

SENATE BILL No. 736

January 15, 2014, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 13a of chapter XIIA (MCL 712A.13a), as amended
by 2012 PA 163.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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~~ **CHILD'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

1 protective services file if the child has not been removed from the
2 home or the department of human services or contract agency foster
3 care file as ~~defined~~**PROVIDED** under 1973 PA 116, MCL 722.111 to
4 722.128.

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~~**CHILD** 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~~**CHILD** in a relative's home
27 under 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 department of human services, 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 (k) "Sex offenders registration act" means the sex offenders
22 registration act, 1994 PA 295, MCL 28.721 to 28.736.

23 (2) If a ~~juvenile~~**CHILD** is alleged to be within the provisions
24 of section 2(b) of this chapter, the court may authorize a petition
25 to be filed at the conclusion of the preliminary hearing or
26 inquiry. The court may authorize the petition upon a showing of
27 probable cause that 1 or more of the allegations in the petition

1 are true and fall within the provisions of section 2(b) of this
2 chapter. If a petition is before the court because the department
3 of human services is required to submit the petition under section
4 17 of the child protection law, 1975 PA 238, MCL 722.637, the court
5 shall hold a hearing on the petition within 24 hours or on the next
6 business day after the petition is submitted, at which hearing the
7 court shall consider at least the matters governed by subsections
8 (4), ~~and (5)~~, **AND (17)**.

9 (3) Except as provided in subsections (5) and (6), if a
10 petition under subsection (2) is authorized, the court may release
11 the ~~juvenile-CHILD~~ in the custody of either of ~~the juvenile's-HIS~~
12 **OR HER** parents or ~~the juvenile's-HIS OR HER~~ guardian or custodian
13 under reasonable terms and conditions necessary for either the
14 ~~juvenile's-CHILD'S~~ physical health or mental well-being.

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

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

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

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

1 mental well-being.

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

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

17 (7) In determining whether to enter an order under subsection
18 (4), the court may consider whether the parent who is to remain in
19 the ~~juvenile's~~**CHILD'S** home is married to the person to be removed
20 or has a legal right to retain possession of the home.

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

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

26 (b) The court may order the alleged abusive person, according
27 to terms the court may set, to surrender to a local law enforcement

1 agency any firearms or other potentially dangerous weapons the
2 alleged abusive person owns, possesses, or uses.

3 (c) The court may include any reasonable term or condition
4 necessary for the ~~juvenile's~~**CHILD'S** physical or mental well-being
5 or necessary to protect the ~~juvenile~~**CHILD**.

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

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

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

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

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

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

20 (10) If the court orders placement of the ~~juvenile~~**CHILD**
21 outside ~~the juvenile's~~**HIS OR HER** home, the court shall inform the
22 parties of the following:

23 (a) That the agency has the responsibility to prepare an
24 initial services plan within 30 days of the ~~juvenile's~~**CHILD'S**
25 placement.

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

1 722.128.

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

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

10 (12) In determining placement of a ~~juvenile-CHILD~~ pending
11 trial, the court shall order the ~~juvenile-CHILD~~ placed in the most
12 family-like setting available consistent with ~~the juvenile's-HIS OR~~
13 ~~HER~~ needs.

14 (13) If a ~~juvenile-CHILD~~ is removed from his or her home, the
15 court shall permit the ~~juvenile's-CHILD'S~~ parent to have frequent
16 parenting time with the ~~juvenile-CHILD~~. If parenting time, even if
17 supervised, may be harmful to the ~~juvenile-CHILD~~, the court shall
18 order the child to have a psychological evaluation or counseling,
19 or both, to determine the appropriateness and the conditions of
20 parenting time. The court may suspend parenting time while the
21 psychological evaluation or counseling is conducted.

22 (14) Upon the motion of any party, the court shall review
23 custody and placement orders and initial services plans pending
24 trial and may modify those orders and plans as the court considers
25 under this section are in the ~~juvenile's-CHILD'S~~ best interests.

26 (15) The court shall include in an order placing a child in
27 foster care an order directing the release of information

1 concerning the child in accordance with this subsection. If a child
2 is placed in foster care, within 10 days after receipt of a written
3 request, the agency shall provide the person who is providing the
4 foster care with copies of all initial, updated, and revised case
5 service plans and court orders relating to the child and all of the
6 child's medical, mental health, and education reports, including
7 reports compiled before the child was placed with that person.

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

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

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

16 (17) IF IN A PROCEEDING UNDER THIS SECTION A COURT FINDS THAT
17 A PARENT, GUARDIAN, CUSTODIAN, OR NONPARENT ADULT HAS MEDICATION
18 PRESCRIBED BY A QUALIFIED PHYSICIAN UNDER THE MICHIGAN MEDICAL
19 MARIHUANA ACT, 2008 IL 1, MCL 333.26421 TO 333.26430, AND THAT THE
20 PARENT'S, GUARDIAN'S, CUSTODIAN'S, OR NONPARENT ADULT'S CONTINUED
21 USE OF THE MEDICATION MIGHT BE INTERFERING WITH THE ABILITY,
22 JUDGMENT, OR SKILL TO PARENT OR CARE FOR THE CHILD BASED ON THE
23 PARENT'S, GUARDIAN'S, CUSTODIAN'S, OR NONPARENT ADULT'S HISTORY OR
24 ANY OTHER INFORMATION, THE COURT MAY ISSUE AN ORDER DIRECTING THE
25 PARENT, GUARDIAN, CUSTODIAN, OR NONPARENT ADULT TO DO ANY OF THE
26 FOLLOWING:

27 (A) SIGN A RELEASE TO ALLOW THE COURT TO VIEW HIS OR HER

1 MEDICAL RECORDS TO DETERMINE THE REASON FOR THE PRESCRIPTION AND
 2 THE RELATIONSHIP BETWEEN THE QUALIFIED PHYSICIAN AND THE PARENT,
 3 GUARDIAN, CUSTODIAN, OR NONPARENT ADULT.

4 (B) SUBMIT TO AN INDEPENDENT MEDICAL EVALUATION TO DETERMINE
 5 IF THE PRESCRIPTION IS NECESSARY OR IF OTHER MEDICATION WOULD BE IN
 6 THE PARENT'S, GUARDIAN'S, CUSTODIAN'S, OR NONPARENT ADULT'S BEST
 7 INTERESTS.

8 (C) DISCONTINUE USE OF THE MEDICATION IF THE PARENT'S,
 9 GUARDIAN'S, CUSTODIAN'S, OR NONPARENT ADULT'S MEDICAL EVALUATION OR
 10 RECORDS INDICATE THAT IT IS NOT IN THE PARENT'S, GUARDIAN'S,
 11 CUSTODIAN'S, OR NONPARENT ADULT'S BEST INTERESTS TO CONTINUE USE.

12 (D) CONTINUE USE UNDER THE QUALIFIED PHYSICIAN'S DIRECTIVE AND
 13 APPROVAL AND ALLOW THE COURT TO VIEW MEDICAL RECORDS FOR THE
 14 DURATION OF THE CASE TO DETERMINE IF THERE IS FURTHER REASON FOR
 15 CONCERN THAT THE PARENT'S, GUARDIAN'S, CUSTODIAN'S, OR NONPARENT
 16 ADULT'S CONTINUED USE OF THE MEDICATION MIGHT BE INTERFERING WITH
 17 THE ABILITY, JUDGMENT, OR SKILL TO PARENT OR CARE FOR THE CHILD.

18 (E) ANY OTHER ORDER THAT THE COURT CONSIDERS NECESSARY THAT IS
 19 OTHERWISE WITHIN THE AUTHORITY OF THE COURT IN THE BEST INTERESTS
 20 OF THE CHILD.

21 (18) ~~(17)~~As used in this section: ~~—"abuse"~~

22 (A) "ABUSE" means 1 or more of the following:

23 (i) ~~(a)~~Harm or threatened harm by a person to a ~~juvenile's~~
 24 CHILD'S health or welfare that occurs through nonaccidental
 25 physical or mental injury.

26 (ii) ~~(b)~~Engaging in sexual contact or sexual penetration as
 27 defined in section 520a of the Michigan penal code, 1931 PA 328,

1 MCL 750.520a, with a ~~juvenile-CHILD~~.

2 **(iii)** ~~(e)~~ Sexual exploitation of a ~~juvenile-CHILD~~, which
3 includes, but is not limited to, allowing, permitting, or
4 encouraging a ~~juvenile-CHILD~~ to engage in prostitution or allowing,
5 permitting, encouraging, or engaging in photographing, filming, or
6 depicting a ~~juvenile-CHILD~~ engaged in a listed sexual act as
7 defined in section 145c of the Michigan penal code, 1931 PA 328,
8 MCL 750.145c.

9 **(iv)** ~~(d)~~ Maltreatment of a ~~juvenile-CHILD~~.

10 **(B) "QUALIFIED PHYSICIAN" MEANS A PERSON LICENSED IN THIS**
11 **STATE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
12 **333.16101 TO 333.18838, TO PRACTICE MEDICINE EITHER AS A MEDICAL**
13 **DOCTOR OR A DOCTOR OF OSTEOPATHIC MEDICINE WHO HAS AT LEAST A 6-**
14 **MONTH DOCTOR-PATIENT RELATIONSHIP WITH THE PATIENT AND WHO**
15 **SPECIALIZES IN THE AILMENT WITH WHICH THE PATIENT IS DIAGNOSED.**