

HOUSE BILL NO. 6509

December 09, 2020, Introduced by Rep. Rabhi and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 1 and 17d of chapter XIIA (MCL 712A.1 and 712A.17d), section 1 as amended by 2019 PA 109 and section 17d as amended by 2012 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1** CHAPTER XIIA
- 2** Sec. 1. (1) As used in this chapter:
- 3** (a) "Civil infraction" means that term as defined in section

1 113 of the revised judicature act of 1961, 1961 PA 236, MCL
2 600.113.

3 (b) "Competency evaluation" means a court-ordered examination
4 of a juvenile directed to developing information relevant to a
5 determination of his or her competency to proceed at a particular
6 stage of a court proceeding involving a juvenile who is the subject
7 of a delinquency petition.

8 (c) "Competency hearing" means a hearing to determine whether
9 a juvenile is competent to proceed.

10 (d) "County juvenile agency" means that term as defined in
11 section 2 of the county juvenile agency act, 1998 PA 518, MCL
12 45.622.

13 (e) "Court" means the family division of circuit court.

14 (f) "Department" means the department of health and human
15 services. A reference in this chapter to the "department of social
16 welfare" or the "family independence agency" means the department
17 of health and human services.

18 **(g) "Domestic violence" means that term as defined in section**
19 **1 of 1978 PA 389, MCL 400.1501.**

20 **(h) ~~(g)~~**"Foreign protection order" means that term as defined
21 in section 2950h of the revised judicature act of 1961, 1961 PA
22 236, MCL 600.2950h.

23 **(i) ~~(h)~~**"Incompetent to proceed" means that a juvenile, based
24 on age-appropriate norms, lacks a reasonable degree of rational and
25 factual understanding of the proceeding or is unable to do 1 or
26 more of the following:

27 (i) Consult with and assist his or her attorney in preparing
28 his or her defense in a meaningful manner.

29 (ii) Sufficiently understand the charges against him or her.

1 **(j)** ~~(i)~~—"Juvenile" means ~~a person~~**an individual** who is less
2 than 18 years of age who is the subject of a delinquency petition.

3 **(k)** ~~(j)~~—"Least restrictive environment" means a supervised
4 community placement, preferably a placement with the juvenile's
5 parent, guardian, relative, or a facility or conditions of
6 treatment that is a residential or institutional placement only
7 utilized as a last resort based on the best interest of the
8 juvenile or for reasons of public safety.

9 **(l)** ~~(k)~~—"Licensed child caring institution" means a child
10 caring institution as defined and licensed under 1973 PA 116, MCL
11 722.111 to 722.128.

12 **(m)** ~~(l)~~—"MCI" means the Michigan children's institute created
13 and established by 1935 PA 220, MCL 400.201 to 400.214.

14 **(n)** ~~(m)~~—"Mental health code" means the mental health code,
15 1974 PA 258, MCL 330.1001 to 330.2106.

16 **(o)** ~~(n)~~—"Personal protection order" means a personal
17 protection order issued under section 2950 or 2950a of the revised
18 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
19 and includes a valid foreign protection order.

20 **(p)** ~~(o)~~—"Qualified juvenile forensic mental health examiner"
21 means 1 of the following who performs forensic mental health
22 examinations for the purposes of sections 1062 to 1074 of the
23 mental health code, MCL 330.2062 to 330.2074, but does not exceed
24 the scope of his or her practice as authorized by state law:

25 **(i)** A psychiatrist or psychologist who possesses experience or
26 training in the following:

27 **(A)** Forensic evaluation procedures for juveniles.

28 **(B)** Evaluation, diagnosis, and treatment of children and
29 adolescents with emotional disturbance, mental illness, or

1 developmental disabilities.

2 (C) Clinical understanding of child and adolescent
3 development.

4 (D) Familiarity with competency standards in this state.

5 (ii) A mental health professional other than a psychiatrist or
6 psychologist who has completed a juvenile competency training
7 program for forensic mental health examiners that is endorsed by
8 the department under section 1072 of the mental health code, MCL
9 330.2072, and who possesses experience or training in all of the
10 following:

11 (A) Forensic evaluation procedures for juveniles.

12 (B) Evaluation, diagnosis, and treatment of children and
13 adolescents with emotional disturbance, mental illness, or
14 developmental disabilities.

15 (C) Clinical understanding of child and adolescent
16 development.

17 (D) Familiarity with competency standards in this state.

18 **(q)** ~~(p)~~ "Qualified restoration provider" means an individual
19 who the court determines, as a result of the opinion provided by
20 the qualified forensic mental health examiner, has the skills and
21 training necessary to provide restoration services. The court shall
22 take measures to avoid any conflict of interest among agencies or
23 individuals who may provide evaluation and restoration.

24 **(r)** ~~(q)~~ "Reasonable and prudent parenting standard" means
25 decisions characterized by careful and sensible parental decisions
26 that maintain a child's health, safety, and best interest while
27 encouraging the emotional and developmental growth of the child
28 when determining whether to allow a child in foster care to
29 participate in extracurricular, enrichment, cultural, and social

1 activities.

2 (s) ~~(r)~~—"Restoration" means the process by which education or
3 treatment of a juvenile results in that juvenile becoming competent
4 to proceed.

5 (t) ~~(s)~~—"Serious misdemeanor" means that term as defined in
6 section 61 of the William Van Regenmorter crime victim's rights
7 act, 1985 PA 87, MCL 780.811.

8 (u) ~~(t)~~—"Valid foreign protection order" means a foreign
9 protection order that satisfies the conditions for validity
10 provided in section 2950i of the revised judicature act of 1961,
11 1961 PA 236, MCL 600.2950i.

12 (2) Except as otherwise provided, proceedings under this
13 chapter are not criminal proceedings.

14 (3) This chapter ~~shall~~**must** be liberally construed so that
15 each juvenile coming within the court's jurisdiction receives the
16 care, guidance, and control, preferably in his or her own home,
17 conducive to the juvenile's welfare and the best interest of the
18 state. If a juvenile is removed from the control of his or her
19 parents, the juvenile shall be placed in care as nearly as possible
20 equivalent to the care that should have been given to the juvenile
21 by his or her parents.

22 Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the
23 child, and not the court. The lawyer-guardian ad litem's powers and
24 duties include at least all of the following:

25 (a) The obligations of the attorney-client privilege.

26 (b) To serve as the independent representative for the child's
27 best interests, and be entitled to full and active participation in
28 all aspects of the litigation and access to all relevant
29 information regarding the child.

1 (c) To determine the facts of the case by conducting an
2 independent investigation including, but not limited to,
3 interviewing the child, social workers, family members, and others
4 as necessary, and reviewing relevant reports and other information.
5 The agency case file ~~shall~~**must** be reviewed before disposition and
6 before the hearing for termination of parental rights. Updated
7 ~~materials shall~~**material must** be reviewed as provided to the court
8 and parties. The supervising agency shall provide documentation of
9 progress ~~relating~~**that relates** to all aspects of the last court
10 ordered treatment plan, including copies of evaluations and therapy
11 reports and verification of parenting time not later than 5
12 business days before the scheduled hearing.

13 (d) To meet with or observe the child and assess the child's
14 needs and wishes with regard to the representation and the issues
15 in the case in the following instances:

16 (i) Before the pretrial hearing.

17 (ii) Before the initial disposition, if held more than 91 days
18 after the petition has been authorized.

19 (iii) Before a dispositional review hearing.

20 (iv) Before a permanency planning hearing.

21 (v) Before a post-termination review hearing.

22 (vi) At least once during the pendency of a supplemental
23 petition.

24 (vii) At other times as ordered by the court. Adjourned or
25 continued hearings do not require additional visits unless directed
26 by the court.

27 (e) The court may allow alternative means of contact with the
28 child if good cause is shown on the record.

29 (f) To explain to the child, taking into account the child's

1 ability to understand the proceedings, the lawyer-guardian ad
2 litem's role.

3 (g) To file all necessary pleadings and papers and
4 independently call witnesses on the child's behalf.

5 (h) To attend all hearings and substitute representation for
6 the child only with court approval.

7 (i) To make a determination regarding the child's best
8 interests and advocate for those best interests according to the
9 lawyer-guardian ad litem's understanding of those best interests,
10 regardless of whether the lawyer-guardian ad litem's determination
11 reflects the child's wishes. The child's wishes are relevant to the
12 lawyer-guardian ad litem's determination of the child's best
13 interests, and the lawyer-guardian ad litem shall weigh the child's
14 wishes according to the child's competence and maturity. Consistent
15 with the law governing attorney-client privilege, the lawyer-
16 guardian ad litem shall inform the court ~~as to~~ **of** the child's
17 wishes and preferences.

18 (j) To monitor the implementation of case plans and court
19 orders, and determine whether services the court ordered for the
20 child or the child's family are being provided in a timely manner
21 and are accomplishing their purpose. The lawyer-guardian ad litem
22 shall inform the court if the services are not being provided in a
23 timely manner, if the family fails to take advantage of the
24 services, or if the services are not accomplishing their intended
25 purpose.

26 (k) Consistent with the rules of professional responsibility,
27 to identify common interests among the parties and, to the extent
28 possible, promote a cooperative resolution of the matter through
29 consultation with the child's parent, foster care provider,

1 guardian, and caseworker.

2 (l) To request authorization by the court to pursue issues on
3 the child's behalf that do not arise specifically from the court
4 appointment.

5 (m) To participate in ~~training in~~ early childhood, child, and
6 adolescent development **training**.

7 **(n) To participate in domestic violence training.**

8 (2) If, after discussion between the child and his or her
9 lawyer-guardian ad litem, the lawyer-guardian ad litem determines
10 that the child's interests as identified by the child are
11 inconsistent with the lawyer-guardian ad litem's determination of
12 the child's best interests, the lawyer-guardian ad litem shall
13 communicate the child's position to the court. If the court
14 considers the appointment appropriate considering the child's age
15 and maturity and the nature of the inconsistency between the
16 child's and the lawyer-guardian ad litem's identification of the
17 child's interests, the court may appoint an attorney for the child.
18 An attorney appointed under this subsection serves in addition to
19 the child's lawyer-guardian ad litem.

20 (3) The court or another party to the case shall not call a
21 lawyer-guardian ad litem as a witness to testify regarding matters
22 related to the case. The lawyer-guardian ad litem's file of the
23 case is not discoverable.

24 Enacting section 1. This amendatory act takes effect October
25 1, 2021.