

HOUSE BILL No. 4755

June 15, 2011, Introduced by Reps. Callton and McMillin and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 10, 13a, and 14 of chapter XIIIA (MCL 712A.10, 712A.13a, and 712A.14), section 10 as amended by 1988 PA 92, section 13a as amended by 2004 PA 475, and section 14 as amended by 2001 PA 211, and by adding sections 14a and 14b to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

Sec. 10. (1) Except as otherwise provided in subsection (2) **AND SECTIONS 14, 14A, AND 14B OF THIS CHAPTER**, the ~~judge of probate~~ **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

1 objection by parties in interest. The probation officer or county
2 agent designated to act as referee shall do all of the following:

3 (a) Take and subscribe the oath of office provided by the
4 constitution.

5 (b) Administer oaths and examine witnesses.

6 (c) If a case requires a hearing and the taking of testimony,
7 make a written signed report to the ~~judge of probate~~ **JUDGE**
8 containing a summary of the testimony taken and a recommendation
9 for the court's findings and disposition.

10 (2) If a child is before the court under section 2(a)(1) of
11 this chapter, a probation officer or county agent who is not
12 licensed to practice law in this state shall not be designated to
13 act as a referee in any hearing for the child, except the
14 preliminary inquiry or preliminary hearing. This subsection ~~shall~~
15 **DOES** not apply to a probation officer or county agent who has been
16 designated to act as a referee by the probate judge ~~prior to~~ **BEFORE**
17 January 1, 1988 and who is acting as a referee as of January 1,
18 1988.

19 Sec. 13a. (1) As used in this section and sections 2, 6b, 13b,
20 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

21 (a) "Agency" means a public or private organization,
22 institution, or facility that is performing the functions under
23 part D of title IV of the social security act, 42 USC 651 ~~to 655,~~
24 ~~656 to 657, 658a to 660, and 663 to 669b,~~ or that is responsible
25 under court order or contractual arrangement for a juvenile's care
26 and supervision.

27 (b) "Agency case file" means the current file from the agency

1 providing direct services to the child, that can include the child
2 protective services file if the child has not been removed from the
3 home or the family independence agency or contract agency foster
4 care file as defined under 1973 PA 116, MCL 722.111 to 722.128.

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

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

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

1 (f) "Guardian ad litem" means an individual whom the court
2 appoints to assist the court in determining the child's best
3 interests. A guardian ad litem does not need to be an attorney.

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

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

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

14 (iii) Section 10 of the child protection law, 1975 PA 238, MCL
15 722.630.

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

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

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

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

25 (i) "Permanent foster family agreement" means an agreement for
26 a child 14 years old or older to remain with a particular foster
27 family until the child is 18 years old under standards and

1 requirements established by the family independence agency, which
2 agreement is among all of the following:

3 (i) The child.

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

5 (iii) The foster family.

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

8 (j) "Relative" means an individual who is at least 18 years of
9 age and related to the child by blood, marriage, or adoption, as
10 grandparent, great-grandparent, great-great-grandparent, aunt or
11 uncle, great-aunt or great-uncle, great-great-aunt or great-great-
12 uncle, sibling, stepsibling, nephew or niece, first cousin or first
13 cousin once removed, and the spouse of any of the above, even after
14 the marriage has ended by death or divorce. A child may be placed
15 with the parent of a man whom the court has found probable cause to
16 believe is the putative father if there is no man with legally
17 established rights to the child. A placement with the parent of a
18 putative father under this subdivision is not to be construed as a
19 finding of paternity or to confer legal standing on the putative
20 father.

21 (2) If a juvenile is alleged to be within the provisions of
22 section 2(b) of this chapter, the court may authorize a petition to
23 be filed at the conclusion of the preliminary hearing or inquiry.
24 The court may authorize the petition upon a showing of probable
25 cause that 1 or more of the allegations in the petition are true
26 and fall within the provisions of section 2(b) of this chapter. If
27 a petition is before the court because the family independence

1 agency is required to submit the petition under section 17 of the
2 child protection law, 1975 PA 238, MCL 722.637, the court shall
3 hold a hearing on the petition within 24 hours or on the next
4 business day after the petition is submitted, at which hearing the
5 court shall consider at least the matters governed by subsections
6 (4) and (5).

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

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

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

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

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

27 (5) If a petition alleges abuse by a person described in

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

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

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

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

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

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

26 **(8) THE COURT MAY ORDER PLACEMENT OF THE CHILD IN FOSTER CARE**
27 **IF THE COURT FINDS ALL OF THE FOLLOWING CONDITIONS:**

1 (A) CUSTODY OF THE CHILD WITH THE PARENT PRESENTS A
2 SUBSTANTIAL RISK OF HARM TO THE CHILD'S LIFE, PHYSICAL HEALTH, OR
3 MENTAL WELL-BEING.

4 (B) NO PROVISION OF SERVICE OR OTHER ARRANGEMENT EXCEPT
5 REMOVAL OF THE CHILD IS REASONABLY AVAILABLE TO ADEQUATELY
6 SAFEGUARD THE CHILD FROM RISK AS DESCRIBED IN SUBDIVISION (A).

7 (C) CONTINUING THE CHILD'S RESIDENCE IN THE HOME IS CONTRARY
8 TO THE CHILD'S WELFARE.

9 (D) CONSISTENT WITH THE CIRCUMSTANCES, REASONABLE EFFORTS WERE
10 MADE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD.

11 (E) CONDITIONS OF CHILD CUSTODY AWAY FROM THE PARENT ARE
12 ADEQUATE TO SAFEGUARD THE CHILD'S HEALTH AND WELFARE.

13 (9) ~~(8)~~—If the court orders placement of the juvenile outside
14 the juvenile's home, the court shall inform the parties of the
15 following:

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

18 (b) The general elements of an initial services plan as
19 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
20 722.128.

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

23 (10) ~~(9)~~—Before or within 7 days after a child is placed in a
24 relative's home, the family independence agency shall perform a
25 criminal record check and central registry clearance. If the child
26 is placed in the home of a relative, the court shall order a home
27 study to be performed and a copy of the home study to be submitted

1 to the court not more than 30 days after the placement.

2 (11) ~~(10)~~—In determining placement of a juvenile pending
3 trial, the court shall order the juvenile placed in the most
4 family-like setting available consistent with the juvenile's needs.

5 (12) ~~(11)~~—If a juvenile is removed from his or her home, the
6 court shall permit the juvenile's parent to have frequent parenting
7 time with the juvenile. If parenting time, even if supervised, may
8 be harmful to the juvenile, the court shall order the child to have
9 a psychological evaluation or counseling, or both, to determine the
10 appropriateness and the conditions of parenting time. The court may
11 suspend parenting time while the psychological evaluation or
12 counseling is conducted.

13 (13) ~~(12)~~—Upon the motion of any party, the court shall review
14 custody and placement orders and initial services plans pending
15 trial and may modify those orders and plans as the court considers
16 under this section are in the juvenile's best interests.

17 (14) ~~(13)~~—The court shall include in an order placing a child
18 in foster care an order directing the release of information
19 concerning the child in accordance with this subsection. If a child
20 is placed in foster care, within 10 days after receipt of a written
21 request, the agency shall provide the person who is providing the
22 foster care with copies of all initial, updated, and revised case
23 service plans and court orders relating to the child and all of the
24 child's medical, mental health, and education reports, including
25 reports compiled before the child was placed with that person.

26 (15) ~~(14)~~—In an order placing a child in foster care, the
27 court shall include both of the following:

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

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

7 **(16)** ~~(15)~~ As used in this section, "abuse" means 1 or more of
8 the following:

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

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

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

21 (d) Maltreatment of a juvenile.

22 Sec. 14. (1) Any local police officer, sheriff or deputy
23 sheriff, state police officer, county agent or probation officer of
24 any court of record may, without the order of the court,
25 immediately take into custody any child who is found violating any
26 law or ordinance, ~~or whose surroundings are such as to endanger his~~
27 ~~or her health, morals, or welfare,~~ or for whom there is reasonable

1 cause to believe is violating or has violated a personal protection
2 order issued ~~pursuant to~~ **UNDER** section 2(h) **OF THIS CHAPTER** by the
3 court under section 2950 or 2950a of the revised judicature act of
4 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is
5 reasonable cause to believe is violating or has violated a valid
6 foreign protection order. If ~~such an~~ **THE** officer or county agent
7 takes a child coming within the provisions of this chapter into
8 custody, he or she shall immediately attempt to notify the parent
9 or parents, guardian, or custodian. While awaiting the arrival of
10 the parent or parents, guardian, or custodian, a child under the
11 age of 17 years taken into custody under the provisions of this
12 chapter shall not be held in any detention facility unless the
13 child is completely isolated so as to prevent any verbal, visual,
14 or physical contact with any adult prisoner. Unless the child
15 requires immediate detention as provided for in this act, the
16 officer shall accept the written promise of the parent or parents,
17 guardian, or custodian, to bring the child to the court at a **FIXED**
18 time. ~~fixed therein.~~ The child shall then be released to the
19 custody of the parent or parents, guardian, or custodian.

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

27 (3) If a complaint is authorized under subsection (2), the

1 order shall state where the child is to be placed, pending
2 investigation and hearing, which placement may be in any of the
3 following:

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

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

12 (c) In a child care institution or child placing agency
13 licensed by the ~~state~~ department of ~~social~~ **HUMAN** services to
14 receive for care children within the jurisdiction of the court.

15 (d) In a suitable place of detention.

16 (4) Except as otherwise provided in subsection (5), if a court
17 is providing at the time of the enactment of this subsection foster
18 care home services subject to the court's supervision to children
19 within section 2(b) of this chapter, the court may continue to
20 provide those services through December 31, 1989. Beginning January
21 1, 1990, the court shall discontinue providing those services.

22 (5) If a court located in a county with a population in excess
23 of 650,000 is providing at the time of the enactment of this
24 subsection foster care home services subject to the court's
25 supervision to children within section 2(b) of this chapter, the
26 court may continue to provide those services through December 31,
27 1991. Beginning January 1, 1992, the court shall discontinue those

1 services.

2 SEC. 14A. (1) IF THERE IS REASONABLE CAUSE TO BELIEVE THAT A
3 CHILD IS SUFFERING FROM SERIOUS HARM OR IS IN SURROUNDINGS THAT
4 PRESENT AN IMMINENT RISK OF HARM AND THE CHILD'S IMMEDIATE REMOVAL
5 FROM THOSE SURROUNDINGS IS NECESSARY TO PROTECT THE CHILD'S HEALTH
6 AND SAFETY, AN OFFICER MAY, WITHOUT A COURT ORDER, IMMEDIATELY TAKE
7 THAT CHILD INTO PROTECTIVE CUSTODY. AN OFFICER WHO TAKES A CHILD
8 INTO PROTECTIVE CUSTODY UNDER THIS SECTION SHALL IMMEDIATELY NOTIFY
9 THE DEPARTMENT OF HUMAN SERVICES. WHILE AWAITING THE ARRIVAL OF THE
10 DEPARTMENT OF HUMAN SERVICES, THE CHILD SHALL NOT BE HELD IN A
11 DETENTION FACILITY.

12 (2) IF A CHILD TAKEN INTO PROTECTIVE CUSTODY UNDER THIS
13 SECTION IS NOT RELEASED, THE OFFICER OR THE DEPARTMENT OF HUMAN
14 SERVICES SHALL IMMEDIATELY CONTACT THE DESIGNATED JUDGE OR REFEREE,
15 AS PROVIDED IN SUBSECTION (3), TO SEEK A COURT ORDER FOR PLACEMENT
16 OF THE CHILD PENDING A PRELIMINARY HEARING.

17 (3) THE CHIEF JUDGE OF THE CIRCUIT COURT SHALL DESIGNATE A
18 JUDGE OR REFEREE WHO MAY BE CONTACTED WHEN A PLACEMENT ORDER IS
19 SOUGHT FOR A CHILD IN PROTECTIVE CUSTODY UNDER THIS SECTION. IF THE
20 COURT IS CLOSED, THE DESIGNATED JUDGE OR REFEREE MAY ORDER
21 PLACEMENT IF THE PLACEMENT ORDER IS IMMEDIATELY COMMUNICATED,
22 ELECTRONICALLY OR OTHERWISE, TO THE APPROPRIATE COUNTY DEPARTMENT
23 OFFICE AND FILED WITH THE COURT THE NEXT BUSINESS DAY. WHEN A
24 PLACEMENT ORDER IS ISSUED BY A DESIGNATED REFEREE, THE ORDER SHALL
25 TAKE EFFECT AS AN INTERIM ORDER PENDING A PRELIMINARY HEARING.

26 (4) A PLACEMENT ORDER ISSUED UNDER SUBSECTION (3) SHALL
27 INDICATE THAT CONTINUATION IN THE HOME IS CONTRARY TO THE CHILD'S

1 WELFARE AND MUST STATE THE BASIS FOR THAT DETERMINATION. THE
2 PLACEMENT ORDER SHALL BE SERVED ON THE PARTIES BEFORE THE
3 PRELIMINARY HEARING.

4 (5) AS USED IN THIS SECTION, "OFFICER" MEANS A LOCAL POLICE
5 OFFICER, SHERIFF OR DEPUTY SHERIFF, STATE POLICE OFFICER, OR COUNTY
6 AGENT OR PROBATION OFFICER OF A COURT OF RECORD.

7 SEC. 14B. (1) A JUDGE OR REFEREE MAY ISSUE AN EX PARTE ORDER
8 AUTHORIZING THE DEPARTMENT OF HUMAN SERVICES TO IMMEDIATELY TAKE A
9 CHILD INTO PROTECTIVE CUSTODY AND PLACE THE CHILD PENDING THE
10 PRELIMINARY HEARING IF THE COURT FINDS ALL OF THE FOLLOWING:

11 (A) THERE IS REASONABLE CAUSE TO BELIEVE THAT THE CHILD IS
12 SUFFERING FROM SERIOUS HARM OR IS IN SURROUNDINGS THAT PRESENT AN
13 IMMINENT RISK OF HARM AND THE CHILD'S IMMEDIATE REMOVAL FROM THOSE
14 SURROUNDINGS IS NECESSARY TO PROTECT THE CHILD'S HEALTH AND SAFETY.

15 (B) THE CIRCUMSTANCES WARRANT ISSUING AN EX PARTE ORDER
16 PENDING THE PRELIMINARY HEARING.

17 (C) CONSISTENT WITH THE CIRCUMSTANCES, REASONABLE EFFORTS WERE
18 MADE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD.

19 (D) NO REMEDY OTHER THAN PROTECTIVE CUSTODY IS REASONABLY
20 AVAILABLE TO PROTECT THE CHILD.

21 (E) CONTINUING TO RESIDE IN THE HOME IS CONTRARY TO THE
22 CHILD'S WELFARE.

23 (2) THE ORDER SHALL BE SUPPORTED BY WRITTEN FINDINGS OF FACT.