



HOUSE BILL No. 4221

January 30, 1995, Introduced by Reps. Profit, Brater and Schroer and referred to the Committee on Judiciary and Civil Rights.

A bill to amend the title and sections 17c, 19, 19a, 19b, and 28 of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

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

sections 17c, 19, 19a, and 19b as amended by Act No. 264 of the Public Acts of 1994 and section 28 as amended by Act No. 73 of

the Public Acts of 1989, being sections 712A.17c, 712A.19, 712A.19a, 712A.19b, and 712A.28 of the Michigan Compiled Laws; and to add sections 17d, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 17c, 19, 19a, 19b, and 28
2 of chapter XIIIA of Act No. 288 of the Public Acts of 1939, sec-
3 tions 17c, 19, 19a, and 19b as amended by Act No. 264 of the
4 Public Acts of 1994 and section 28 as amended by Act No. 73 of
5 the Public Acts of 1989, being sections 712A.17c, 712A.19,
6 712A.19a, 712A.19b, and 712A.28 of the Michigan Compiled Laws,
7 are amended and sections 17d, 35, 36, 37, 38, 39, 40, 41, 42, 43,
8 44, and 45 are added to read as follows:

9 TITLE

10 An act to revise and consolidate the statutes relating to
11 certain aspects of the organization and jurisdiction of the pro-
12 bate court of this state, the powers and duties of ~~such~~ THAT
13 court and ~~the~~ ITS judges and other officers, ~~thereof~~, certain
14 aspects of the statutes of descent and distribution of property,
15 and the statutes governing the change of name of adults and chil-
16 dren, the adoption of adults and children, and the jurisdiction
17 of the juvenile division of the probate court; to prescribe the
18 powers and duties of the juvenile division of the probate court,
19 and the judges and other officers ~~thereof~~ OF THAT DIVISION; to
20 prescribe the manner and time within which actions and proceed-
21 ings may be brought in the juvenile division of the probate
22 court; to prescribe pleading, evidence, practice, and procedure

1 in actions and proceedings in the juvenile division of the
2 probate court; to provide for appeals from the juvenile division
3 of the probate court; to prescribe the powers and duties of cer-
4 tain state departments, agencies, and officers; TO CREATE A STATE
5 CHILD ADVOCACY OFFICE AND LOCAL CHILD ADVOCACY PROGRAMS; TO PRE-
6 SCRIBE THE POWERS AND DUTIES AND LIMIT THE LIABILITY OF CERTAIN
7 PERSONS IN CONNECTION WITH LOCAL CHILD ADVOCACY PROGRAMS; and to
8 provide remedies and penalties for the violation of this act.

9

CHAPTER XIIA

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

13 (2) In a proceeding under section 2(a) or (d) of this chap-
14 ter, the court shall appoint an attorney to represent the child
15 if 1 or more of the following apply:

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

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

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

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

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

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

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

13 (a) The right to an attorney at each stage of the
14 proceeding.

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

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

20 (5) If it appears to the court in a proceeding under section
21 2(b) or (c) of this chapter that the respondent wants an attorney
22 and is financially unable to retain an attorney, the court shall
23 appoint an attorney to represent the respondent.

24 (6) Except as otherwise provided in this subsection, in a
25 proceeding under section 2(b) or (c) of this chapter, the respon-
26 dent may waive his or her right to an attorney. A respondent who

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

3 (7) In a proceeding under section 2(b) or (c) of this chap-
4 ter, the court shall appoint an attorney to represent the child.
5 The child shall not waive the assistance of an attorney. The
6 appointed attorney shall observe and, dependent upon the child's
7 age and capability, interview the child. If the child is placed
8 in foster care, the attorney shall, before representing the child
9 in each subsequent proceeding or hearing, review the agency case
10 file and consult with the foster parents and the caseworker.

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

26 (9) ~~(8)~~ If an attorney is appointed for a party under this
27 section, the court may enter an order assessing attorney costs

1 against the party or the person responsible for the support of
2 that party. An order assessing attorney costs may be enforced
3 through contempt proceedings.

4 (10) ~~(9)~~ An attorney appointed by the court under this
5 section shall serve until discharged by the court.

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

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

16 (2) Except as otherwise provided in ~~subsections (3), (5),~~
17 ~~(6), (8), (9), and (10)~~ THIS SECTION, if a child is placed in
18 foster care, the cause shall be reheard not more than 182 days
19 after entry of the order of disposition. The showing shall be
20 recorded stenographically at a hearing held by the judge or
21 referee. If the child remains in foster care in the temporary
22 custody of the court following the hearing, the cause shall be
23 further reheard not more than 182 days after the hearing. In
24 conducting the review hearing, the court shall review the per-
25 formance of the child, the child's parent, guardian, or custodi-
26 an, the juvenile worker, and other persons providing assistance
27 to the child and his or her family.

1 (3) If, in a proceeding under section 2(b) of this chapter,
2 a child is placed and remains in foster care, a review hearing
3 shall be held not more than 91 days after entry of the order of
4 disposition and NOT MORE THAN every 91 days ~~thereafter~~ AFTER
5 THE INITIAL REVIEW HEARING for the first year following the entry
6 of the order of disposition. After the first year following the
7 entry of the order of disposition, a review hearing shall be held
8 not more than 182 days after a permanency planning hearing held
9 ~~pursuant to~~ AS PROVIDED IN section 19a of this chapter. Upon
10 motion by any party or in the court's discretion, a review hear-
11 ing may be accelerated to review any element of the case service
12 plan prepared ~~pursuant to~~ AS PRESCRIBED BY section 18f of this
13 chapter.

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

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

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

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

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

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

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

1 (g) The attorney for the child, the attorneys for each
2 party, and the prosecuting attorney if the prosecuting attorney
3 has appeared in the case.

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

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

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

8 (5) At a review hearing under subsection (3), the court
9 shall review on the record all of the following:

10 (a) Compliance with the case service plan with respect to
11 services provided or offered to the child and his or her parent,
12 guardian, or custodian and whether the parent, guardian, or cus-
13 todian has complied with and benefited from those services.

14 (b) Compliance with the case service plan with respect to
15 visitation with the child. If visitation did not occur or was
16 infrequent, the court shall determine why visitation did not
17 occur or was infrequent.

18 (c) The extent to which the parent complied with each provi-
19 sion of the case service plan, prior court orders, and any agree-
20 ment between the parent and the agency.

21 (d) Likely harm to the child if the child continues to be
22 separated from his or her parent, guardian, or custodian.

23 (e) Likely harm to the child if the child is returned to his
24 or her parent, guardian, or custodian.

25 (6) After review of the case service plan, the court shall
26 determine the extent of progress made toward alleviating or
27 mitigating the conditions that caused the child to be placed in

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

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

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

11 (7) At a review hearing under subsection (2) or (3), the
12 court shall determine the continuing necessity and appropriate-
13 ness of the child's placement and shall order the return of the
14 child to the custody of the parent, continue the dispositional
15 order, modify the dispositional order, or enter a new disposi-
16 tional order.

17 (8) If in a proceeding under section 2(b) of this chapter a
18 child is placed in foster care, the court shall determine at the
19 dispositional hearing and each review hearing whether the cause
20 should be reviewed before the next review hearing required by
21 subsection (3). In making this determination, the court shall
22 consider, but IS not ~~be~~ limited to CONSIDERING, all of the
23 following:

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

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

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

9 (10) An agency report filed with the court shall be accessi-
10 ble to all parties to the action and shall be offered into
11 evidence. The court shall consider any written or oral informa-
12 tion concerning the child from the child's parent, guardian, cus-
13 todian, foster parent, child caring institution, or relative with
14 whom a child is placed, in addition to any other evidence offered
15 at the hearing.

16 Sec. 19a. (1) If a child remains in foster care and paren-
17 tal rights to the child have not been terminated, the court shall
18 conduct a permanency planning hearing not more than 364 days
19 after entry of the order of disposition and every 364 days
20 ~~thereafter~~ AFTER THE INITIAL PERMANENCY PLANNING HEARING during
21 the continuation of the child's placement in foster care. A per-
22 manency planning hearing may be combined with a review hearing
23 held under section 19(3) of this chapter.

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

1 (3) Not less than 14 days before a permanency planning
2 hearing, written notice of the hearing and a statement of the
3 purposes of the hearing, including a notice that the hearing may
4 result in further proceedings to terminate parental rights, shall
5 be served upon all of the PARTIES REQUIRED TO BE NOTIFIED OF A
6 REVIEW HEARING UNDER SECTION 19. ~~following:~~

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

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

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

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

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

16 ~~(f) If tribal affiliation has been determined, the elected~~
17 ~~leader of the Indian tribe.~~

18 ~~(g) The attorney for the child, the attorneys for each~~
19 ~~party, and the prosecuting attorney if the prosecuting attorney~~
20 ~~has appeared in the case.~~

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

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

23 (4) If parental rights to the child have not been terminated
24 and the court determines at a permanency planning hearing that
25 the return of the child to his or her parent would not cause a
26 substantial risk of harm to the child's life, physical health, or
27 mental well-being, the court shall order the child returned to

1 his or her parent. In determining whether the return of the
2 child would cause a substantial risk of harm to the child, the
3 court shall view the failure of the parent to substantially
4 comply with the terms and conditions of the case service plan
5 prepared under section 18f of this chapter as evidence that
6 return of the child to his or her parent would cause a substan-
7 tial risk of harm to the child's life, physical health, or mental
8 well-being. In addition to considering conduct of the parent as
9 evidence of substantial risk of harm, the court shall consider
10 any condition or circumstance of the child that may be evidence
11 that a return to the parent would cause a substantial risk of
12 harm to the child's life, physical health, or mental well-being.

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

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

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

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

4 (7) In making the determinations under this section, the
5 court shall consider any written or oral information concerning
6 the child from the child's parent, guardian, custodian, foster
7 parent, child caring institution, or relative with whom the child
8 is placed, in addition to any other evidence offered at the
9 hearing.

10 Sec. 19b. (1) Except as provided in subsection (4), if a
11 child remains in foster care in the temporary custody of the
12 court following a review hearing under section 19(3) of this
13 chapter or a permanency planning hearing under section 19a of
14 this chapter or if a child remains in the custody of a guardian
15 or limited guardian, upon petition of the prosecuting attorney,
16 whether or not the prosecuting attorney is representing or acting
17 as legal consultant to the agency or any other party, or of the
18 child, guardian, custodian, concerned person as defined in sub-
19 section (6), agency, or the children's ombudsman ~~pursuant to~~
20 UNDER section 7 of the children's ombudsman act, ACT NO. 204 OF
21 THE PUBLIC ACTS OF 1994, BEING SECTION 722.927 OF THE MICHIGAN
22 COMPILED LAWS, the court shall hold a hearing to determine if the
23 parental rights to a child should be terminated and, if all
24 parental rights to the child are terminated, the child placed in
25 permanent custody of the court. The court shall state on the
26 record or in writing its findings of fact and conclusions of law

1 with respect to whether or not parental rights should be
2 terminated.

3 (2) Not less than 14 days before a hearing to determine if
4 the parental rights to a child should be terminated, written
5 notice of the hearing shall be served upon all of the PARTIES
6 REQUIRED TO BE NOTIFIED OF A REVIEW HEARING UNDER SECTION 19.
7 ~~following:~~

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

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

11 ~~(c) The child's parents.~~

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

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

16 ~~(f) If tribal affiliation has been determined, the elected~~
17 ~~leader of the Indian tribe.~~

18 ~~(g) The attorney for the child and the attorneys for all~~
19 ~~parties.~~

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

21 ~~(i) The prosecutor.~~

22 (3) The court may terminate the parental rights of a parent
23 to a child if the court finds, by clear and convincing evidence,
24 1 or more of the following:

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

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

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

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

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

17 (ii) A parent who had the opportunity to prevent the physi-
18 cal injury or physical or sexual abuse failed to do so and the
19 court finds that there is a reasonable likelihood that the child
20 will suffer injury or abuse in the foreseeable future if placed
21 in the parent's home.

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

26 (i) The conditions that led to the adjudication continue to
27 exist and there is no reasonable likelihood that the conditions

1 will be rectified within a reasonable time considering the age of
2 the child.

3 (ii) Other conditions exist that cause the child to come
4 within the jurisdiction of the court, the parent has received
5 recommendations to rectify those conditions, the conditions have
6 not been rectified by the parent after the parent has received
7 notice ~~—~~ AND a hearing, and HAS been given a reasonable oppor-
8 tunity to rectify the conditions, and there is no reasonable
9 likelihood that the conditions will be rectified within a reason-
10 able time considering the age of the child.

11 (d) The parent of a child has placed the child in a limited
12 guardianship under section 424a of the revised probate code, Act
13 No. 642 of the Public Acts of 1978, being section 700.424a of the
14 Michigan Compiled Laws, and has substantially failed, without
15 good cause, to comply with a limited guardianship placement plan
16 described in section 424a of Act No. 642 of the Public Acts of
17 1978 regarding the child to the extent that such noncompliance
18 has resulted in a disruption of the parent-child relationship.

19 (e) The parent of a child who has a guardian under the
20 revised probate code, Act No. 642 of the Public Acts of 1978,
21 being sections 700.1 to 700.993 of the Michigan Compiled Laws,
22 has substantially failed, without good cause, to comply with a
23 court-structured plan described in section 424b or 424c of Act
24 No. 642 of the Public Acts of 1978, being sections 700.424b and
25 700.424c of the Michigan Compiled Laws, regarding the child to
26 the extent that ~~—such—~~ THE noncompliance has resulted in a
27 disruption of the parent-child relationship.

1 (f) The child has a guardian under the revised probate code,
2 Act No. 642 of the Public Acts of 1978, and both of the following
3 have occurred:

4 (i) The parent, having the ability to support or assist in
5 supporting the minor, has failed or neglected, without good
6 cause, to provide regular and substantial support for the minor
7 for a period of 2 years or more before the filing of the petition
8 or, if a support order has been entered, has failed to substan-
9 tially comply with the order for a period of 2 years or more
10 before the filing of the petition.

11 (ii) The parent, having the ability to visit, contact, or
12 communicate with the minor, has regularly and substantially
13 failed or neglected, without good cause, to do so for a period of
14 2 years or more before the filing of the petition.

15 (g) The parent, without regard to intent, fails to provide
16 proper care or custody for the child and there is no reasonable
17 expectation that the parent will be able to provide proper care
18 and custody within a reasonable time considering the age of the
19 child.

20 (h) The parent is imprisoned for such a period that the
21 child will be deprived of a normal home for a period exceeding 2
22 years, and the parent has not provided for the child's proper
23 care and custody, and there is no reasonable expectation that the
24 parent will be able to provide proper care and custody within a
25 reasonable time considering the age of the child.

26 (i) Parental rights to 1 or more siblings of the child have
27 been terminated due to serious and chronic neglect or physical or

1 sexual abuse, and prior attempts to rehabilitate the parents have
2 been unsuccessful.

3 (j) There is a reasonable likelihood, based on the conduct
4 or capacity of the child's parent, that the child will be harmed
5 if he or she is returned to the home of the parent.

6 (4) If a petition to terminate the parental rights to a
7 child is filed, the court may enter an order terminating parental
8 rights under subsection (3) at the initial dispositional
9 hearing.

10 (5) If the court finds that there are grounds for termina-
11 tion of parental rights, the court shall order termination of
12 parental rights and order that additional efforts for reunifica-
13 tion of the child with the parent shall not be made, unless the
14 court finds that termination of parental rights to the child is
15 clearly not in the child's best interests.

16 (6) As used in this section, "concerned person" means a
17 foster parent with whom the child is living or has lived who has
18 specific knowledge of behavior by the parent constituting grounds
19 for termination under subsection (3)(b) or (g) and who has con-
20 tacted the department of social services, the prosecuting attor-
21 ney, the child's attorney, and the child's guardian ad litem, if
22 any, and is satisfied that none of these persons intend to file a
23 petition under this section.

24 Sec. 28. (1) Before June 1, 1988, the court shall maintain
25 records of all cases brought before it and as provided in the
26 juvenile diversion act, Act No. 13 of the Public Acts of 1988,
27 being sections 722.821 to 722.831 of the Michigan Compiled Laws.

1 The records shall be open only by order of the court to persons
2 having a legitimate interest except that diversion records shall
3 be open only as provided in Act No. 13 of the Public Acts of
4 1988.

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

18 (3) RECORDS AND INFORMATION ACQUIRED BY A SPECIAL ADVOCATE
19 AND REPORTS PREPARED BY A SPECIAL ADVOCATE SHALL BE DISCLOSED
20 ONLY UNDER COURT RULE OR AS PROVIDED BY LAW.

21 (4) ~~(3) Whenever~~ IF the court issues an order in respect
22 to payments by a parent under section 18(2) of this chapter, a
23 copy shall be mailed to the department of treasury. Action taken
24 against parents or adults shall not be released for publicity
25 unless the parents or adults are adjudged guilty of contempt of
26 court. The court shall furnish the department of social services
27 with reports of the administration of the juvenile division in a

1 form as shall be recommended by the Michigan association of
2 probate and juvenile court judges. Copies of these reports
3 shall, upon request, be made available to other state departments
4 by the department of social services.

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

10 SEC. 35. AS USED IN THIS CHAPTER:

11 (A) "LOCAL BOARD" MEANS A LOCAL BOARD ESTABLISHED UNDER
12 SECTION 38 OF THIS CHAPTER FOR A LOCAL PROGRAM.

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

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

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

19 SEC. 36. (1) THE STATE CHILD ADVOCACY OFFICE IS CREATED AND
20 IS LOCATED IN THE STATE COURT ADMINISTRATOR'S OFFICE FOR
21 ADMINISTRATION.

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

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

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

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

10 (A) PROMULGATE RULES AND DEVELOP POLICIES FOR, AND OVERSEE
11 THE OPERATION OF, THE STATE CHILD ADVOCACY OFFICE.

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

15 (C) PROMULGATE RULES AND DEVELOP POLICIES NECESSARY TO
16 IMPLEMENT LOCAL PROGRAMS, INCLUDING RULES AND POLICIES THAT
17 FACILITATE THE CREATION AND INCREASE THE EFFECTIVENESS OF LOCAL
18 PROGRAMS AND THAT ESTABLISH THE CRITERIA FOR A LOCAL BOARD'S ELI-
19 GIBILITY FOR STATE FUNDS.

20 (D) SUBJECT TO THE PRESCRIPTIONS OF SECTION 38 OF THIS CHAP-
21 TER, APPOINT 3 LOCAL BOARD MEMBERS FOR 1-YEAR TERMS; 3 FOR 2-YEAR
22 TERMS; AND 3 FOR 3-YEAR TERMS FOR EACH LOCAL PROGRAM ESTABLISHED
23 IN COMPLIANCE WITH THE STATE BOARD'S RULES AND POLICIES.

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

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

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

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

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

6 (B) PROPOSE RULES TO THE STATE BOARD ESTABLISHING CRITERIA
7 FOR A LOCAL BOARD'S ELIGIBILITY FOR STATE MONEY.

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

10 (D) REVIEW APPLICATIONS FOR MONEY BY LOCAL PROGRAMS AND DIS-
11 TRIBUTE STATE MONEY TO THOSE THAT QUALIFY.

12 (E) DEVELOP A SPECIAL ADVOCATE TRAINING MANUAL AND TRAINING
13 PROGRAM.

14 (F) APPROVE LOCAL SPECIAL ADVOCATE TRAINING PROGRAMS.

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

17 SEC. 38. (1) A PERSON MAY ESTABLISH A LOCAL PROGRAM CONSIS-
18 TENT WITH THE RULES AND POLICIES OF THE STATE BOARD. EACH LOCAL
19 PROGRAM SHALL BE GOVERNED BY A LOCAL BOARD INITIALLY APPOINTED AS
20 PROVIDED IN SECTION 36 OF THIS CHAPTER. A LOCAL BOARD CONSISTS
21 OF 9 MEMBERS FROM THE COMMUNITY SERVED BY THE LOCAL PROGRAM WHO
22 ARE FROM DIVERSE FIELDS SUCH AS EDUCATION, LAW, MEDICINE, PSY-
23 CHOLOGY, AND SOCIAL WORK AND WHO HAVE DEMONSTRATED AN INTEREST IN
24 CHILDREN AND THEIR WELFARE. AT LEAST 1 LOCAL BOARD MEMBER SHALL
25 BE A PROBATE JUDGE OR HIS OR HER DESIGNEE.

26 (2) A LOCAL BOARD SHALL APPOINT LOCAL BOARD MEMBERS TO
27 REPLACE THOSE WHOSE TERMS EXPIRE. A LOCAL BOARD MEMBER MAY BE

1 REAPPOINTED. AN APPOINTMENT UNDER THIS SECTION IS FOR A 3-YEAR
2 TERM.

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

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

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

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

12 (D) RAISE MONEY TO SUPPLEMENT ALLOCATED STATE MONEY.

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

15 SEC. 39. A DIRECTOR APPOINTED UNDER SECTION 38 OF THIS
16 CHAPTER SHALL DO ALL OF THE FOLLOWING:

17 (A) ADMINISTER THE LOCAL PROGRAM.

18 (B) APPLY FOR STATE AND LOCAL MONEY FOR WHICH THE LOCAL PRO-
19 GRAM IS ELIGIBLE.

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

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

25 (E) RECRUIT, SELECT, TRAIN, SUPERVISE, AND DISMISS SPECIAL
26 ADVOCATES. THE DIRECTOR SHALL MAKE ALL FINAL DETERMINATIONS
27 REGARDING A SPECIAL ADVOCATE'S PARTICIPATION IN THE LOCAL

1 PROGRAM. A PERSON QUALIFIED TO BE A SPECIAL ADVOCATE, HOWEVER,
2 SHALL NOT BE DISCRIMINATED AGAINST BASED ON AGE, ETHNIC ORIGIN,
3 MARITAL STATUS, RACE, RELIGION, GENDER, SEXUAL ORIENTATION, OR
4 SOCIOECONOMIC STATUS.

5 (F) ASSIGN A SPECIAL ADVOCATE TO EACH CASE AS PROVIDED IN
6 SECTION 43 OF THIS CHAPTER.

7 (G) EMPLOY CLERICAL STAFF AS REQUIRED.

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

12 SEC. 41. (1) EACH LOCAL PROGRAM SHALL HAVE AT LEAST 1 STAFF
13 ATTORNEY.

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

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

19 SEC. 42. (1) A SPECIAL ADVOCATE IS A VOLUNTEER WHO IS AT
20 LEAST 21 YEARS OF AGE AND HAS DEMONSTRATED AN INTEREST IN CHIL-
21 DREN AND THEIR WELFARE. A SPECIAL ADVOCATE SHALL COMMIT TO AT
22 LEAST 1 YEAR OF SERVICE. A SPECIAL ADVOCATE MUST HAVE RELIABLE
23 TRANSPORTATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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