

SENATE BILL NO. 954

February 26, 1998, Introduced by Senator VAN REGENMORTER and referred to the Committee on Families, Mental Health and Human Services.

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:

CHAPTER XIIIA

1

2 Sec. 13a. (1) As used in this section and sections 13b,
3 17C, 17D, 18f, 19, 19a, 19b, and 19c of this chapter:

4 (a) "Agency" means a public or private organization, insti-
5 tution, or facility responsible under court order or contractual
6 arrangement for ~~the~~ A JUVENILE'S care and supervision. ~~of a~~
7 ~~juvenile.~~

8 (B) "ATTORNEY" INCLUDES, FOR THE PURPOSE OF NOTICE, AN
9 ATTORNEY WHO IS A CHILD'S CHILD-ATTORNEY OR LEGAL COUNSEL.

10 (C) "CHILD-ATTORNEY" MEANS AN ATTORNEY APPOINTED BY THE
11 COURT TO REPRESENT THE CHILD'S BEST INTERESTS.

12 (D) ~~(b)~~ "Foster care" means care provided to a juvenile in
13 a foster family home, foster family group home, or juvenile
14 caring institution licensed or approved under 1973 PA 116,
15 MCL 722.111 to 722.128, or care provided to a juvenile in a
16 relative's home under ~~an~~ A COURT order. ~~of the court.~~

17 (E) "LEGAL COUNSEL" MEANS AN ATTORNEY WHO SERVES AS THE
18 CHILD'S LEGAL ADVOCATE IN A TRADITIONAL ATTORNEY-CLIENT RELATION-
19 SHIP WITH THE CHILD, AS GOVERNED BY THE MICHIGAN RULES OF PROFES-
20 SIONAL CONDUCT. THE CHILD'S LEGAL COUNSEL OWES THE SAME DUTIES
21 OF UNDIVIDED LOYALTY, CONFIDENTIALITY, AND ZEALOUS REPRESENTATION
22 OF THE CHILD'S EXPRESSED WISHES AS HE OR SHE WOULD TO AN ADULT
23 CLIENT.

24 (F) ~~(c)~~ "Permanent foster family agreement" means an
25 agreement for a child 14 years old or older to remain with a par-
26 ticular foster family until the child is 18 years old under

1 standards and requirements established by the family independence
2 agency, which 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
7 care in foster care.

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

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

1 (4) The court may order a parent, guardian, custodian, or
2 other person residing in a child's home to leave the home and,
3 except as the court orders, not TO subsequently return to the
4 home if all of the following take place:

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

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

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

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

25 (6) In determining whether to enter an order under
26 subsection (4), the court may consider whether the parent who is

1 to remain in the juvenile's home is married to the person to be
2 removed or has a legal right to retain possession of the home.

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

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

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

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

15 (8) If the court orders placement of the juvenile outside
16 the juvenile's home, the court shall inform the parties of the
17 following:

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

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

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

26 (9) Before or within 7 days after a child is placed in a
27 relative's home, the department shall perform a criminal record

1 check and central registry clearance. If the child is placed in
2 the home of a relative, the court shall order a home study to be
3 performed and a copy of the home study to be submitted to the
4 court not more than 30 days after the placement.

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

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

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

23 (13) The court shall include in an order placing a child in
24 foster care an order directing the release of information con-
25 cerning the child in accordance with this subsection. If a child
26 is placed in foster care, within 10 days after receipt of a
27 written request, the agency shall provide the person who is

1 providing the foster care with copies of all initial, updated,
2 and revised case service plans and court orders relating to the
3 child and all of the child's medical, mental, and education
4 reports, including reports compiled before the child was placed
5 with that person.

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

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

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

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

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

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

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

1 (d) Maltreatment of a juvenile.

2 Sec. 17c. (1) In a proceeding under section 2(a) or (d) of
3 this chapter, the court shall advise the child that ~~the child~~
4 HE OR SHE has a right to an attorney at each stage of the
5 proceeding.

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

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

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

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

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

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

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

1 litem objects or if the appointment is made ~~pursuant to~~ UNDER
2 subsection (2)(e).

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

6 (a) The right to an attorney at each stage of the
7 proceeding.

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

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

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

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

22 (7) In a proceeding under section 2(b) or (c) of this chap-
23 ter, the court shall appoint ~~an attorney~~ A CHILD-ATTORNEY to
24 represent the child. The child shall not waive the assistance of
25 ~~an attorney. The appointed attorney shall observe and, depen-~~
26 ~~dent upon the child's age and capability, interview the child.~~
27 ~~If the child is placed in foster care, the attorney shall, before~~

1 ~~representing the child in each subsequent proceeding or hearing,~~
2 ~~review the agency case file and consult with the foster parents~~
3 ~~and the caseworker. The child's attorney shall be present at all~~
4 ~~hearings concerning the child and shall not substitute counsel~~
5 ~~unless the court approves.~~ A CHILD-ATTORNEY. IN ADDITION TO ANY
6 OTHER POWERS AND DUTIES, A CHILD-ATTORNEY'S POWERS AND DUTIES
7 INCLUDE THOSE PRESCRIBED IN SECTION 17D.

8 (8) If an attorney, CHILD-ATTORNEY, OR LEGAL COUNSEL is
9 appointed for a party under this ~~section~~ ACT, the court may
10 enter an order assessing attorney costs against the party or the
11 person responsible for the support of that party. An order
12 assessing attorney costs may be enforced through contempt
13 proceedings.

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

26 SEC. 17D. (1) A CHILD-ATTORNEY APPOINTED UNDER SECTION 17C
27 HAS AT LEAST ALL OF THE FOLLOWING POWERS AND DUTIES:

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

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

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

15 (D) TO EXPLAIN TO THE CHILD, TAKING INTO ACCOUNT THE CHILD'S
16 ABILITY TO UNDERSTAND THE PROCEEDINGS, THE CHILD-ATTORNEY'S ROLE,
17 AND THOSE CIRCUMSTANCES UNDER WHICH THE CHILD-ATTORNEY MAY DIS-
18 CLOSE INFORMATION TO THE COURT.

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

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

23 (G) TO MAKE A DETERMINATION REGARDING THE CHILD'S BEST
24 INTERESTS AND ADVOCATE FOR THOSE BEST INTERESTS ACCORDING TO THE
25 CHILD-ATTORNEY'S UNDERSTANDING OF THOSE BEST INTERESTS, REGARD-
26 LESS OF WHETHER THE CHILD-ATTORNEY'S DETERMINATION REFLECTS THE
27 CHILD'S WISHES. THE CHILD'S WISHES ARE RELEVANT TO THE

1 CHILD-ATTORNEY'S DETERMINATION OF THE CHILD'S BEST INTERESTS, AND
2 THE CHILD-ATTORNEY SHALL WEIGH THE CHILD'S WISHES ACCORDING TO
3 THE CHILD'S COMPETENCE AND MATURITY. IN ANY EVENT, THE
4 CHILD-ATTORNEY SHALL INFORM THE COURT AS TO THE CHILD'S WISHES
5 AND PREFERENCES.

6 (H) TO MONITOR THE IMPLEMENTATION OF CASE PLANS AND COURT
7 ORDERS, AND DETERMINE WHETHER SERVICES THE COURT ORDERED FOR THE
8 CHILD OR THE CHILD'S FAMILY ARE BEING PROVIDED IN A TIMELY MANNER
9 AND ARE ACCOMPLISHING THEIR PURPOSE. THE CHILD-ATTORNEY SHALL
10 INFORM THE COURT IF THE SERVICES ARE NOT BEING PROVIDED IN A
11 TIMELY MANNER, IF THE FAMILY FAILS TO TAKE ADVANTAGE OF THE SERV-
12 ICES, OR IF THE SERVICES ARE NOT ACCOMPLISHING THEIR INTENDED
13 PURPOSE.

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

17 (2) IF, AFTER DISCUSSION BETWEEN THE CHILD AND HIS OR HER
18 CHILD-ATTORNEY, THE CHILD-ATTORNEY DETERMINES THAT THE CHILD'S
19 INTERESTS AS IDENTIFIED BY THE CHILD ARE INCONSISTENT WITH THE
20 CHILD-ATTORNEY'S DETERMINATION OF THE CHILD'S BEST INTERESTS, THE
21 CHILD-ATTORNEY SHALL COMMUNICATE THE CHILD'S POSITION TO THE
22 COURT AND ASK THE COURT TO APPOINT A LEGAL COUNSEL TO REPRESENT
23 THE CHILD.

24 (3) THE CHILD-ATTORNEY SHALL NOT ALLOW THE ATTORNEY-CLIENT
25 PRIVILEGE OR ANY OTHER STATUTORY OR LEGALLY RECOGNIZED PRIVILEGE
26 TO PREVENT THE CHILD-ATTORNEY FROM SHARING WITH THE COURT ALL
27 INFORMATION RELEVANT TO THE CHILD'S BEST INTERESTS.

1 (4) THE COURT OR ANOTHER PARTY TO THE CASE SHALL NOT CALL A
2 CHILD-ATTORNEY AS A WITNESS TO TESTIFY REGARDING MATTERS RELATED
3 TO THE CASE. THE CHILD-ATTORNEY'S FILE OF THE CASE IS NOT
4 DISCOVERABLE.

5 (5) A CHILD-ATTORNEY IS NOT LIABLE IN A CIVIL ACTION FOR
6 DAMAGES FOR ACTS OR OMISSIONS OF THE CHILD-ATTORNEY IN FURTHER-
7 ANCE OF HIS OR HER APPOINTMENT, UNLESS THE ACTS OR OMISSIONS ARE
8 GROSSLY NEGLIGENT OR WILLFUL AND WANTON.