

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Jones

ENROLLED SENATE BILL No. 320

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 10, 13a, and 14 of chapter XIIA (MCL 712A.10, 712A.13a, and 712A.14), section 10 as amended by 1988 PA 92, section 13a as amended by 2012 PA 115, and section 14 as amended by 2001 PA 211, and by adding sections 14a and 14b to chapter XIIA.

The People of the State of Michigan enact:

CHAPTER XIIA

Sec. 10. (1) Except as otherwise provided in subsection (2) and sections 14, 14a, and 14b of this chapter, the judge may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a child is within the provisions of this chapter, if there is no objection by parties in interest. The probation officer or county agent designated to act as referee shall do all of the following:

- (a) Take and subscribe the oath of office provided by the constitution.
- (b) Administer oaths and examine witnesses.
- (c) If a case requires a hearing and the taking of testimony, make a written signed report to the judge containing a summary of the testimony taken and a recommendation for the court's findings and disposition.
- (2) If a child is before the court under section 2(a)(1) of this chapter, a probation officer or county agent who is not licensed to practice law in this state shall not be designated to act as a referee in any hearing for the child, except the preliminary inquiry or preliminary hearing. This subsection does not apply to a probation officer or county agent who has been designated to act as a referee by the judge before January 1, 1988 and who is acting as a referee as of January 1, 1988.

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 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 department of human services 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 department of human services, 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.

(k) “Sex offenders registration act” means the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(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 department of human services 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 subsections (5) and (6), 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) If a court finds a parent is required by court order to register under the sex offenders registration act, the department of human services may, but is not required to, make reasonable efforts to reunify the child with the parent. The court may order reasonable efforts to be made by the department of human services.

(7) 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.

(8) 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.

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

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

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

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

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

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

(10) 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.

(11) Before or within 7 days after a child is placed in a relative's home, the department of human services 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

Sec. 14. (1) Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or for whom there is reasonable cause to believe is violating or has violated a personal protection order issued under section 2(h) of this chapter by the court under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is reasonable cause to believe is violating or has violated a valid foreign protection order. If the officer or county agent takes a child coming within the provisions of this chapter into custody, he or she shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years taken into custody under the provisions of this chapter shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a fixed time. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

(2) If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

(3) If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing, which placement may be in any of the following:

(a) In the home of the child's parent, guardian, or custodian.

(b) If a child is within the court's jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (4) and (5), if a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.

(c) In a child care institution or child placing agency licensed by the department of human services to receive for care children within the jurisdiction of the court.

(d) In a suitable place of detention.

(4) Except as otherwise provided in subsection (5), if a court is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1989. Beginning January 1, 1990, the court shall discontinue providing those services.

(5) If a court located in a county with a population in excess of 650,000 is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1991. Beginning January 1, 1992, the court shall discontinue those services.

Sec. 14a. (1) If there is reasonable cause to believe that a child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety, an officer may, without a court order, immediately take that child into protective custody. An officer who takes a child into protective custody under this section shall immediately notify the department of human services. While awaiting the arrival of the department of human services, the child shall not be held in a detention facility.

(2) If a child taken into protective custody under this section is not released, the officer or the department of human services shall immediately contact the designated judge or referee, as provided in subsection (3), to seek a court order for placement of the child pending a preliminary hearing.

(3) A judge or referee shall be designated as the contact when a placement order is sought for a child in protective custody under this section. In accordance with the provisions of section 14b of this chapter, if the court is closed, the designated judge or referee may, upon receipt electronically or otherwise of a petition or affidavit of facts, order placement if the placement order is communicated in writing, electronically or otherwise, to the appropriate county department office and filed with the court the next business day. When a placement order is issued by a designated referee, the order shall take effect as an interim order pending a preliminary hearing.

(4) As used in this section, "officer" means a local police officer, sheriff or deputy sheriff, state police officer, or county agent or probation officer of a court of record.

Sec. 14b. (1) Upon receipt electronically or otherwise of a petition or affidavit of facts, a judge or referee may issue a written ex parte order, electronically or otherwise, authorizing the department of human services to immediately take a child into protective custody and place the child pending the preliminary hearing if the court finds all of the following:

(a) There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety.

(b) The circumstances warrant issuing an ex parte order pending the preliminary hearing.

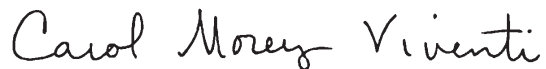
(c) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(d) No remedy other than protective custody is reasonably available to protect the child.

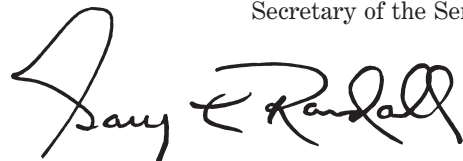
(e) Continuing to reside in the home is contrary to the child's welfare.

(2) The ex parte order shall be supported by written findings of fact.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor