

HOUSE BILL No. 4169

February 5, 2009, Introduced by Reps. Dean, Gonzales, Stanley, Bauer, Lemmons, Espinoza, Hansen, Lori, Bennett, Roy Schmidt, Hammel, LeBlanc, Bledsoe, Tlaib, Leland, Donigan and Valentine and referred to the Committee on Families and Children's Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 13a of chapter XIIA (MCL 712A.13a), as amended
by 2004 PA 475.

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 that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible

1 under court order or contractual arrangement for a juvenile's care
2 and supervision.

3 (b) "Agency case file" means the current file from the agency
4 providing direct services to the child, that can include the child
5 protective services file if the child has not been removed from the
6 home or the ~~family independence agency~~ **DEPARTMENT** or contract
7 agency foster care file as ~~defined~~ **REGULATED** under 1973 PA 116, MCL
8 722.111 to 722.128.

9 (c) "Attorney" means, if appointed to represent a child in a
10 proceeding under section 2(b) or (c) of this chapter, an attorney
11 serving as the child's legal advocate in a traditional attorney-
12 client relationship with the child, as governed by the Michigan
13 rules of professional conduct. An attorney defined under this
14 subdivision owes the same duties of undivided loyalty,
15 confidentiality, and zealous representation of the child's
16 expressed wishes as the attorney would to an adult client. For the
17 purpose of a notice required under these sections, attorney
18 includes a child's lawyer-guardian ad litem.

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

27 (e) "Foster care" means care provided to a juvenile in a

1 foster family home, foster family group home, or child caring
2 institution licensed or approved under 1973 PA 116, MCL 722.111 to
3 722.128, or care provided to a juvenile in a relative's home under
4 a court order.

5 (f) "Guardian ad litem" means an individual whom the court
6 appoints to assist the court in determining the child's best
7 interests. A guardian ad litem does not need to be an attorney.

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

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

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

18 (iii) Section 10 of the child protection law, 1975 PA 238, MCL
19 722.630.

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

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

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

27 (iii) Is not the child's parent or a person otherwise related to

1 the child by blood or affinity to the third degree.

2 (i) "Permanent foster family agreement" means an agreement for
3 a child 14 years old or older to remain with a particular foster
4 family until the child is 18 years old under standards and
5 requirements established by the ~~family independence agency~~
6 **DEPARTMENT**, which agreement is among all of the following:

7 (i) The child.

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

9 (iii) The foster family.

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

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

25 (2) If a juvenile is alleged to be within the provisions of
26 section 2(b) of this chapter, the court may authorize a petition to
27 be filed at the conclusion of the preliminary hearing or inquiry.

1 The court may authorize the petition upon a showing of probable
2 cause that 1 or more of the allegations in the petition are true
3 and fall within the provisions of section 2(b) of this chapter. If
4 a petition is before the court because the ~~family independence~~
5 ~~agency-DEPARTMENT~~ is required to submit the petition under section
6 17 of the child protection law, 1975 PA 238, MCL 722.637, the court
7 shall hold a hearing on the petition within 24 hours or on the next
8 business day after the petition is submitted, at which hearing the
9 court shall consider at least the matters governed by subsections
10 (4) and (5).

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

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

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

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

27 (c) The court finds on the record that the presence in the

1 home of the person alleged to have committed the abuse presents a
2 substantial risk of harm to the child's life, physical health, or
3 mental well-being.

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

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

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

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

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

27 (c) The court may include any reasonable term or condition

1 necessary for the juvenile's physical or mental well-being or
2 necessary to protect the juvenile.

3 (8) If the court orders placement of the juvenile outside the
4 juvenile's home, the court shall inform the parties of the
5 following:

6 (a) That the agency has the responsibility to prepare an
7 initial services plan within 30 days of the juvenile's placement.

8 (b) The general elements of an initial services plan as
9 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
10 722.128.

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

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

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

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

1 appropriateness and the conditions of parenting time. The court may
2 suspend parenting time while the psychological evaluation or
3 counseling is conducted.

4 (12) Upon the motion of any party, the court shall review
5 custody and placement orders and initial services plans pending
6 trial and may modify those orders and plans as the court considers
7 under this section are in the juvenile's best 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 child
11 is placed in foster care, within 10 days after receipt of a written
12 request, the agency shall provide the person who is providing the
13 foster care with copies of all initial, updated, and revised case
14 service plans and court orders relating to the child and all of the
15 child's medical, mental health, and education reports, including
16 reports compiled before the child was placed with that person.

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

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

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

25 **(C) AN ORDER THAT THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN**
26 **DISCLOSE TO THE DEPARTMENT THE NAMES, ADDRESSES, AND ANY OTHER**
27 **IDENTIFYING INFORMATION OF THE CHILD'S RELATIVES. PROVIDING THIS**

1 INFORMATION DOES NOT GUARANTEE THAT THE CHILD SHALL BE PLACED WITH
2 A RELATIVE IDENTIFIED UNDER THIS SUBDIVISION. INFORMATION OBTAINED
3 UNDER THIS SUBDIVISION SHALL BE USED TO ASSIST IN THIS PROCESS OF
4 DETERMINING PLACEMENT FOR THE CHILD AS REQUIRED UNDER SECTION 4A OF
5 THE FOSTER CARE AND ADOPTION SERVICES ACT, 1994 PA 203, MCL
6 722.954A.

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

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

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

15 (c) Sexual exploitation of a juvenile, which includes, but is
16 not limited to, allowing, permitting, or encouraging a juvenile to
17 engage in prostitution or allowing, permitting, encouraging, or
18 engaging in photographing, filming, or depicting a juvenile engaged
19 in a listed sexual act as defined in section 145c of the Michigan
20 penal code, 1931 PA 328, MCL 750.145c.

21 (d) Maltreatment of a juvenile.