

**SUBSTITUTE FOR  
SENATE BILL NO. 954**

A bill to amend 1939 PA 288, entitled

"An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties,"

by amending sections 13a and 17c of chapter XIIIA (MCL 712A.13a and 712A.17c), section 13a as amended by 1997 PA 163 and section 17c as amended by 1997 PA 169, and by adding section 17d to chapter XIIIA.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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1

CHAPTER XIIA

2

Sec. 13a. (1) As used in this section and sections 13b,

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17C, 17D, 18f, 19, 19a, 19b, and 19c of this chapter:

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(a) "Agency" means a public or private organization, insti-

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tution, or facility responsible under court order or contractual

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arrangement for ~~the~~ A JUVENILE'S care and supervision. ~~of a~~

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~~juvenile.~~

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(B) "ATTORNEY" INCLUDES, FOR THE PURPOSE OF NOTICE, AN

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ATTORNEY WHO IS A CHILD'S LEGAL COUNSEL.

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(C) ~~(b)~~ "Foster care" means care provided to a juvenile in

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a foster family home, foster family group home, or juvenile

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caring institution licensed or approved under 1973 PA 116,

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MCL 722.111 to 722.128, or care provided to a juvenile in a

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relative's home under ~~an~~ A COURT order. ~~of the court.~~

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(D) "LEGAL COUNSEL" MEANS AN ATTORNEY WHO SERVES AS THE

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CHILD'S LEGAL ADVOCATE IN A TRADITIONAL ATTORNEY-CLIENT RELATION-

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SHIP WITH THE CHILD, AS GOVERNED BY THE MICHIGAN RULES OF PROFES-

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SIONAL CONDUCT. THE CHILD'S LEGAL COUNSEL OWES THE SAME DUTIES

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OF UNDIVIDED LOYALTY, CONFIDENTIALITY, AND ZEALOUS REPRESENTATION

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OF THE CHILD'S EXPRESSED WISHES AS HE OR SHE WOULD TO AN ADULT

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CLIENT.

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(E) ~~(c)~~ "Permanent foster family agreement" means an

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agreement for a child 14 years old or older to remain with a par-

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ticular foster family until the child is 18 years old under stan-

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dards and requirements established by the family independence

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agency, which agreement is among all of the following:

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1 (i) The child.

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

3 (iii) The foster family.

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

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

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

25 (4) The court may order a parent, guardian, custodian, or  
26 other person residing in a child's home to leave the home and,

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1 except as the court orders, not TO subsequently return to the  
2 home if all of the following take place:

3 (a) A petition alleging abuse of the child by the parent,  
4 guardian, custodian, or other person is authorized under  
5 subsection (2).

6 (b) The court after a hearing finds probable cause to  
7 believe the parent, guardian, custodian, or other person commit-  
8 ted the abuse.

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

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

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

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

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

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

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

13 (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) ~~The~~ THAT THE agency has the responsibility to prepare  
17 an initial services plan within 30 days of the juvenile's  
18 placement.

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

22 (c) ~~Participation in an~~ THAT PARTICIPATION IN THE initial  
23 services plan is voluntary without a court order.

24 (9) Before or within 7 days after a child is placed in a  
25 relative's home, the department shall perform a criminal record  
26 check and central registry clearance. If the child is placed in  
27 the home of a relative, the court shall order a home study to be

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1 performed and a copy of the home study to be submitted to the  
2 court not more than 30 days after the placement.

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

7 (11) If a juvenile is removed from his or her home, THE  
8 COURT SHALL PERMIT the juvenile's parent ~~shall be permitted~~ to  
9 have FREQUENT parenting time ~~frequently~~ with the juvenile.  
10 However, if parenting time, even if supervised, may be harmful to  
11 the juvenile, the court shall order the child to have a psycho-  
12 logical evaluation or counseling, or both, to determine the  
13 appropriateness and the conditions of parenting time. The court  
14 may suspend parenting time while the psychological evaluation or  
15 counseling is conducted.

16 (12) Upon the motion of any party, the court shall review  
17 custody and placement orders and initial services plans pending  
18 trial and may modify those orders and plans as the court consid-  
19 ers under this section are in the JUVENILE'S best interests. ~~of~~  
20 ~~the juvenile.~~

21 (13) The court shall include in an order placing a child in  
22 foster care an order directing the release of information con-  
23 cerning the child in accordance with this subsection. If a child  
24 is placed in foster care, within 10 days after receipt of a writ-  
25 ten request, the agency shall provide the person who is providing  
26 the foster care with copies of all initial, updated, and revised  
27 case service plans and court orders relating to the child and all

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1 of the child's medical, mental, and education reports, including  
2 reports compiled before the child was placed with that person.

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

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

8 (b) An order that each of the child's medical providers  
9 release the child's medical records. The order may specify pro-  
10 viders by profession or type of institution.

11 (15) As used in this section, "abuse" means 1 or more of the  
12 following:

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

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

19 (c) Sexual exploitation of a juvenile, which includes, but  
20 is not limited to, allowing, permitting, or encouraging a juve-  
21 nile to engage in prostitution or allowing, permitting, encourag-  
22 ing, or engaging in photographing, filming, or depicting a juve-  
23 nile engaged in a listed sexual act as defined in section 145c of  
24 the Michigan penal code, 1931 PA 328, MCL 750.145c.

25 (d) Maltreatment of a juvenile.

26 Sec. 17c. (1) In a proceeding under section 2(a) or (d) of  
27 this chapter, the court shall advise the child that ~~the child~~

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1 HE OR SHE has a right to an attorney at each stage of the  
2 proceeding.

3 (2) In a proceeding under section 2(a) or (d) of this chap-  
4 ter, the court shall appoint an attorney to represent the child  
5 if 1 or more of the following apply:

6 (a) The child's parent refuses or fails to appear and par-  
7 ticipate in the proceedings.

8 (b) The child's parent is the complainant or victim.

9 (c) The child and those responsible for his or her support  
10 are financially unable to employ an attorney and the child does  
11 not waive his or her right to an attorney.

12 (d) Those responsible for the child's support refuse or  
13 neglect to employ an attorney for the child and the child does  
14 not waive his or her right to an attorney.

15 (e) The court determines that the best interests of the  
16 child or the public require appointment.

17 (3) Except as otherwise provided in this subsection, in a  
18 proceeding under section 2(a) or (d) of this chapter, the child  
19 may waive his or her right to an attorney. The waiver by a child  
20 shall be made in open court, on the record, and shall not be made  
21 unless the court finds on the record that the waiver was volun-  
22 tarily and understandingly made. The child may not waive his or  
23 her right to an attorney if the child's parent or guardian ad  
24 litem objects or if the appointment is made ~~pursuant to~~ UNDER  
25 subsection (2)(e).

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1 (4) In a proceeding under section 2(b) or (c) of this  
2 chapter, the court shall advise the respondent at the  
3 respondent's first court appearance of all of the following:

4 (a) The right to an attorney at each stage of the  
5 proceeding.

6 (b) The right to a court-appointed attorney if the respon-  
7 dent is financially unable to employ an attorney.

8 (c) If the respondent is not represented by an attorney, the  
9 right to request and receive a court-appointed attorney at a  
10 later proceeding.

11 (5) If it appears to the court in a proceeding under section  
12 2(b) or (c) of this chapter that the respondent wants an attorney  
13 and is financially unable to retain an attorney, the court shall  
14 appoint an attorney to represent the respondent.

15 (6) Except as otherwise provided in this subsection, in a  
16 proceeding under section 2(b) or (c) of this chapter, the respon-  
17 dent may waive his or her right to an attorney. A respondent who  
18 is a minor may not waive his or her right to an attorney if the  
19 respondent's parent or guardian ad litem objects.

20 (7) In a proceeding under section 2(b) or (c) of this chap-  
21 ter, the court shall appoint ~~an attorney~~ A GUARDIAN AD LITEM to  
22 represent the child. The child shall not waive the assistance of  
23 ~~an attorney. The appointed attorney shall observe and, depen-~~  
24 ~~dent upon the child's age and capability, interview the child.~~  
25 ~~If the child is placed in foster care, the attorney shall, before~~  
26 ~~representing the child in each subsequent proceeding or hearing,~~  
27 ~~review the agency case file and consult with the foster parents~~

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1 ~~and the caseworker. The child's attorney shall be present at all~~  
2 ~~hearings concerning the child and shall not substitute counsel~~  
3 ~~unless the court approves.~~ A GUARDIAN AD LITEM. IN ADDITION TO  
4 ANY OTHER POWERS AND DUTIES, A GUARDIAN AD LITEM'S POWERS AND  
5 DUTIES INCLUDE THOSE PRESCRIBED IN SECTION 17D.

6 (8) If an attorney, GUARDIAN AD LITEM, OR LEGAL COUNSEL is  
7 appointed for a party under this ~~section~~ ACT, AFTER A DETERMI-  
8 NATION OF ABILITY TO PAY the court may enter an order assessing  
9 attorney costs against the party or the person responsible for  
10 ~~the~~ THAT PARTY'S support, ~~of that party~~ OR AGAINST THE MONEY  
11 ALLOCATED FROM MARRIAGE LICENSE FEES FOR FAMILY COUNSELING SERV-  
12 ICES UNDER SECTION 3 OF 1887 PA 128, MCL 551.103. An order  
13 assessing attorney costs may be enforced through contempt  
14 proceedings.

15 (9) An attorney OR GUARDIAN AD LITEM appointed by the court  
16 under this section shall serve until discharged by the court. If  
17 the child's case was petitioned under section 2(b) of this chap-  
18 ter, the court shall not discharge the ~~attorney~~ GUARDIAN AD  
19 LITEM for the child as long as the child is subject to the juris-  
20 diction, control, or supervision of the court, or of the Michigan  
21 children's institute or other agency, unless the court discharges  
22 the ~~attorney~~ GUARDIAN AD LITEM for good cause shown on the  
23 record. If the child remains subject to the jurisdiction, con-  
24 trol, or supervision of the court, or the Michigan children's  
25 institute or other agency, the court shall immediately appoint  
26 another ~~attorney~~ GUARDIAN AD LITEM to represent the child.

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1           SEC. 17D. (1) A GUARDIAN AD LITEM APPOINTED UNDER  
2 SECTION 17C MUST BE AN ATTORNEY AND THE GUARDIAN AD LITEM'S DUTY  
3 IS TO THE CHILD, TO REPRESENT THE CHILD AND THE CHILD'S BEST  
4 INTERESTS. THE GUARDIAN AD LITEM HAS AT LEAST ALL OF THE FOLLOW-  
5 ING POWERS AND DUTIES:

6           (A) TO SERVE AS THE INDEPENDENT REPRESENTATIVE FOR THE  
7 CHILD'S BEST INTERESTS, AND BE ENTITLED TO FULL AND ACTIVE PAR-  
8 TICIPATION IN ALL ASPECTS OF THE LITIGATION AND ACCESS TO ALL  
9 RELEVANT INFORMATION REGARDING THE CHILD.

10          (B) TO DETERMINE THE FACTS OF THE CASE BY CONDUCTING AN  
11 INDEPENDENT INVESTIGATION INCLUDING, BUT NOT LIMITED TO, INTER-  
12 VIEWING THE CHILD, SOCIAL WORKERS, FAMILY MEMBERS, AND OTHERS AS  
13 NECESSARY, AND REVIEWING RELEVANT REPORTS AND OTHER INFORMATION.

14          (C) BEFORE EACH PROCEEDING OR HEARING, TO MEET WITH AND  
15 OBSERVE THE CHILD, ASSESS THE CHILD'S NEEDS AND WISHES WITH  
16 REGARD TO THE REPRESENTATION AND THE ISSUES IN THE CASE, REVIEW  
17 THE AGENCY CASE FILE AND, CONSISTENT WITH THE RULES OF PROFES-  
18 SIONAL RESPONSIBILITY, CONSULT WITH THE CHILD'S PARENTS, FOSTER  
19 CARE PROVIDERS, AND CASEWORKERS.

20          (D) TO EXPLAIN TO THE CHILD, TAKING INTO ACCOUNT THE CHILD'S  
21 ABILITY TO UNDERSTAND THE PROCEEDINGS, THE GUARDIAN AD LITEM'S  
22 ROLE.

23          (E) TO FILE ALL NECESSARY PLEADINGS AND PAPERS AND INDEPEN-  
24 DENTLY CALL WITNESSES ON THE CHILD'S BEHALF.

25          (F) TO ATTEND ALL HEARINGS AND SUBSTITUTE REPRESENTATION FOR  
26 THE CHILD ONLY WITH COURT APPROVAL.

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1 (G) TO MAKE A DETERMINATION REGARDING THE CHILD'S BEST  
2 INTERESTS AND ADVOCATE FOR THOSE BEST INTERESTS ACCORDING TO THE  
3 GUARDIAN AD LITEM'S UNDERSTANDING OF THOSE BEST INTERESTS,  
4 REGARDLESS OF WHETHER THE GUARDIAN AD LITEM'S DETERMINATION  
5 REFLECTS THE CHILD'S WISHES. THE CHILD'S WISHES ARE RELEVANT TO  
6 THE GUARDIAN AD LITEM'S DETERMINATION OF THE CHILD'S BEST INTER-  
7 ESTS, AND THE GUARDIAN AD LITEM SHALL WEIGH THE CHILD'S WISHES  
8 ACCORDING TO THE CHILD'S COMPETENCE AND MATURITY. CONSISTENT  
9 WITH THE LAW GOVERNING ATTORNEY-CLIENT PRIVILEGE, THE GUARDIAN AD  
10 LITEM SHALL INFORM THE COURT AS TO THE CHILD'S WISHES AND  
11 PREFERENCES.

12 (H) TO MONITOR THE IMPLEMENTATION OF CASE PLANS AND COURT  
13 ORDERS, AND DETERMINE WHETHER SERVICES THE COURT ORDERED FOR THE  
14 CHILD OR THE CHILD'S FAMILY ARE BEING PROVIDED IN A TIMELY MANNER  
15 AND ARE ACCOMPLISHING THEIR PURPOSE. THE GUARDIAN AD LITEM SHALL  
16 INFORM THE COURT IF THE SERVICES ARE NOT BEING PROVIDED IN A  
17 TIMELY MANNER, IF THE FAMILY FAILS TO TAKE ADVANTAGE OF THE SERV-  
18 ICES, OR IF THE SERVICES ARE NOT ACCOMPLISHING THEIR INTENDED  
19 PURPOSE.

20 (I) CONSISTENT WITH THE RULES OF PROFESSIONAL RESPONSIBILI-  
21 TY, TO IDENTIFY COMMON INTERESTS AMONG THE PARTIES AND, TO THE  
22 EXTENT POSSIBLE, PROMOTE A COOPERATIVE RESOLUTION OF THE MATTER.

(J) TO REQUEST AUTHORIZATION BY THE COURT TO PURSUE ISSUES ON  
THE CHILD'S BEHALF THAT DO NOT ARISE SPECIFICALLY FROM THE COURT  
APPOINTMENT.

23 (2) IF, AFTER DISCUSSION BETWEEN THE CHILD AND HIS OR HER  
24 GUARDIAN AD LITEM, THE GUARDIAN AD LITEM DETERMINES THAT THE  
25 CHILD'S INTERESTS AS IDENTIFIED BY THE CHILD ARE INCONSISTENT  
26 WITH THE GUARDIAN AD LITEM'S DETERMINATION OF THE CHILD'S BEST  
27 INTERESTS, THE GUARDIAN AD LITEM SHALL COMMUNICATE THE CHILD'S

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1 POSITION TO THE COURT. [REDACTED]

2 [REDACTED] IF THE COURT CONSIDERS THE APPOINTMENT

3 APPROPRIATE CONSIDERING THE CHILD'S AGE AND MATURITY AND THE

4 NATURE OF THE INCONSISTENCY BETWEEN THE CHILD'S AND THE GUARDIAN

5 AD LITEM'S IDENTIFICATION OF THE CHILD'S INTERESTS, THE COURT MAY

6 APPOINT LEGAL COUNSEL FOR THE CHILD. A LEGAL COUNSEL APPOINTED

7 UNDER THIS SUBSECTION SERVES IN ADDITION TO THE CHILD'S GUARDIAN

8 AD LITEM.

9 (3) THE COURT OR ANOTHER PARTY TO THE CASE SHALL NOT CALL A

10 GUARDIAN AD LITEM AS A WITNESS TO TESTIFY REGARDING MATTERS

11 RELATED TO THE CASE. THE GUARDIAN AD LITEM'S FILE OF THE CASE IS

12 NOT DISCOVERABLE.