

SENATE BILL No. 1444

September 30, 2004, Introduced by Senator CROPSEY and referred to the Committee on
Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 13a, 13b, and 17d of chapter XIIA (MCL
712A.13a, 712A.13b, and 712A.17d), section 13a as amended by 2000
PA 55, section 13b as amended by 2000 PA 46, and section 17d as
added by 1998 PA 480.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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 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
providing direct services to the child, that can include the

1 child protective services file if the child has not been removed
2 from the home or the family independence agency or contract
3 agency foster care file as defined under 1973 PA 116, MCL 722.111
4 to 722.128.

5 (c) ~~—(b)—~~ "Attorney" means, if appointed to represent a child
6 in a proceeding under section 2(b) or (c) of this chapter, an
7 attorney serving as the child's legal advocate in a traditional
8 attorney-client relationship with the child, as governed by the
9 Michigan rules of professional conduct. An attorney defined
10 under this 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
13 the purpose of a notice required under these sections, attorney
14 includes a child's lawyer-guardian ad litem.

15 (d) ~~—(e)—~~ "Case service plan" means the plan developed by an
16 agency and prepared pursuant to section 18f of this chapter that
17 includes services to be provided by and responsibilities and
18 obligations of the agency and activities, responsibilities, and
19 obligations of the parent. The case service plan may be referred
20 to using different names than case service plan including, but
21 not limited to, a parent/agency agreement or a parent/agency
22 treatment plan and service agreement.

23 (e) ~~—(d)—~~ "Foster care" means care provided to a juvenile in
24 a foster family home, foster family group home, or child caring
25 institution licensed or approved under 1973 PA 116, MCL 722.111
26 to 722.128, or care provided to a juvenile in a relative's home
27 under a court order.

1 **(f)** ~~—(e)—~~ "Guardian ad litem" means an individual whom the
2 court appoints to assist the court in determining the child's
3 best interests. A guardian ad litem does not need to be an
4 attorney.

5 **(g)** ~~—(f)—~~ "Lawyer-guardian ad litem" means an attorney
6 appointed under section 17c of this chapter. A lawyer-guardian
7 ad litem represents the child, and has the powers and duties, as
8 set forth in section 17d of this chapter. The provisions of
9 section 17d of this chapter also apply to a lawyer-guardian ad
10 litem appointed under each of the following:

11 (i) Section 5213 or 5219 of the estates and protected
12 individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

13 (ii) Section 4 of the child custody act of 1970, 1970 PA 91,
14 MCL 722.24.

15 (iii) Section 10 of the child protection law, 1975 PA 238,
16 MCL 722.630.

17 **(h)** ~~—(g)—~~ "Nonparent adult" means a person who is 18 years of
18 age or older and who, regardless of the person's domicile, meets
19 all of the following criteria in relation to a child over whom
20 the court takes jurisdiction under this chapter:

21 (i) Has substantial and regular contact with the child.

22 (ii) Has a close personal relationship with the child's
23 parent or with a person responsible for the child's health or
24 welfare.

25 (iii) Is not the child's parent or a person otherwise related
26 to the child by blood or affinity to the third degree.

27 **(i)** ~~—(h)—~~ "Permanent foster family agreement" means an

1 agreement for a child 14 years old or older to remain with a
2 particular foster family until the child is 18 years old under
3 standards and requirements established by the family independence
4 agency, which agreement is among all of the following:

5 (i) The child.

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

7 (iii) The foster family.

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

10 (j) "Relative" means an individual who is at least 18 years
11 of age and related to the child by blood, marriage, or adoption,
12 as grandparent, great-grandparent, great-great-grandparent, aunt
13 or uncle, great-aunt or great-uncle, great-great-aunt or
14 great-great-uncle, sibling, stepsibling, nephew or niece, first
15 cousin or first cousin once removed, and the spouse of any of the
16 above, even after the marriage has ended by death or divorce. A
17 child may be placed with the parent of a man whom the court has
18 found probable cause to believe is the putative father if there
19 is no man with legally established rights to the child. This
20 provision is for the purposes of placement only and is not to be
21 construed as a finding of paternity or to confer legal standing.

22 (2) If a juvenile is alleged to be within the provisions of
23 section 2(b) of this chapter, the court may authorize a petition
24 to be filed at the conclusion of the preliminary hearing or
25 inquiry. The court may authorize the petition upon a showing of
26 probable cause that 1 or more of the allegations in the petition
27 are true and fall within the provisions of section 2(b) of this

1 chapter. If a petition is before the court because the family
2 independence agency is required to submit the petition under
3 section 17 of the child protection law, 1975 PA 238, MCL 722.637,
4 the court shall hold a hearing on the petition within 24 hours or
5 on the next business day after the petition is submitted, at
6 which hearing the court shall consider at least the matters
7 governed by subsections (4) and (5).

8 (3) Except as provided in subsection (5), if a petition under
9 subsection (2) is authorized, the court may release the juvenile
10 in the custody of either of the juvenile's parents or the
11 juvenile's guardian or custodian under reasonable terms and
12 conditions necessary for either the juvenile's physical health or
13 mental well-being.

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

19 (a) A petition alleging abuse of the child by the parent,
20 guardian, custodian, nonparent adult, or other person is
21 authorized under subsection (2).

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

25 (c) The court finds on the record that the presence in the
26 home of the person alleged to have committed the abuse presents a
27 substantial risk of harm to the child's life, physical health, or

1 mental well-being.

2 (5) If a petition alleges abuse by a person described in
3 subsection (4), regardless of whether the court orders the
4 alleged abuser to leave the child's home under subsection (4),
5 the court shall not leave the child in or return the child to the
6 child's home or place the child with a person not licensed under
7 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that
8 the conditions of custody at the placement and with the
9 individual with whom the child is placed are adequate to
10 safeguard the child from the risk of harm to the child's life,
11 physical health, or mental well-being.

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

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

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

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

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

1 (8) 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
6 placement.

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

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

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

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

22 (11) If a juvenile is removed from his or her home, the court
23 shall permit the juvenile's parent to have frequent parenting
24 time with the juvenile. ~~However, if~~ If parenting time, even if
25 supervised, may be harmful to the juvenile, the court shall order
26 the child to have a psychological evaluation or counseling, or
27 both, to determine the appropriateness and the conditions of

1 parenting time. The court may suspend parenting time while the
2 psychological evaluation or counseling is conducted.

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

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

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

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

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

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

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

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

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

13 (d) Maltreatment of a juvenile.

14 Sec. 13b. (1) If a child under the court's jurisdiction
15 under section 2(b) of this chapter, or under MCI jurisdiction,
16 control, or supervision, is placed in foster care, the agency
17 shall not change the child's placement except under 1 of the
18 following circumstances:

19 (a) The person providing the foster care requests or agrees
20 to the change.

21 (b) Even though the person providing the foster care objects
22 to a proposed change in placement, 1 of the following applies:

23 (i) The court orders the child returned home.

24 (ii) The change in placement is less than 30 days after the
25 child's initial removal from his or her home.

26 (iii) The change in placement is less than 90 days after the
27 child's initial removal from his or her home, and the new

1 placement is with a relative.

2 (iv) The change in placement is in accordance with other
3 provisions of this section.

4 (2) Except as provided in subsections (1) and (7), before a
5 change in foster care placement takes effect, the agency shall do
6 all of the following:

7 (a) Notify the state court administrative office of the
8 proposed change in placement.

9 (b) Notify the foster parents of the intended change in
10 placement and inform them that, if they disagree with the
11 decision, they may appeal within 3 days to a foster care review
12 board. A foster parent may appeal orally, but must submit the
13 appeal in writing immediately following the oral appeal. The
14 agency shall provide the foster parents with the address and
15 telephone number of a foster care review board with jurisdiction
16 over the child.

17 (c) Maintain the current placement for not less than the time
18 for appeal to the foster care review board and if a foster parent
19 appeals, until the foster care review board determination.

20 (3) Upon receipt of an appeal from foster parents under
21 subsection (2) or (7), the foster care review board shall
22 investigate the change in foster care placement **within 7 days** and
23 shall report its findings and recommendations within 3 days to
24 the court or, if the child is under MCI jurisdiction, control, or
25 supervision, the MCI superintendent, to the foster care parents,
26 to the parents, and to the agency.

27 (4) If after investigation the foster care review board

1 determines that the move is in the child's best interests, the
2 agency may move the child.

3 (5) If after investigation the foster care review board
4 determines that the move is not in the child's best interest, the
5 agency shall maintain the current placement until a finding and
6 order by the court or, if the child is under MCI jurisdiction,
7 control, or supervision, a decision by the MCI superintendent.
8 ~~However, the~~ **The** agency shall not return a child to a placement
9 from which the child was removed under subsection (7) unless the
10 court orders that placement's restoration under subsection (6) or
11 the MCI superintendent approves that placement's restoration
12 under this subsection. The foster care review board shall notify
13 the court, or if the child is under MCI jurisdiction, control, or
14 supervision, the MCI superintendent, about the board's and
15 agency's disagreement. The court shall set a hearing date and
16 provide notice to the foster parents, each interested party, and
17 the prosecuting attorney if the prosecuting attorney has appeared
18 in the case. The court shall set the hearing no sooner than 7
19 and no later than 14 days after receipt of the notice from the
20 foster care review board. The rules of evidence do not apply to
21 a hearing required by this subsection. Within 14 days after
22 notification under this subsection, the MCI superintendent shall
23 make a decision regarding the child's placement and shall inform
24 each interested party what the decision is.

25 (6) After hearing testimony from the agency and any other
26 interested party and considering any other evidence bearing upon
27 the proposed change in placement, the court shall order the

1 continuation or restoration of the placement unless the court
2 finds that the proposed change in placement is in the child's
3 best interests.

4 (7) If the agency has reasonable cause to believe that the
5 child has suffered sexual abuse or nonaccidental physical injury,
6 or that there is substantial risk of harm to the child's
7 emotional well-being, the agency may change the child's foster
8 care placement without complying with subsection (1) or (2)(b) or
9 (c). The agency shall include in the child's file documentation
10 of its justification for action under this subsection. If a
11 foster parent objects to the removal of a child under this
12 subsection, he or she may appeal to the foster care review board
13 within 3 days after the child's removal. The foster parent may
14 appeal orally, but must submit the appeal in writing immediately
15 following the oral appeal.

16 (8) At the time of or immediately following a child's removal
17 under subsection (7), the agency shall inform the foster parents
18 about the removal and that, if they disagree with the decision,
19 they may appeal within 3 days to a foster care review board in
20 the manner provided in subsection (7). The agency shall provide
21 the foster parents with the address and telephone number of a
22 foster care review board with jurisdiction over the child.

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

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

27 (b) To serve as the independent representative for the

1 child's best interests, and be entitled to full and active
2 participation in all aspects of the litigation and access to all
3 relevant information regarding the child.

4 (c) To determine the facts of the case by conducting an
5 independent investigation including, but not limited to,
6 interviewing the child, social workers, family members, and
7 others as necessary, and reviewing relevant reports and other
8 information. **The agency case file shall be reviewed before**
9 **disposition and before the hearing for termination of parental**
10 **rights. Updated materials shall be reviewed as provided to the**
11 **court and parties. The supervising agency shall provide**
12 **documentation of progress relating to all aspects of the last**
13 **court ordered treatment plan, including copies of evaluations and**
14 **therapy reports and verification of parenting time not later than**
15 **5 business days before the scheduled hearing.**

16 (d) ~~Before each proceeding or hearing, to~~ **To meet with and**
17 **observe the child, assess the child's needs and wishes with**
18 **regard to the representation and the issues in the case** ~~, review~~
19 ~~the agency case file and, consistent with the rules of~~
20 ~~professional responsibility, consult with the child's parents,~~
21 ~~foster care providers, guardians, and caseworkers.~~ **in the**
22 **following instances:**

23 (i) **Before the pretrial hearing.**

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

26 (iii) **Before a dispositional review hearing.**

27 (iv) **Before a permanency planning hearing.**

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

2 (vi) At least once during the pendency of a supplemental
3 petition.

4 (vii) At other times as ordered by the court. Adjourned or
5 continued hearings do not require additional visits unless
6 directed by the court.

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

9 (f) ~~—(e)—~~ To explain to the child, taking into account the
10 child's ability to understand the proceedings, the
11 lawyer-guardian ad litem's role.

12 (g) ~~—(f)—~~ To file all necessary pleadings and papers and
13 independently call witnesses on the child's behalf.

14 (h) ~~—(g)—~~ To attend all hearings and substitute
15 representation for the child only with court approval.

16 (i) ~~—(h)—~~ To make a determination regarding the child's best
17 interests and advocate for those best interests according to the
18 lawyer-guardian ad litem's understanding of those best interests,
19 regardless of whether the lawyer-guardian ad litem's
20 determination reflects the child's wishes. The child's wishes
21 are relevant to the lawyer-guardian ad litem's determination of
22 the child's best interests, and the lawyer-guardian ad litem
23 shall weigh the child's wishes according to the child's
24 competence and maturity. Consistent with the law governing
25 attorney-client privilege, the lawyer-guardian ad litem shall
26 inform the court as to the child's wishes and preferences.

27 (j) ~~—(i)—~~ To monitor the implementation of case plans and

1 court orders, and determine whether services the court ordered
2 for the child or the child's family are being provided in a
3 timely manner and are accomplishing their purpose. The
4 lawyer-guardian ad litem shall inform the court if the services
5 are not being provided in a timely manner, if the family fails to
6 take advantage of the services, or if the services are not
7 accomplishing their intended purpose.

8 **(k)** ~~—(j)—~~ Consistent with the rules of professional
9 responsibility, to identify common interests among the parties
10 and, to the extent possible, promote a cooperative resolution of
11 the matter.

12 **(l)** ~~—(k)—~~ To request authorization by the court to pursue
13 issues on the child's behalf that do not arise specifically from
14 the court appointment.

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

27 (3) The court or another party to the case shall not call a

1 lawyer-guardian ad litem as a witness to testify regarding
2 matters related to the case. The lawyer-guardian ad litem's file
3 of the case is not discoverable.