-D agency shall send a notice to the payer subject to the support order informing the payer of the imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the amount of periodic support payments payable under the payer’s support order for the time period specified in this act.

(5) The title IV-D agency or another person required to provide notice under this section or sections 25b to 25i shall provide notice by paper, unless the person to be notified agrees to notice by other means. The title IV-D agency or other person providing notice under this section or sections 25b to 25i shall complete and preserve proof of service of the notice in a form substantially conforming to the requirements for proof of service under the Michigan court rules.

(6) A lien under subsection (1) does not arise against any of the following:

- (a) A financial asset pledged to a financial institution as collateral.
- (b) A financial asset to which a financial institution has a prior right of setoff or other lien.

(c) Property or an allowance described in sections 2401 to 2404 of the estates and protected individuals code, 1998 PA 386, MCL 700.2401 to 700.2404.

(d) Fifty percent of the amount of compensation due to a payer under a worker's compensation order, settlement, redemption order, or voluntary payment.

(e) That portion of money to be paid as a distribution from a decedent's estate; as the result of a claim for negligence, personal injury, or death; under an arbitration award; under a settlement of or judgment issued in a civil action; or as compensation under a worker's compensation order, settlement, redemption order, or voluntary payment that is owed for any of the following:

(i) Attorney fees.

(ii) Court costs and other litigation costs, including, but not limited to, medical examination costs, expenses for reports, deposition fees, court reporter fees, and record copy fees.

(iii) The medicaid program under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, unless medicaid is subordinated to child support under federal law.

(iv) Medical services or a reimbursement for a payment made for medical services either to or by an insurer, health maintenance organization, or nonprofit health care corporation. For the purposes of compensation under a worker's compensation order, settlement, redemption order, or voluntary payment, as used in this subparagraph, "medical services" means services as described and regulated under sections 315 and 319 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315 and 418.319, and the rules promulgated under those sections.

(v) An amount to reimburse an insurance company for the expense incurred by the insurance company in responding to a lien and levy under sections 25b to 25i. A reimbursement amount under this subparagraph shall not exceed the actual expense or \$50.00, whichever is less, for each lien and levy or for each payment under a lien and levy.

(vi) Other costs related to the arbitration, civil action, or worker's compensation order, settlement, redemption order, or voluntary payment.

(vii) For reimbursements to which an employer or carrier is entitled under section 827 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.827.

(viii) For vocational rehabilitation costs, reimbursements, or credits incidental to long- or short-term disability programs or to pension or welfare benefit funds.

(ix) For a medicare set aside account for future medical care or for future medicaid, unless medicare or medicaid is subordinated to child support under federal law.

(f) Money to be paid under an insurance policy for the repair or replacement of real or tangible personal property.

(g) Money to be paid for allowable expenses that are payable as benefits under section 3107(1)(a) and for expenses under section 3107(1)(c) of the insurance code of 1956, 1956 PA 218, MCL 500.3107.

(7) The title IV-D agency does not have the authority to alter an amount itemized in a redemption order. A lien that arises under this act and a levy of that lien only affect that portion, as prescribed in this section, of the payment due the payer under a redemption order. A carrier shall not use the enforcement of a lien and levy under this act as the basis for freezing or otherwise refusing to pay out an amount itemized in a redemption order that is not affected by the lien and levy under this act.

(8) As used in this section and sections 25b to 25i:

(a) "Carrier" means any of the following:

(i) "Carrier" as that term is defined in section 601 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.601.

(ii) A fund created under section 501 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.501.

(iii) The property and casualty guaranty association required to be maintained by section 7911 of the insurance code of 1956, 1956 PA 218, MCL 500.7911.

(b) "Insurer" means that term as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.

### **552.625b Remedy as cumulative; lien; perfection; notice; review procedures; enforcement; termination; disclosure of information.**

Sec. 25b. (1) A remedy provided by this section is cumulative and does not affect the availability of another remedy under this act or other law.

(2) Except for a financial asset, money to be paid, or compensation to which section 25c applies, the title IV-D agency may perfect a lien created under section 25a upon the real or personal property of the payer when an arrearage has accrued in an amount that exceeds 2 times the monthly amount of periodic support payments payable under the payer's support order.

(3) If the arrearage under subsection (2) is reached and the title IV-D agency has determined that the delinquent payer holds real or personal property, other than a financial asset, money to be paid, or compensation to which section 25c applies, the title IV-D agency may perfect the lien. The title IV-D agency shall perfect a lien on property to which this section applies in the same manner in which another lien on property of the same type is perfected.

(4) The title IV-D agency shall notify the payer when the title IV-D agency has perfected a lien against real or personal property of the payer. The notice shall be sent by ordinary mail to the payer's last known address, and a copy of the notice shall be sent by ordinary mail to the recipient of support. A notice under this subsection shall include all of the following:

(a) The amount of the arrearage.

(b) That a lien is in effect on the real or personal property of the payer.

(c) That the property is subject to seizure unless the payer responds by paying the arrearage or requesting a review within 21 days after the date of mailing the notice.

(d) That, at the review, the payer may object to the lien and to proposed action based on a mistake of fact concerning the overdue support amount or the payer's identity.

(e) That, if the payer believes that the amount of support ordered should be modified because of a change in circumstances, the payer may file a petition with the court for modification of the support order.

(5) Within 21 days after the date on which the notice described in subsection (4) is mailed to a payer, the payer may request a review on the lien and the proposed action. If the payer requests a review under this subsection, the title IV-D agency shall conduct the review within 14 days after the date of the request.

(6) If, at the review, the payer establishes that the lien is not proper because of a mistake of fact, the title IV-D agency shall terminate or modify the lien and, within 7 days, notify the applicable entity that the lien is terminated against all or a portion of the property.

(7) If the payer fails to request a review, to appear for a review, or to establish a mistake of fact, the title IV-D agency may collect the arrearage by levy upon any property belonging to the payer as provided in this section. The title IV-D agency shall notify the payer at the review or by written notice of its intent to levy.

(8) To enforce a lien on real property or personal property, the title IV-D agency may sell the real property in the manner provided by law for the judicial foreclosure of mortgage liens; apply to the circuit court for an order to execute the judgment, to appoint a receiver of the real and personal property subject to the lien, and to order the property and its income to be applied to the amount of the judgment; or take any other appropriate action to enforce the judgment. The title IV-D agency shall mail a copy of orders under this subsection to the payer and recipient of support at his or her last known address.

(9) A payer may request that the title IV-D agency terminate a lien against the real and personal property of the payer on the basis that the payer is no longer in arrears. If the payer is no longer in arrears, the title IV-D agency shall terminate the lien in accordance with law.

(10) An entity is not liable under any federal or state law to any person for any disclosure of information to the title IV-D agency under this section or for any other action taken in good faith to comply with the requirements of this section.

**552.625c Remedy as cumulative; arrearage under payer's support order; payer's financial assets held by financial institution; notice of lien and levy; form; notice of withdrawal; release of assets.**

Sec. 25c. (1) A remedy provided by this section is cumulative and does not affect the availability of another remedy under this act or other law.

(2) If an arrearage has accrued in an amount that exceeds 2 times the monthly amount of periodic support payments payable under a payer's support order, the title IV-D agency may levy against any of the following items subject to a lien under section 25a to which the payer is entitled:

(a) Financial assets held by a financial institution.

(b) Money to be paid by an insurer as the result of a claim for negligence, personal injury, or death, under an arbitration award, or under a settlement of or judgment issued in a civil action.

(c) Compensation under a worker's compensation order, settlement, redemption order, or voluntary payment.

(3) To levy against a payer's financial assets, money to be paid, or compensation, the title IV-D agency shall serve the financial institution holding the financial assets, the insurer, or the carrier with a notice of the lien and levy, directing the financial institution, insurer, or carrier to freeze those financial assets or that money or compensation. The office of child support, in consultation with the state court administrative office, shall create the form that is required for the notice to a financial institution, insurer, or carrier under this subsection. The form shall include, or provide for inclusion of, at least all of the following:

(a) The levy amount.

(b) Information that enables the financial institution, insurer, or carrier to link the payer with his or her financial assets, money to be paid, or compensation and to notify the payer.

(c) Information on how to contact the title IV-D agency.

(d) Statements setting forth the rights and responsibilities of the financial institution, insurer, or carrier and payer.

(4) A title IV-D agency may withdraw a levy under this section at any time before the circuit court considers or hears the matter in an action filed under section 25f. The title IV-D agency shall give notice of the withdrawal to the payer and financial institution, insurer, or carrier. Upon receiving notice of a withdrawal of a levy, the financial institu-



tion, insurer, or carrier shall release the payer's financial assets, money to be paid, or compensation by the close of business on 1 of the following days:

(a) If the notice is received before noon, the first business day after the business day on which the notice is received.

(b) If the notice is received at noon or later, the second business day after the business day on which the notice is received.

### **552.625d Obligation or liability of financial institution, insurer, or carrier; limitations.**

Sec. 25d. (1) A financial institution, insurer, or carrier incurs no obligation or liability to a depositor, account holder, or other person arising from the furnishing of information under sections 25c to 25i or from the failure to disclose to a depositor, account holder, or other person that the person's name as a person with an interest in the financial assets, money to be paid, or compensation was included in the information provided.

(2) A financial institution, insurer, or carrier incurs no obligation or liability to the title IV-D agency or another person for an error or omission made in good faith compliance with sections 25c to 25i.

(3) A financial institution, insurer, or carrier incurs no obligation or liability for blocking, freezing, placing a hold upon, forwarding, or otherwise dealing with a person's financial assets, money to be paid, or compensation in response to a lien or levy imposed or information provided under sections 25c to 25i.

(4) A financial institution, insurer, or carrier is not obligated to block, freeze, place a hold upon, forward, or otherwise deal with a person's financial assets, money to be paid, or compensation until served with the notice of levy in accordance with section 25c. A financial institution, insurer, or carrier that forwards financial assets, money to be paid, or compensation to the title IV-D agency in response to a levy under section 25c is discharged from any obligation or liability to the depositor, account holder, or other person with an interest in the financial assets, money to be paid, or compensation forwarded to the title IV-D agency.

### **552.625e Freeze of payer's financial assets; execution; notice.**

Sec. 25e. (1) When a financial institution, insurer, or carrier receives a notice of levy under section 25c on a payer's financial assets held by the financial institution; money to be paid by an insurer as the result of a claim for negligence, personal injury, or death, under an arbitration award, or under a settlement of or judgment issued in a civil action; or compensation under a worker's compensation order, settlement, redemption order, or voluntary payment, the financial institution, insurer, or carrier shall freeze those financial assets, money to be paid, or compensation. If the payer's financial assets, money to be paid, or compensation exceeds the levy amount, the financial institution, insurer, or carrier shall freeze those financial assets, or that money to be paid or compensation, up to the levy amount. A financial institution, insurer, or carrier shall execute the freeze of a payer's financial assets, money to be paid, or compensation under this section by the close of business on 1 of the following days:

(a) If the notice is received before noon, the first business day after the business day on which the notice is received.

(b) If the notice is received at noon or later, the second business day after the business day on which the notice is received.

(2) After complying with subsection (1), a financial institution, insurer, or carrier shall give notice of that compliance to the title IV-D agency and the payer. In addition, a financial institution shall notify each other person with an interest in the financial assets as shown

in the financial institution's records. A financial institution's, insurer's, or carrier's notice to a payer under this subsection shall include a copy of the title IV-D agency notice to the financial institution, insurer, or carrier.

**552.625f Levy on financial assets; challenge; procedures.**

Sec. 25f. (1) A payer whose financial assets are, or money to be paid or compensation is, levied on under section 25c or another person with an interest in the financial assets may challenge the levy by submitting a written challenge with the title IV-D agency at the location specified in the title IV-D agency notice. A payer, or other person with an interest in the financial assets, must submit a written challenge under this section within 21 days after the financial institution, insurer, or carrier sends the payer a copy of the title IV-D agency notice as required by section 25e. A challenge to a levy under section 25c is governed by this act and is not subject to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A payer, or other person with an interest in the financial assets, who submits a challenge under this subsection may withdraw the challenge at any time by giving notice of the withdrawal to the title IV-D agency.

(2) If the title IV-D agency receives a written challenge from a payer, or other person with an interest in the financial assets, within the time limit required by subsection (1), the title IV-D agency shall notify the financial institution, insurer, or carrier about the challenge and, within 7 days, shall review the case with the challenger. The title IV-D agency shall consider only a mistake in the payer's identity or in the amount of the payer's past due support, or another mistake of fact, as cause to release or modify the levy. If the title IV-D agency determines that a mistake of fact occurred, the title IV-D agency shall do 1 of the following:

(a) If the mistake is the payer's identity or that the payer does not owe past due support in an amount equal to or greater than 2 times the payer's monthly support amount under a support order, notify the financial institution, insurer, or carrier and the payer that the levy is released.

(b) If the payer does owe past due support in an amount equal to or greater than 2 times the payer's monthly support amount under a support order, but the amount in the notice to levy is more than the payer owes, notify the payer of the corrected amount.

(c) If the mistake concerns a fact other than those described in subdivisions (a) and (b), take action appropriate to the mistake.

(3) If the title IV-D agency finds no mistake of fact, the title IV-D agency shall notify the payer or other person with an interest of that finding.

(4) If the payer, or other person with an interest in the financial assets, disagrees with the title IV-D agency review determination under this section, the payer or other person with an interest may challenge the levy under section 25c by filing an action in the circuit court that issued a support order that is an underlying basis for the levy. A payer, or other person with an interest in the financial assets, must file an action under this subsection within 21 days after the title IV-D agency sends notice of its review determination and shall give the title IV-D agency notice of the action.

(5) If an action is not filed in the circuit court within the time limit required by subsection (4), the title IV-D agency shall notify the financial institution, insurer, or carrier, directing the financial institution, insurer, or carrier to act in accordance with the title IV-D agency review determination under this section. If an action is filed in the circuit court within the time limit prescribed in subsection (4), the title IV-D agency shall notify the financial institution, insurer, or carrier, directing the financial institution, insurer, or carrier to act in accordance with the court decision.

**552.625g Forwarding money by financial institution, insurer, or carrier.**

Sec. 25g. (1) A financial institution, insurer, or carrier that receives a notice of levy under section 25c shall forward money in the amount of past due support as stated in the notice, or in the corrected amount if notified of a corrected amount, to the state disbursement unit, along with information necessary to identify the payer as required by the notice.

(2) A financial institution, insurer, or carrier shall forward money as required by subsection (1) no sooner than the next day and no later than the seventh day after 1 of the following takes place:

(a) The financial institution, insurer, or carrier notifies the payer and the title IV-D agency that the payer's financial assets are, or money to be paid or compensation is, frozen as required by section 25e and has not received, within 28 days after the day on which the financial institution, insurer, or carrier sent the notices, a notice from the title IV-D agency that the payer, or another person with an interest in the payer's financial assets, has submitted a challenge to the levy under section 25f.

(b) The financial institution, insurer, or carrier receives, within the time limit prescribed in subdivision (a), a notice from the title IV-D agency that the payer, or another person with an interest in the payer's financial assets, submitted a challenge to the levy and receives the subsequent title IV-D agency notice required by section 25f, directing the financial institution, insurer, or carrier to act in accordance with either the title IV-D agency review determination or the circuit court decision.

(3) If, in order to forward sufficient money to the SDU, the financial institution must convert 1 or more financial assets to cash, the financial institution shall execute the conversion, assessing a resulting fee or other cost or penalty against the payer. If the payer's financial assets are insufficient to pay the past due support amount plus resulting fees and other costs or penalties, the financial institution may deduct the fees, costs, and penalties before forwarding the balance of the money.

**552.625h Circuit court review.**

Sec. 25h. (1) If an action is filed in circuit court within the time limit prescribed in section 25f, the circuit court shall review the matter de novo. The action is governed by this section and the Michigan court rules. The circuit court review is not limited to mistakes of fact.

(2) All of the following apply in an action governed by this section:

(a) The circuit court shall only address the issues of the propriety of the levy and whether the levy amount is correct.

(b) The circuit court shall not admit evidence or consider an issue that is related to custody, parenting time, or the amount of support under a support order unless that evidence is related to the levy against a payer's financial assets, money to be paid, or compensation.

(c) The circuit court shall not modify a support order. A court finding regarding a monthly or past due support amount does not modify the underlying support order.

**552.625i Return of forwarded money to payer; reimbursement of fee, cost, or penalty; interest; allocations.**

Sec. 25i. (1) If, after a financial institution forwards money to the state disbursement unit, all of the forwarded money is returned to the payer due to a mistake of fact or court order, the title IV-D agency shall reimburse the payer for a fee, cost, or penalty that the

financial institution assessed against the payer under section 25g. The title IV-D agency shall also compensate the payer for the amount of interest that the financial assets would have earned had they not been converted and forwarded to the SDU, to the extent that the interest can be determined with a reasonable degree of certainty.

(2) If the total amount of past due support the payer owes under all support orders subject to levy under section 25c is more than the amount of money a financial institution, insurer, or carrier forwards the SDU under section 25g, the SDU shall allocate the money among those support orders by multiplying the total amount of money forwarded by the percentages arrived at by dividing the past due support amount under each of those support orders by the total of the past due support amounts under all of those support orders.

**Effective date.**

Enacting section 1. This amendatory act takes effect January 1, 2006.

**Reports.**

Enacting section 2. Before January 31, 2006, the title IV-D agency and the worker's compensation agency shall report to the standing committees of the senate and house of representatives with primary responsibility for legislation concerning child support enforcement on the status of, efficacy of, and problems that have arisen in the implementation of the provisions of the support and parenting time enforcement act that were amended or added by this amendatory act and in the implementation of the related interagency agreement. In addition, the worker's compensation agency shall report to those same standing committees the effect that implementation has had on efficiency in the management of worker's compensation case settlements and redemptions.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 485]**

**(SB 1243)**

AN ACT to amend 2001 PA 142, entitled "An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions," (MCL 250.1001 to 250.1100) by adding section 74.

*The People of the State of Michigan enact:*

**250.1074[1] "Purple Heart Trail".**

Sec. 74. That part of highway I-69 in Branch county shall be known as the "Purple Heart Trail".

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 486]****(HB 6008)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending section 45 of chapter X (MCL 710.45), as amended by 1996 PA 409.

*The People of the State of Michigan enact:*

## CHAPTER X

**710.45 Withholding of consent by representative or court; motion by petitioner; decision by court; termination of rights; entering orders; appeal.**

Sec. 45. (1) A court shall not allow the filing of a petition to adopt a child if the consent of a representative or court is required by section 43(1)(b), (c), or (d) of this chapter unless the petition is accompanied by the required consent or a motion as provided in subsection (2).

(2) If an adoption petitioner has been unable to obtain the consent required by section 43(1)(b), (c), or (d) of this chapter, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious. A motion under this subsection shall contain information regarding both of the following:

(a) The specific steps taken by the petitioner to obtain the consent required and the results, if any.

(b) The specific reasons why the petitioner believes the decision to withhold consent was arbitrary and capricious.

(3) If consent has been given to another petitioner and if the child has been placed with that other petitioner according to an order under section 51 of this chapter, a motion under this section shall not be brought after either of the following:

(a) Fifty-six days following the entry of the order placing the child.

(b) Entry of an order of adoption.

(4) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

(5) The court shall provide notice of a motion brought under this section to all interested parties as described in section 24a(1) of this chapter, the guardian ad litem of

the prospective adoptee if one has been appointed during a child protection proceeding, and the applicant who received consent to adopt.

(6) Upon the filing of a petition to adopt a child and the motion described in subsection (2), the court may waive or modify the full investigation of the petition provided in section 46 of this chapter. The court shall decide the motion within 91 days after the filing of the motion unless good cause is shown.

(7) Unless the petitioner establishes by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion described in subsection (2) and dismiss the petition to adopt.

(8) If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or department and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner's costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.

(9) If the consent at issue is that required of the court under section 43(1)(c) of this chapter, the motion shall be heard by a visiting judge assigned according to section 8212 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8212.

(10) The court's decision on a motion brought under this section is appealable by right to the court of appeals.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 487]**

**(HB 6010)**

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties," by amending sections 21a, 22, 23a, 23d, 24, 24a, and 56 of chapter X (MCL 710.21a, 710.22, 710.23a, 710.23d, 710.24, 710.24a, and 710.56), section 21a as added by 1982 PA 72, sections 22, 24, and 24a as amended by 1996 PA 409, section 23a as amended by 1994 PA 373, section 23d as amended by 2004 PA 68, and section 56 as amended by 1994 PA 240.

*The People of the State of Michigan enact:*

## CHAPTER X

### **710.21a General purposes of chapter.**

Sec. 21a. The general purposes of this chapter are:

(a) To provide that each adoptee in this state who needs adoption services receives those services.

(b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.

(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.

(d) To achieve permanency and stability for adoptees as quickly as possible.

(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

### **710.22 Definitions.**

Sec. 22. As used in this chapter:

(a) “Adoptee” means the individual who is to be adopted, regardless of whether the individual is a child or an adult.

(b) “Adoption attorney” means an attorney acting as counsel in an adoption proceeding or case.

(c) “Adult former sibling” means an individual who is 18 years of age or older and is related to an adult adoptee either biologically or through adoption by at least 1 common parent, regardless of whether the adult former sibling ever lived in the same household as the adult adoptee.

(d) “Agency placement” means a placement in which a child placing agency, the department, or a court selects the adoptive parent for the child and transfers physical custody of the child to the prospective adoptive parent.

(e) “Applicant” means an individual or individuals who desire to adopt a child and who have submitted an adoption application to a child placing agency.

(f) “Attending practitioner” means a licensed physician or a registered professional nurse certified as a nurse midwife by the Michigan board of nursing.

(g) “Best interests of the adoptee” or “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39 of this chapter, the putative father and the adoptee.

(ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

(iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father, to provide the adoptee



with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father.

(vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father.

(vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father, and of the adoptee.

(viii) The home, school, and community record of the adoptee.

(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.

(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings.

(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody.

(h) "Born out of wedlock" means a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage.

(i) "Central adoption registry" means the registry established by the department under section 27b of this chapter to control the release of identifying adoption information.

(j) "Child" means an individual less than 18 years of age.

(k) "Child placing agency" means a private organization licensed under 1973 PA 116, MCL 722.111 to 722.128, to place children for adoption.

(l) "Consent" means a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.

(m) "Court" means the family division of circuit court of this state, or if the context requires, the court having jurisdiction over adoption in another state or country.

(n) "Department" means the family independence agency.

(o) "Direct placement" means a placement in which a parent or guardian selects an adoptive parent for a child, other than a stepparent or an individual related to the child within the fifth degree by marriage, blood, or adoption, and transfers physical custody of the child to the prospective adoptive parent.

(p) "Formal placement" means a placement that is approved by the court under section 51 of this chapter.

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Petitioner", except as used in section 68b of this chapter, means the individual or individuals who file an adoption petition with the court.

(s) "Placement" or "to place" means selection of an adoptive parent for a child and transfer of physical custody of the child to a prospective adoptive parent according to this chapter.

(t) "Relative" means an individual who is related to the child within the fifth degree by marriage, blood, or adoption.

(u) “Release” means a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.

(v) “Rescission petition” means a petition filed by an adult adoptee and his or her parent whose rights have been terminated to rescind the adoption in which a stepparent acquired parental rights and to restore parental rights of that parent according to section 66 of this chapter.

(w) “Suitable to be a parent of an adoptee” means a conclusion that there is no specific concern with respect to an individual that would suggest that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.

(x) “Temporary placement” means a placement that occurs before court approval under section 51 of this chapter and that meets the requirements of section 23d of this chapter.

(y) “Within the fifth degree by marriage, blood, or adoption” means any of the following relationships: parent, step-parent, grandparent, step-grandparent, brother, step-brother, sister, step-sister, uncle, step-uncle, aunt, step-aunt, first cousin, step-first cousin, great aunt, step-great aunt, great uncle, step-great uncle, great grandparent, step-great grandparent, first cousin once removed, step-first cousin once removed, great great grandparent, step-great great grandparent, great great uncle, step-great great uncle, great great aunt, step-great great aunt, great great great grandparent, or step-great great great grandparent.

**710.23a Direct placement by parent or guardian of child for adoption; temporary placement; formal placement; selection by parent or guardian not delegated; information to be provided by prospective adoptive parent, adoption attorney, or child placing agency; placement of child with stepparent or relative; attendance of child at hearing.**

Sec. 23a. (1) A parent or guardian having legal and physical custody of a child may make a direct placement of the child for adoption by making a temporary placement under section 23d of this chapter or a formal placement under section 51 of this chapter. A temporary placement becomes a formal placement when the court orders the termination of the rights of the parent or parents or the guardian and approves placement under section 51 of this chapter. A formal placement under section 51 of this chapter is not required to be preceded by a temporary placement.

(2) A parent or guardian shall personally select a prospective adoptive parent in a direct placement. The selection shall not be delegated.

(3) In a direct placement the prospective adoptive parent, an adoption attorney, or a child placing agency shall provide information about a prospective adoptive parent to the parent or guardian before placement. This information shall include the specific information contained in a preplacement assessment as described in section 23f of this chapter, and may include additional information requested by the parent or guardian. The information does not have to include identifying information described in section 27(3) of this chapter. The parent or guardian and the prospective adoptive parent shall determine whether to exchange identifying information and whether to meet each other.

(4) A parent or guardian having legal and physical custody of a child may make a formal placement of the child for adoption under section 51 of this chapter with a stepparent or a relative.

(5) The court may allow the child to attend his or her adoption hearing held under this act.

**710.23d Temporary placement; procedures.**

Sec. 23d. (1) In a direct placement, a parent or guardian with legal and physical custody of a child may make a temporary placement of the child as prescribed by this section. In an agency placement, a child placing agency with written authorization from the parent or guardian as prescribed by section 23b of this chapter may make a temporary placement of the child as prescribed by this section. A temporary placement shall meet all of the following requirements:

(a) The prospective adoptive parent with whom a child is temporarily placed has had a preplacement assessment completed within 1 year before the date of the transfer with a finding that the prospective adoptive parent is suitable to be a parent of an adoptee.

(b) In a direct placement, the parent or guardian is assisted by an adoption attorney or a child placing agency.

(c) In the presence of a witness who also signs the document, the parent, guardian, or representative of the child placing agency signs a statement evidencing the transfer of physical custody of the child. If the parent making the temporary placement is an unemancipated minor, the statement is not valid unless it is also signed in the presence of the witness by a parent or guardian of that minor parent. The statement shall contain all of the following:

(i) The date of the transfer of physical custody.

(ii) Language providing that the transfer is for the purpose of adoption by the prospective adoptive parent.

(iii) Language indicating that unless the parent or guardian and the prospective adoptive parent agree otherwise, the prospective adoptive parent has the authority to consent to all medical, surgical, psychological, educational, and related services for the child and language indicating that the parent or guardian otherwise retains full parental rights to the child being temporarily placed and that the temporary placement may be revoked by the filing of a petition under subsection (5).

(iv) Language providing that the person making the transfer has read a preplacement assessment of the prospective adoptive parent completed or updated within 1 year before the date of the transfer with a finding that the prospective adoptive parent is suitable to be a parent of an adoptee. If a child placing agency makes the transfer of physical custody, the statement shall include a verification that the child placing agency has given the parent or guardian who authorized the temporary placement an opportunity to review the preplacement assessment.

(v) Even if only 1 parent is making the temporary placement, the name and address of both parents of the child, including in the case of a child born out of wedlock, the name and the address of each putative father of the child, if known.

(d) In the presence of a witness who also signs the document, the prospective adoptive parent signs a statement setting forth the date of the transfer of physical custody and the name and address of the prospective adoptive parent and attesting to all of the following:

(i) That the prospective adoptive parent understands that the temporary placement will not become a formal placement until the parents consent or release their parental rights and the court orders the termination of parental rights and approves the placement and that the prospective adoptive parent must relinquish custody of the child within 24 hours after being served with an order under section 23e(2) of this chapter.

(ii) That, if the prospective adoptive parent is a Michigan resident, the prospective adoptive parent agrees to reside with the child in Michigan until formal placement occurs.

(iii) That the prospective adoptive parent agrees to obtain approval in compliance with the interstate compact on the placement of children, 1984 PA 114, MCL 3.711 to 3.717,

before the child is sent, brought, or caused to be sent or brought into a receiving state as that term is defined in section 1 of the interstate compact on the placement of children, 1984 PA 114, MCL 3.711.

(iv) That the prospective adoptive parent submits to this state's jurisdiction.

(2) Not later than 2 days, excluding weekends and holidays, after a transfer of physical custody of a child in accordance with subsection (1), the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court in the county in which the child's parent or guardian or the prospective adoptive parent resides, or in which the child is found, a report that contains all of the following:

(a) The date of the transfer of physical custody.

(b) The name and address of the parent or guardian or the child placing agency who made the temporary placement.

(c) The name and address of the prospective adoptive parent with whom the temporary placement was made.

(d) Even if only 1 parent is making the temporary placement, the name and address of both parents of the child, including, in the case of a child born out of wedlock, the name of each putative father, if known.

(e) The documents required under subsection (1)(c) and (d) and, if applicable, the authorization required under section 23b of this chapter.

(3) Not later than 30 days after the transfer of physical custody of a child under this section, the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court that received the report described in subsection (2) a report indicating whether or not 1 of the following dispositions has occurred:

(a) A petition for adoption of the child has been filed.

(b) The child has been returned to the agency or to a parent or other person having legal custody.

(4) If the court has not received the report required under subsection (3) within 45 days after the transfer of physical custody of a child, the court shall immediately investigate and determine whether an adoption petition has been filed or the child has been returned to a parent or other person having legal custody. If the report required under subsection (3) or the court's investigation reveals that neither disposition has occurred, the court shall immediately report to the prosecutor, who shall immediately file a petition in the court that received the report described in subsection (2) for disposition of the child as required by section 23e of this chapter. If a petition has been filed under subsection (5), (6), or (7), the prosecutor is not required to file a petition.

(5) A parent or guardian who wishes to regain custody of a child who has been placed temporarily shall file a petition in the court that received the report described in subsection (2) requesting that the temporary placement be revoked and that the child be returned to the parent or guardian. Upon request of the parent or guardian, the adoption attorney or child placing agency who assisted in making the temporary placement shall assist the parent or guardian in filing the petition to revoke the temporary placement. If the temporary placement was made by a child placing agency under section 23b(3) of this chapter, the child placing agency shall file the petition on behalf of a parent or guardian who wishes to regain custody of the child.

(6) If a prospective adoptive parent with whom a child has been temporarily placed is either unwilling or unable to proceed with the adoption, the prospective adoptive parent

may file a petition in the court that received the report described in subsection (2) for disposition of the child as required by section 23e of this chapter.

(7) If a child placing agency that temporarily placed a child is unable to proceed with an adoption because of the unavailability of a parent or guardian to execute a release, or if a child placing agency with legal custody of a child decides not to proceed with the adoption by a prospective adoptive parent with whom the child has been temporarily placed and the prospective adoptive parent refuses upon the agency's request to return the child to the agency, the child placing agency shall file a petition in the court that received the report described in subsection (2) for disposition of the child as required by section 23e of this chapter.

(8) Except as otherwise agreed to by the parties, the prospective adoptive parent with whom a child is temporarily placed under this section may consent to all medical, surgical, psychological, educational, and related services for the child.

(9) A hospital or attending practitioner shall not release a child to an individual or agency not otherwise legally entitled to the physical custody of the child unless all of the requirements of subsection (1) are met.

#### **710.24 Petition for adoption; filing; jurisdiction; verification; contents.**

Sec. 24. (1) If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides or where the adoptee is found or, if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.

(2) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

(3) If a petition to adopt is filed in a county other than that in which the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found.

(4) The petition for adoption shall be verified by each petitioner and shall contain the following information:

(a) The name, date and place of birth, and place of residence of each petitioner, including the maiden name of the adopting mother.

(b) Except as otherwise provided in subsection (7), the name, date and place of birth, and place of residence if known of the adoptee.

(c) The relationship, if any, of the adoptee to the petitioner.

(d) The full name by which the adoptee shall be known after adoption.

(e) The full description of the property, if any, of the adoptee.

(f) Unless the rights of the parents have been terminated by a court of competent jurisdiction or except as otherwise provided in subsection (7), the names of the parents of the adoptee and the place of residence of each living parent if known.

(g) Except as otherwise provided in subsection (7), the name and place of residence of the guardian of the person or estate of the adoptee, if any has been appointed.

(5) In a direct placement, the petitioner shall attach to the petition a verified statement certifying that the petitioner has been informed of the availability of counseling services and whether the petitioner has received counseling.

(6) Except as otherwise provided in this subsection, in a direct placement, the petitioner shall attach a copy of a preplacement assessment of the petitioner completed or updated within 1 year before the petition is filed with a finding that the petitioner is suitable to be a parent of an adoptee, copies of all other preplacement assessments of the petitioner, if any others have been completed, and a verified statement stating that no preplacement assessments of the petitioner have been completed other than those attached to the petition and explaining any preplacement assessments of the petitioner that have been initiated but not completed. If the petitioner is seeking review of a preplacement assessment under section 23f(8) of this chapter, the petitioner may comply with this subsection by attaching a copy of that preplacement assessment and a copy of the application for review, together with copies of all other preplacement assessments and the verified statement required by this section.

(7) In a direct placement in which the parties have elected not to exchange identifying information, the information required by subsection (4)(f) and (g) and the surname and place of residence of the adoptee required under subsection (4)(b) may be omitted. The attorney or child placing agency assisting in the adoption shall file a verified statement containing the omitted information.

### **710.24a Interested parties; appointment of guardian to defeat parent's status as interested party.**

Sec. 24a. (1) Interested parties in a petition for adoption are all of the following:

- (a) The petitioner or petitioners.
- (b) The adoptee, if over 14 years of age.
- (c) A minor parent, adult parent, or surviving parent of an adoptee, unless 1 or more of the following apply:
  - (i) The rights of the parent have been terminated by a court of competent jurisdiction.
  - (ii) A guardian of the adoptee, with specific authority to consent to adoption, has been appointed.
  - (iii) A guardian of the parent, with specific authority to consent to adoption, has been appointed.
  - (iv) The rights of the parent have been released.
  - (v) The parent has consented to the granting of the petition.
- (d) The department or a child placing agency to which the adoptee has been, or for purposes of subsection (3) is proposed to be, released or committed by an order of the court.
- (e) A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- (f) The court with permanent custody of the adoptee.
- (g) A court with continuing jurisdiction over the adoptee.
- (h) A child placing agency of another state or country that has authority to consent to adoption.

- (i) The guardian or guardian ad litem of an interested party.
- (2) Interested parties in a petition for a hearing to identify the father of an adoptee and to determine or terminate his rights are all of the following:
  - (a) The persons set forth in subsection (1).
  - (b) A putative father of the adoptee.
- (3) Interested parties in a proceeding relating to the execution of a voluntary release are all of the following:
  - (a) The adoptee, if over 5 years of age.
  - (b) The department or a child placing agency to which the adoptee is proposed to be released.
  - (c) The person executing the release of parental rights.
- (4) Interested parties in a rescission petition are all of the following:
  - (a) The petitioners.
  - (b) The stepparent who adopted the adult adoptee.
  - (c) The spouse of the parent whose rights were terminated.
- (5) Interested parties in a hearing related to temporary placement are all of the following:
  - (a) The parent or guardian who made or authorized the temporary placement.
  - (b) The parent or guardian of an unemancipated minor parent of the adoptee.
  - (c) A child placing agency that was authorized under section 23b of this chapter to make the temporary placement.
  - (d) If only 1 parent made or authorized the temporary placement, the other parent and each putative father of the adoptee.
  - (e) The prospective adoptive parent with whom temporary placement was made.
  - (f) The prosecutor who filed a petition under section 23d of this chapter.
  - (g) The guardian ad litem of any interested party, if a guardian ad litem has been appointed.
- (6) In the interest of justice, the court may require additional parties to be served.
- (7) The court shall not appoint a guardian of the adoptee or of a parent solely for the purpose of defeating that parent's status as an interested party under this section.

**710.56 Order of adoption; time; waiver; extension of time; hearing; effect of filing petition for rehearing or appeal from order terminating parental rights; conditions; adoption of adult.**

Sec. 56. (1) Six months after formal placement under section 51, unless the court determines that circumstances have arisen that make adoption undesirable, the court may enter an order of adoption. Upon the motion of the petitioner, the court may waive the 6-month period, or any portion of that period, if the waiver is in the best interests of the adoptee. If, after a hearing, the court finds that the best interests of the adoptee will be served, it may extend the 6-month period for an additional period of time not exceeding 18 months from the time of formal placement for adoption. In an adoption proceeding for which an adoption order is not entered within 18 months after formal placement, the court shall hold a hearing and determine whether an order of adoption shall be entered or the petition denied. If a child is formally placed according to section 41(2) of this chapter, the court may extend the 6-month period for an additional period, which may exceed 18 months from the time of formal placement, until an order for adoption may be entered under subsection (2).