

Act No. 114
Public Acts of 1993
Approved by the Governor
July 20, 1993
Filed with the Secretary of State
July 20, 1993

STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Reps. Johnson, McNutt, Berman, Gire, Munsell, Wallace, Dalman, Gilmer, Walberg, Llewellyn, Points, Nye, Martin, Bodem, Bobier, Jaye, London, Horton, Whyman, McBryde, Hill, Brown, Crissman, Bullard and Galloway

Reps. Allen, Alley, Bandstra, Bender, Clack, Curtis, DeMars, Dobb, Dobronski, Dolan, Freeman, Gagliardi, Gernaat, Goschka, Griffin, Hammerstrom, Jersevic, Kaza, Kukuk, McManus, Middaugh, Olshove, Oxender, Porreca, Profit, Rhead, Rivers, Schroer, Scott, Shugars, Stallworth, Stille, Voorhees, Wetters, Willard, Yokich and Joe Young, Jr. named co-sponsors

ENROLLED HOUSE BILL No. 4206

AN ACT to amend section 13a of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended "An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act," as added by Act No. 224 of the Public Acts of 1988, being section 712A.13a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 13a of chapter XIIA of Act No. 288 of the Public Acts of 1939, as added by Act No. 224 of the Public Acts of 1988, being section 712A.13a of the Michigan Compiled Laws, is amended to read as follows:

CHAPTER XIIA

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

(a) "Agency" means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(b) "Foster care" means care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, or care provided to a child in a relative's home pursuant to an order by the juvenile division of the probate court.

(2) If a child is alleged to come 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 petition may be authorized 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.

(3) If a petition under subsection (2) is authorized, the court may release the child in the custody of either of the child's parents, guardian, or custodian under such reasonable terms and conditions as are necessary for either the physical health or mental well-being of the child.

(4) If a petition alleging abuse by a parent, guardian, custodian, or other person residing in the child's home is authorized under subsection (2) and the court after a hearing finds probable cause to believe the parent, guardian, custodian, or other person committed the abuse, the court may order that parent, guardian, custodian, or other person to leave the home and not subsequently return to it, except as the court orders, and may release the child to the other parent or to another guardian or custodian. The court shall not enter an order under this subsection unless the court determines all of the following:

(a) The presence in the home of the person who is alleged to have committed the abuse presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) Removing the person who is alleged to have committed the abuse is necessary to adequately safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

(c) The conditions of custody with the other parent or another guardian or custodian are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

(d) It is in the best interests of the child for the child to remain in the home.

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

(6) 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 child 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 child's physical or mental well-being or necessary to protect the child.

(7) If a petition under subsection (2) is authorized, the court may order placement of the child with someone other than a parent if the court after hearing determines that both of the following conditions exist:

(a) Custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health, or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk.

(b) Conditions of custody of the child away from a parent, guardian, or custodian are adequate to safeguard the child's health and welfare.

(8) If the court orders placement of the child outside the child's home, the court shall inform the parties of the following:

(a) The agency has the responsibility to prepare an initial services plan within 30 days of the child's placement.

(b) The general elements of an initial services plan as required by the rules promulgated pursuant to Act No. 116 of the Public Acts of 1973.

(c) Without a court order participation in an initial services plan is voluntary.

(9) In determining placement of a child pending trial, the court shall order the child placed in the most family-like setting available consistent with the needs of the child.

(10) Unless visitation, even if supervised, would be harmful to the child, the child's parent shall be permitted to visit frequently with the child.

(11) 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 pursuant to this section are in the best interests of the child.

(12) As used in subsection (4), "abuse" means any of the following:

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

(b) Engaging in sexual contact or penetration with a child as defined in section 520a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.520a of the Michigan Compiled Laws.

(c) Sexual exploitation of a child, which includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of Act No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.

(d) Maltreatment of a child.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.