

HOUSE BILL No. 5980

May 10, 2018, Introduced by Reps. Guerra, Faris and Cambensy and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 13a of chapter XIIIA (MCL 712A.13a), as amended by 2016 PA 191.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIIA

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

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 department or contract agency foster care file as
4 provided 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
24 to 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, which agreement is
2 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 stepparent, ex-
15 stepparent, or the parent who shares custody of a half-sibling
16 shall be considered a relative for the purpose of placement.
17 Notification to the stepparent, ex-stepparent, or the parent who
18 shares custody of a half-sibling is required as described in
19 section 4a of the foster care and adoption services act, 1994 PA
20 203, MCL 722.954a. A child may be placed with the parent of a man
21 whom the court has found probable cause to believe is the putative
22 father if there is no man with legally established rights to the
23 child. A placement with the parent of a putative father under this
24 subdivision is not a finding of paternity and does not confer legal
25 standing on the putative father.

26 (k) "Sex offenders registration act" means the sex offenders
27 registration act, 1994 PA 295, MCL 28.721 to 28.736.

1 (1) "Sibling" means a child who is related through birth or
2 adoption by at least 1 common parent **OR A STEPSIBLING**. Sibling
3 includes that term as defined by the American Indian or Alaskan
4 native child's tribal code or custom.

5 (2) If a juvenile is alleged to be within the provisions of
6 section 2(b) of this chapter, the court may authorize a petition to
7 be filed at the conclusion of the preliminary hearing or inquiry.
8 The court may authorize the petition upon a showing of probable
9 cause that 1 or more of the allegations in the petition are true
10 and fall within the provisions of section 2(b) of this chapter. If
11 a petition is before the court because the department is required
12 to submit the petition under section 17 of the child protection
13 law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on
14 the petition within 24 hours or on the next business day after the
15 petition is submitted, at which hearing the court shall consider at
16 least the matters governed by subsections (4) and (5).

17 (3) Except as provided in subsections (5) and (6), if a
18 petition under subsection (2) is authorized, the court may release
19 the juvenile in the custody of either of the juvenile's parents or
20 the juvenile's guardian or custodian under reasonable terms and
21 conditions necessary for either the juvenile's physical health or
22 mental well-being.

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

27 (a) A petition alleging abuse of the child by the parent,

1 guardian, custodian, nonparent adult, or other person is authorized
2 under subsection (2).

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

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

10 (5) If a petition alleges abuse by a person described in
11 subsection (4), regardless of whether the court orders the alleged
12 abuser to leave the child's home under subsection (4), the court
13 shall not leave the child in or return the child to the child's
14 home or place the child with a person not licensed under 1973 PA
15 116, MCL 722.111 to 722.128, unless the court finds that the
16 conditions of custody at the placement and with the individual with
17 whom the child is placed are adequate to safeguard the child from
18 the risk of harm to the child's life, physical health, or mental
19 well-being.

20 (6) If a court finds a parent is required by court order to
21 register under the sex offenders registration act, the department
22 may, but is not required to, make reasonable efforts to reunify the
23 child with the parent. The court may order reasonable efforts to be
24 made by the department.

25 (7) In determining whether to enter an order under subsection
26 (4), the court may consider whether the parent who is to remain in
27 the juvenile's home is married to the person to be removed or has a

1 legal right to retain possession of the home.

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

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

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

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

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

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

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

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

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

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

1 (10) If the court orders placement of the juvenile outside the
2 juvenile's home, the court shall inform the parties of the
3 following:

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

6 (b) The general elements of an initial services plan as
7 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
8 722.128.

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

11 (11) Before or within 7 days after a child is placed in a
12 relative's home, the department shall perform a criminal record
13 check and central registry clearance. If the child is placed in the
14 home of a relative, the court shall order a home study to be
15 performed and a copy of the home study to be submitted to the court
16 not more than 30 days after the placement.

17 (12) In determining placement of a juvenile pending trial, the
18 court shall order the juvenile placed in the most family-like
19 setting available consistent with the juvenile's needs.

20 (13) If a juvenile is removed from the parent's custody at any
21 time, the court shall permit the juvenile's parent to have regular
22 and frequent parenting time with the juvenile. Parenting time
23 between the juvenile and his or her parent shall not be less than 1
24 time every 7 days unless the court determines either that exigent
25 circumstances require less frequent parenting time or that
26 parenting time, even if supervised, may be harmful to the
27 juvenile's life, physical health, or mental well-being. If the

1 court determines that parenting time, even if supervised, may be
2 harmful to the juvenile's life, physical health, or mental well-
3 being, the court may suspend parenting time until the risk of harm
4 no longer exists. The court may order the juvenile to have a
5 psychological evaluation or counseling, or both, to determine the
6 appropriateness and the conditions of parenting time.

7 (14) Reasonable efforts shall be made to do the following:

8 (a) Place siblings removed from their home in the same foster
9 care, kinship guardianship, or adoptive placement, unless the
10 supervising agency documents that a joint placement would be
11 contrary to the safety or well-being of any of the siblings.

12 (b) In the case of siblings removed from their home who are
13 not jointly placed, provide for visitation, at least monthly, or
14 other ongoing interaction between the siblings, unless the
15 supervising agency documents that visitation, at least monthly, or
16 other ongoing interaction would be contrary to the safety or well-
17 being of any of the siblings.

18 (15) If the supervising agency documents that visitation or
19 other contact is contrary to the safety or well-being of any of the
20 siblings and temporarily suspends visitation or contact, the
21 supervising agency shall report its determination to the court for
22 consideration at the next review hearing.

23 (16) If the supervising agency temporarily suspends visitation
24 or contact, the court shall review the decision and determine
25 whether sibling visitation or contact will be beneficial to the
26 siblings. If so, the court shall order sibling visitation or
27 contact to the extent reasonable.

1 (17) Upon the motion of any party, the court shall review
2 custody and placement orders and initial services plans pending
3 trial and may modify those orders and plans as the court considers
4 under this section are in the juvenile's best interests.

5 (18) The court shall include in an order placing a child in
6 foster care an order directing the release of information
7 concerning the child in accordance with this subsection. If a child
8 is placed in foster care, within 10 days after receipt of a written
9 request, the agency shall provide the person who is providing the
10 foster care with copies of all initial, updated, and revised case
11 service plans and court orders relating to the child and all of the
12 child's medical, mental health, and education reports, including
13 reports compiled before the child was placed with that person.

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

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

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

22 (20) As used in this section, "abuse" means 1 or more of the
23 following:

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

27 (b) Engaging in sexual contact or sexual penetration as

1 defined in section 520a of the Michigan penal code, 1931 PA 328,
2 MCL 750.520a, with a juvenile.

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

9 (d) Maltreatment of a juvenile.

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted into law.