

HOUSE BILL No. 6077

September 16, 1998, Introduced by Reps. Schauer and LaForge and referred to the Committee on Human Services and Children.

A bill 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; and to provide remedies and penalties,"

by amending sections 13a, 18f, and 19 of chapter XIIIA (MCL 712A.13a, 712A.18f, and 712A.19), as amended by 1997 PA 163, and by adding sections 6b, 13c, 13d, and 17d to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

1

2 SEC. 6B. THE COURT MAY ISSUE AN ORDER THAT AFFECTS AN ADULT
3 WHO RESIDES IN THE HOME OF A CHILD OVER WHOM THE COURT HAS JURIS-
4 DICTION THAT DOES ANY OF THE FOLLOWING:

5 (A) REQUIRES THE ADULT TO PARTICIPATE IN THE DEVELOPMENT OF
6 A CASE SERVICE PLAN.

7 (B) REQUIRES COMPLIANCE WITH A CASE SERVICE PLAN.

8 (C) IMPOSES SANCTIONS IF THE NONPARENT ADULT DOES NOT PAR-
9 TICIPATE OR COMPLY AS REQUIRED UNDER THIS SUBSECTION.

10 Sec. 13a. (1) As used in this section and sections 6B, 13b,
11 13C, 13D, 17D, 18f, 19, 19a, 19b, and 19c of this chapter:

12 (a) "Agency" means a public or private organization, insti-
13 tution, or facility responsible under court order or contractual
14 arrangement for the care and supervision of a juvenile.

15 (B) "CASE SERVICE PLAN" MEANS THE PLAN DEVELOPED BY AN
16 AGENCY AND PREPARED PURSUANT TO SECTION 18F OF THIS CHAPTER AND
17 AGREED TO BY A PARENT THAT INCLUDES SERVICES TO BE PROVIDED BY,
18 AND RESPONSIBILITIES AND OBLIGATIONS OF, THE AGENCY AND ACTIVI-
19 TIES, RESPONSIBILITIES, AND OBLIGATIONS OF THE PARENT. THE CASE
20 SERVICE PLAN MAY BE REFERRED TO USING A TERM DIFFERENT THAN CASE
21 SERVICE PLAN INCLUDING, BUT NOT LIMITED TO, A PARENT/AGENCY
22 AGREEMENT OR A PARENT/AGENCY TREATMENT AND SERVICE AGREEMENT.

23 (C) ~~(b)~~ "Foster care" means care provided to a juvenile in
24 a foster family home, foster family group home, or juvenile
25 caring institution licensed or approved under 1973 PA 116,
26 MCL 722.111 to 722.128, or care provided to a juvenile in a
27 relative's home under an order of the court.

1 (D) ~~(c)~~ "Permanent foster family agreement" means an
2 agreement for a child 14 years old or older to remain with a par-
3 ticular foster family until the child is 18 years old under stan-
4 dards and requirements established by the family independence
5 agency, which agreement is among all of the following:

6 (i) The child.

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

8 (iii) The foster family.

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

11 (2) If a juvenile is alleged to be within the provisions of
12 section 2(b) of this chapter, the court may authorize a petition
13 to be filed at the conclusion of the preliminary hearing or
14 inquiry. The court may authorize the petition upon a showing of
15 probable cause that 1 or more of the allegations in the petition
16 are true and fall within the provisions of section 2(b) of this
17 chapter. If a petition is before the court because the family
18 independence agency is required to submit the petition under sec-
19 tion 17 of THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.637,
20 the court shall hold a hearing on the petition within 24 hours or
21 on the next business day after the petition is submitted, at
22 which hearing the court shall at least consider the matters gov-
23 erned by subsections (4) and (5).

24 (3) Except as provided in subsection (5), if a petition
25 under subsection (2) is authorized, the court may release the
26 juvenile in the custody of either of the juvenile's parents or
27 the juvenile's guardian or custodian under reasonable terms and

1 conditions necessary for either the juvenile's physical health or
2 mental well-being.

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

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

10 (b) The court after a hearing finds probable cause to
11 believe the parent, guardian, custodian, or other person commit-
12 ted the abuse.

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

17 (5) If a petition alleges abuse by a person described in
18 subsection (4), regardless of whether the court orders the
19 alleged abuser to leave the child's home under subsection (4),
20 the court shall not leave the child in or return the child to the
21 child's home or place the child with a person not licensed under
22 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that
23 the conditions of custody at the placement and with the individ-
24 ual with whom the child is placed are adequate to safeguard the
25 child from the risk of harm to the child's life, physical health,
26 or mental well-being.

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

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

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

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

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

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

20 (a) The agency has the responsibility to prepare an initial
21 services plan within 30 days ~~of~~ AFTER the juvenile's
22 placement.

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

26 (c) Participation in an initial services plan is voluntary
27 without a court order.

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

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

10 (11) If a juvenile is removed from his or her home, the
11 juvenile's parent shall be permitted to have parenting time fre-
12 quently with the juvenile. However, if parenting time, even if
13 supervised, may be harmful to the juvenile, the court shall order
14 the child to have a psychological evaluation or counseling, or
15 both, to determine the appropriateness and the conditions of par-
16 enting time. The court may suspend parenting time while the psy-
17 chological evaluation or counseling is conducted.

18 (12) Upon the motion of any party, the court shall review
19 custody and placement orders and initial services plans pending
20 trial and may modify those orders and plans as the court consid-
21 ers under this section are in the best interests of the
22 juvenile.

23 (13) The court shall include in an order placing a child in
24 foster care an order directing the release of information con-
25 cerning the child in accordance with this subsection. If a child
26 is placed in foster care, within 10 days after receipt of a
27 written request, the agency shall provide the person who is

1 providing the foster care with copies of all initial, updated,
2 and revised case service plans and court orders relating to the
3 child and all of the child's medical, mental HEALTH, and educa-
4 tion reports, including reports compiled before the child was
5 placed with that person.

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

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

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

14 (15) IN DETERMINING PLACEMENT OF A JUVENILE OUTSIDE OF THE
15 JUVENILE'S HOME, THE COURT SHALL CONSIDER WHETHER THE JUVENILE
16 WAS THE VICTIM OR PERPETRATOR OF THE ABUSE.

17 (16) ~~(15)~~ As used in this section, "abuse" means 1 or more
18 of the following:

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

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

25 (c) Sexual exploitation of a juvenile, which includes, but
26 is not limited to, allowing, permitting, or encouraging a
27 juvenile to engage in prostitution or allowing, permitting,

1 encouraging, or engaging in photographing, filming, or depicting
2 a juvenile engaged in a listed sexual act as defined in section
3 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

4 (d) Maltreatment of a juvenile.

5 SEC. 13C. EACH AGENCY RESPONSIBLE FOR THE CARE OF CHILDREN
6 IN FOSTER CARE SHALL MONITOR AND DOCUMENT PROGRESS AND PER-
7 FORMANCE OF EACH CHILD IN FOSTER CARE UNDER THE SUPERVISION OF
8 THE AGENCY. DOCUMENTATION OF COMPLIANCE WITH THIS REQUIREMENT
9 SHALL BE RECORDED IN EACH CHILD'S CASE FILE. IF THERE IS ANY
10 DISAGREEMENT BETWEEN THE AGENCY AND THE FOSTER CARE PROVIDER, THE
11 AREAS OF DISAGREEMENT SHALL BE DOCUMENTED IN THE FILE ALONG WITH
12 A RECORD OF EFFORTS TO RESOLVE THE DISAGREEMENT.

13 SEC. 13D. IF A JUVENILE IS REMOVED FROM THE JUVENILE'S HOME
14 BECAUSE HE OR SHE IS ALLEGED TO HAVE COMMITTED ABUSE TO A SIB-
15 LING, THE AGENCY SHALL INFORM THE PARTIES OF THE ACTION TO BE
16 TAKEN. THE AGENCY SHALL CONSIDER WHETHER THE JUVENILE IS A
17 VICTIM OR PERPETRATOR OF THE ABUSE WHEN MAKING A REFERRAL REGARD-
18 ING SIBLING ON SIBLING ABUSE.

19 SEC. 17D. (1) AT EACH REVIEW, DISPOSITIONAL, OR PERMANENCY
20 HEARING, THE COURT SHALL INQUIRE WHETHER THE ATTORNEY OF THE
21 CHILD WHO IS THE SUBJECT OF THE HEARING HAS DONE EACH OF THE
22 FOLLOWING:

23 (A) CONSULTED WITH THE CHILD.

24 (B) FULFILLED HIS OR HER OBLIGATION TO OBSERVE AND INTERVIEW
25 THE CHILD AS PROVIDED IN SECTION 17C OF THIS CHAPTER.

26 (C) CONSULTED WITH THE CHILD'S FOSTER PARENTS IF THE CHILD
27 IS IN FOSTER CARE.

1 (D) CONSULTED WITH THE CHILD'S PUBLIC OR PRIVATE AGENCY
2 CASEWORKER.

3 (2) IN A PROCEEDING UNDER SECTION 2(B) OR (C) OF THIS CHAP-
4 TER, AN AGENCY CASEWORKER WHO KNOWS THAT A CHILD'S ATTORNEY HAS
5 NOT MET THE OBLIGATION TO OBSERVE AND INTERVIEW THE CHILD SHALL
6 INFORM THE COURT OF THAT FACT.

7 Sec. 18f. (1) If, in a proceeding under section 2(b) of
8 this chapter, an agency advises the court against placing a child
9 in the custody of the child's parent, guardian, or custodian, the
10 agency shall report in writing to the court what efforts were
11 made to prevent the child's removal from his or her home or the
12 efforts made to rectify the conditions that caused the child's
13 removal from his or her home. The report shall include all of
14 the following:

15 (a) If services were provided to the child and his or her
16 parent, guardian, or custodian, the services, including in-home
17 services, that were provided.

18 (b) If services were not provided to the child and his or
19 her parent, guardian, or custodian, the reasons why services were
20 not provided.

21 (c) Likely harm to the child if the child were to be sepa-
22 rated from his or her parent, guardian, or custodian.

23 (d) Likely harm to the child if the child were to be
24 returned to his or her parent, guardian, or custodian.

25 (2) Before the court enters an order of disposition in a
26 proceeding under section 2(b) of this chapter, the agency shall

1 prepare a case service plan that shall be available to the court
2 and all the parties to the proceeding.

3 (3) The case service plan PREPARED UNDER SUBSECTION (2)
4 shall provide for placing the child in the most family-like set-
5 ting available and in as close proximity to the child's parents'
6 home as is consistent with the best interests and special needs
7 of the child. The case service plan shall include, but IS not
8 ~~be~~ limited to, ALL OF the following:

9 (a) The type of home or institution in which the child is to
10 be placed and the reasons for the selected placement.

11 (b) Efforts to be made by the child's parent to enable the
12 child to return to his or her home.

13 (c) Efforts to be made by the agency to return the child to
14 his or her home.

15 (d) ~~Schedule~~ A SCHEDULE of services to be provided to the
16 parent, child, and if the child is to be placed in foster care,
17 the foster parent, to facilitate the child's return to his or her
18 home or to facilitate the permanent placement of the child.

19 (e) Except as provided in subdivision (f), unless parenting
20 time, even if supervised, would be harmful to the child as deter-
21 mined by the court under section 13a of this chapter or other-
22 wise, a schedule for regular and frequent parenting time between
23 the child and his or her parent which shall not be less than once
24 every 7 days.

25 (f) At the time of the initial termination hearing held to
26 consider termination of parental rights, THAT parenting time is
27 automatically suspended unless the parent establishes and the

1 court determines that the exercise of parenting time will not
2 harm the child. If the court adjourns or continues the termina-
3 tion hearing beyond the original scheduled date for any reason,
4 the court shall suspend parenting time in the interim, unless the
5 court determines that the exercise of parenting time will not
6 harm the child.

7 (4) The court shall consider the case service plan PREPARED
8 UNDER SUBSECTION (2), any written or oral information concerning
9 the child from the child's parent, guardian, custodian, foster
10 parent, child caring institution, relative with whom the child is
11 placed, or the child's guardian ad litem and any other evidence,
12 including the appropriateness of parenting time, offered bearing
13 on disposition before the court enters an order of disposition.
14 The order of disposition shall state whether reasonable efforts
15 have been made to prevent the child's removal from his or her
16 home or to rectify the conditions that caused the child's removal
17 from his or her home. The court may order compliance with all or
18 any part of the case service plan as the court considers
19 necessary.

20 (5) If a child continues in placement outside of the child's
21 home, the case service plan PREPARED UNDER SUBSECTION (2) shall
22 be updated and revised at 90-day intervals as required by the
23 rules promulgated under 1973 PA 116, MCL 722.111 to 722.128. The
24 agency shall consult with the foster parents when it updates and
25 revises the case service plan, and shall attach a statement sum-
26 marizing the information received from the foster parents to the
27 updated and revised case service plan. Updated and revised case

1 service plans shall be available to the court and all the parties
2 to the proceeding. Within 10 days after receipt of a written
3 request, the agency shall provide the person who is providing the
4 foster care with the information itemized in section 13a(13) of
5 this chapter.

6 (6) THE AGENCY SHALL PREPARE A REPORT FOR EACH REVIEW HEAR-
7 ING AND PRESENT THE REPORT TO THE COURT THAT DOCUMENTS NONCOMPLI-
8 ANCE WITH A CASE SERVICE PLAN PREPARED UNDER SUBSECTION (2) BY A
9 PARENT OR NONPARENT ADULT REQUIRED TO COMPLY WITH THAT CASE SERV-
10 ICE PLAN.

11 Sec. 19. (1) Subject to section 20 of this chapter, if a
12 child remains under the jurisdiction of the court, a cause may be
13 terminated or an order may be amended or supplemented, within the
14 authority granted to the court in section 18 of this chapter, at
15 any time as the court considers necessary and proper. An amended
16 or supplemented order shall be referred to as a "supplemental
17 order of disposition". If the family independence agency becomes
18 aware of additional abuse or neglect of a child who is under the
19 jurisdiction of the court and IF that abuse or neglect is sub-
20 stantiated as provided in the child protection law, 1975 PA 238,
21 MCL 722.621 to 722.638, the department shall file a supplemental
22 petition with the court.

23 (2) Except as otherwise provided in subsections (3), (6),
24 (7), ~~(9)~~, (10), ~~and~~ (11), AND (12), if a child is placed in
25 foster care, the cause shall be reheard not more than 182 days
26 after entry of the order of disposition. The showing shall be
27 recorded stenographically at a hearing held by the judge or

1 referee. If the child remains in foster care in the temporary
2 custody of the court following the hearing, the cause shall be
3 further reheard not more than 182 days after the hearing. In
4 conducting the review hearing, the court shall review the per-
5 formance of the child, the child's parent, guardian, or custodi-
6 an, the juvenile worker, and other persons providing assistance
7 to the child and his or her family.

8 (3) Except as otherwise provided in subsection (4), if, in a
9 proceeding under section 2(b) of this chapter, a child is placed
10 and remains in foster care, a review hearing shall be held not
11 more than 91 days after entry of the order of disposition and
12 every 91 days after that so long as the child is subject to the
13 jurisdiction, control, or supervision of the court, or of the
14 Michigan children's institute or other agency. Upon motion by
15 any party or in the court's discretion, a review hearing may be
16 accelerated to review any element of the case service plan.
17 ~~prepared pursuant to section 18f of this chapter.~~

18 (4) If a child is in a permanent foster family agreement or
19 if a child is placed with a relative and the placement is
20 intended to be permanent, the court shall hold a review hearing
21 not more than 182 days after a permanency planning hearing held
22 pursuant to section 19a of this chapter and every 182 days after
23 that so long as the child is subject to the jurisdiction, con-
24 trol, or supervision of the court, or of the Michigan children's
25 institute or other agency. Upon the motion of any party or at
26 the court's discretion, a review hearing may be accelerated to

1 review any element of the case service plan. ~~prepared pursuant~~
2 ~~to section 18f of this chapter.~~

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

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

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

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

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

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

14 (F) AN ADULT WHO LIVES IN THE HOME OF A CHILD IF THE ADULT
15 IS REQUIRED TO COMPLY WITH THE CASE SERVICE PLAN.

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

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

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

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

26 (a) Compliance with the case service plan with respect to
27 services provided or offered to the child and the child's parent,

1 guardian, ~~or~~ custodian, OR ADULT WHO LIVES IN THE HOME OF A
2 CHILD IF THE ADULT IS REQUIRED TO COMPLY WITH THE CASE SERVICE
3 PLAN and whether the parent, guardian, ~~or~~ custodian, OR ADULT
4 WHO LIVES IN THE HOME OF A CHILD IF THE ADULT IS REQUIRED TO
5 COMPLY WITH THE CASE SERVICE PLAN has complied with and benefited
6 from those services.

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

11 (c) The extent to which the parent complied with each provi-
12 sion of the case service plan, prior court orders, and an agree-
13 ment between the parent and the agency.

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

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

18 (7) After review of the case service plan, the court shall
19 determine the extent of progress made toward alleviating or miti-
20 gating the conditions that caused the child to be placed in
21 foster care or that caused the child to remain in foster care.
22 The court may modify any part of the case service plan including,
23 but not limited to, the following:

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

1 (b) Prescribing additional actions to be taken by the
2 parent, guardian, ~~or~~ custodian, OR OTHER ADULT WHO LIVES IN THE
3 HOME OF THE CHILD to rectify the conditions that caused the child
4 to be placed in foster care or to remain in foster care.

5 (8) At a review hearing under subsection (2), (3), or (4),
6 the court shall determine the continuing necessity and appropri-
7 ateness of the child's placement and shall order the return of
8 the child to the custody of the parent, continue the disposi-
9 tional order, modify the dispositional order, or enter a new dis-
10 positional order.

11 (9) THE CASE SERVICE PLAN SHALL BE INCLUDED IN ITS ENTIRETY
12 IN THE ORDER ISSUED BY THE COURT FOLLOWING EACH REVIEW HEARING.

13 (10) ~~(9)~~ If in a proceeding under section 2(b) of this
14 chapter a child is placed in foster care, the court shall deter-
15 mine at the dispositional hearing and each review hearing whether
16 the cause should be reviewed before the next review hearing
17 required by subsection (2), (3), or (4). In making this determi-
18 nation, the court shall consider, but IS not ~~be~~ limited to, all
19 of the following:

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

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

25 (C) SUBSTANTIAL COMPLETION OF AND COMPLIANCE WITH THE
26 ACTIONS, TASKS, AND EXPECTATIONS OUTLINED IN THE CASE SERVICE
27 PLAN AND COURT ORDERS.

1 (11) ~~(10)~~ Unless waived, if not less than 7 days' notice
2 is given to all parties prior to the return of a child to the
3 child's home, and no party requests a hearing within the 7 days,
4 the court may issue an order without a hearing permitting the
5 agency to return the child to the child's home.

6 (12) ~~(11)~~ An agency report filed with the court ~~shall be~~
7 IS accessible to all parties to the action and shall be offered
8 into evidence. The court shall consider any written or oral
9 information concerning the child from the child's parent, guardi-
10 an, custodian, foster parent, child caring institution, relative
11 with whom a child is placed, or guardian ad litem, in addition to
12 any other evidence, including the appropriateness of parenting
13 time, offered at the hearing.