

# SENATE BILL No. 1533

September 29, 2010, Introduced by Senators BRATER, PRUSI, THOMAS, SCOTT and JACOBS and referred to the Committee on Families and Human Services.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 10, 13a, and 14 of chapter XIIIA (MCL 712A.10, 712A.13a, and 712A.14), section 10 as amended by 1988 PA 92, section 13a as amended by 2004 PA 475, and section 14 as amended by 2001 PA 211, and by adding sections 14a and 14b to chapter XIIIA.

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

CHAPTER XIIIA

Sec. 10. (1) Except as otherwise provided in subsection (2) **AND SECTIONS 14, 14A, AND 14B OF THIS CHAPTER**, the ~~judge of probate~~ **JUDGE** may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a

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1 child is within the provisions of this chapter, if there is no  
2 objection by parties in interest. The probation officer or county  
3 agent designated to act as referee shall do all of the following:

4 (a) Take and subscribe the oath of office provided by the  
5 constitution.

6 (b) Administer oaths and examine witnesses.

7 (c) If a case requires a hearing and the taking of testimony,  
8 make a written signed report to the ~~judge of probate~~ **JUDGE**  
9 containing a summary of the testimony taken and a recommendation  
10 for the court's findings and disposition.

11 (2) If a child is before the court under section 2(a)(1) of  
12 this chapter, a probation officer or county agent who is not  
13 licensed to practice law in this state shall not be designated to  
14 act as a referee in any hearing for the child, except the  
15 preliminary inquiry or preliminary hearing. This subsection ~~shall~~  
16 **DOES** not apply to a probation officer or county agent who has been  
17 designated to act as a referee by the probate judge ~~prior to~~ **BEFORE**  
18 January 1, 1988 and who is acting as a referee as of January 1,  
19 1988.

20 Sec. 13a. (1) As used in this section and sections 2, 6b, 13b,  
21 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

22 (a) "Agency" means a public or private organization,  
23 institution, or facility that is performing the functions under  
24 part D of title IV of the social security act, 42 USC 651 ~~to 655,~~  
25 ~~656 to 657, 658a to 660, and 663 to 669b,~~ or that is responsible  
26 under court order or contractual arrangement for a juvenile's care  
27 and supervision.

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

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

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

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

1 a court order.

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

5 (g) "Lawyer-guardian ad litem" means an attorney appointed  
6 under section 17c of this chapter. A lawyer-guardian ad litem  
7 represents the child, and has the powers and duties, as set forth  
8 in section 17d of this chapter. The provisions of section 17d of  
9 this chapter also apply to a lawyer-guardian ad litem appointed  
10 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, MCL  
16 722.630.

17 (h) "Nonparent adult" means a person who is 18 years of age or  
18 older and who, regardless of the person's domicile, meets all of  
19 the following criteria in relation to a child over whom the court  
20 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 parent  
23 or with a person responsible for the child's health or welfare.

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

26 (i) "Permanent foster family agreement" means an agreement for  
27 a child 14 years old or older to remain with a particular foster

1 family until the child is 18 years old under standards and  
2 requirements established by the family independence agency, which  
3 agreement is among all of the following:

4 (i) The child.

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

6 (iii) The foster family.

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

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

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

1 a petition is before the court because the family independence  
2 agency is required to submit the petition under section 17 of the  
3 child protection law, 1975 PA 238, MCL 722.637, the court shall  
4 hold a hearing on the petition within 24 hours or on the next  
5 business day after the petition is submitted, at which hearing the  
6 court shall consider at least the matters governed by subsections  
7 (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 in  
10 the custody of either of the juvenile's parents or the juvenile's  
11 guardian or custodian under reasonable terms and conditions  
12 necessary for either the juvenile's physical health or mental well-  
13 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 subsequently  
17 return to the home if all of the following take place:

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

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

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

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

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

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

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

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

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

27           **(8) THE COURT MAY ORDER PLACEMENT OF THE CHILD IN FOSTER CARE**

1 IF THE COURT FINDS ALL OF THE FOLLOWING CONDITIONS:

2 (A) CUSTODY OF THE CHILD WITH THE PARENT PRESENTS A  
3 SUBSTANTIAL RISK OF HARM TO THE CHILD'S LIFE, PHYSICAL HEALTH, OR  
4 MENTAL WELL-BEING.

5 (B) NO PROVISION OF SERVICE OR OTHER ARRANGEMENT EXCEPT  
6 REMOVAL OF THE CHILD IS REASONABLY AVAILABLE TO ADEQUATELY  
7 SAFEGUARD THE CHILD FROM RISK AS DESCRIBED IN SUBDIVISION (A).

8 (C) CONTINUING THE CHILD'S RESIDENCE IN THE HOME IS CONTRARY  
9 TO THE CHILD'S WELFARE.

10 (D) CONSISTENT WITH THE CIRCUMSTANCES, REASONABLE EFFORTS WERE  
11 MADE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD.

12 (E) CONDITIONS OF CHILD CUSTODY AWAY FROM THE PARENT ARE  
13 ADEQUATE TO SAFEGUARD THE CHILD'S HEALTH AND WELFARE.

14 (9) ~~(8)~~—If the court orders placement of the juvenile outside  
15 the juvenile's home, the court shall inform the parties of the  
16 following:

17 (a) That the agency has the responsibility to prepare an  
18 initial services plan within 30 days of the juvenile's 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 to  
21 722.128.

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

24 (10) ~~(9)~~—Before or within 7 days after a child is placed in a  
25 relative's home, the family independence agency shall perform a  
26 criminal record check and central registry clearance. If the child  
27 is placed in the home of a relative, the court shall order a home

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

3 (11) ~~(10)~~—In determining placement of a juvenile pending  
4 trial, the court shall order the juvenile placed in the most  
5 family-like setting available consistent with the juvenile's needs.

6 (12) ~~(11)~~—If a juvenile is removed from his or her home, the  
7 court shall permit the juvenile's parent to have frequent parenting  
8 time with the juvenile. If parenting time, even if supervised, may  
9 be harmful to the juvenile, the court shall order the child to have  
10 a psychological evaluation or counseling, or both, to determine the  
11 appropriateness and the conditions of parenting time. The court may  
12 suspend parenting time while the psychological evaluation or  
13 counseling is conducted.

14 (13) ~~(12)~~—Upon the motion of any party, the court shall review  
15 custody and placement orders and initial services plans pending  
16 trial and may modify those orders and plans as the court considers  
17 under this section are in the juvenile's best interests.

18 (14) ~~(13)~~—The court shall include in an order placing a child  
19 in foster care an order directing the release of information  
20 concerning the child in accordance with this subsection. If a child  
21 is placed in foster care, within 10 days after receipt of a written  
22 request, the agency shall provide the person who is providing the  
23 foster care with copies of all initial, updated, and revised case  
24 service plans and court orders relating to the child and all of the  
25 child's medical, mental health, and education reports, including  
26 reports compiled before the child was placed with that person.

27 (15) ~~(14)~~—In an order placing a child in foster care, the

1 court shall include both of the following:

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

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

8 (16) ~~(15)~~—As used in this section, "abuse" means 1 or more of  
9 the following:

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

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

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

22 (d) Maltreatment of a juvenile.

23 Sec. 14. (1) Any local police officer, sheriff or deputy  
24 sheriff, state police officer, county agent or probation officer of  
25 any court of record may, without the order of the court,  
26 immediately take into custody any child who is found violating any  
27 law or ordinance, ~~or whose surroundings are such as to endanger his~~

1 ~~or her health, morals, or welfare,~~ or for whom there is reasonable  
2 cause to believe is violating or has violated a personal protection  
3 order issued ~~pursuant to~~ **UNDER** section 2(h) **OF THIS CHAPTER** by the  
4 court under section 2950 or 2950a of the revised judicature act of  
5 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is  
6 reasonable cause to believe is violating or has violated a valid  
7 foreign protection order. If ~~such an~~ **THE** officer or county agent  
8 takes a child coming within the provisions of this chapter into  
9 custody, he or she shall immediately attempt to notify the parent  
10 or parents, guardian, or custodian. While awaiting the arrival of  
11 the parent or parents, guardian, or custodian, a child under the  
12 age of 17 years taken into custody under the provisions of this  
13 chapter shall not be held in any detention facility unless the  
14 child is completely isolated so as to prevent any verbal, visual,  
15 or physical contact with any adult prisoner. Unless the child  
16 requires immediate detention as provided for in this act, the  
17 officer shall accept the written promise of the parent or parents,  
18 guardian, or custodian, to bring the child to the court at a **FIXED**  
19 time. ~~fixed therein.~~ The child shall then be released to the  
20 custody of the parent or parents, guardian, or custodian.

21 (2) If a child is not released under subsection (1), the child  
22 and his or her parents, guardian, or custodian, if they can be  
23 located, shall immediately be brought before the court for a  
24 preliminary hearing on the status of the child, and an order signed  
25 by a ~~judge of probate~~ **JUDGE** or a referee authorizing the filing of  
26 a complaint shall be entered or the child shall be released to his  
27 or her parent or parents, guardian, or custodian.

1 (3) If a complaint is authorized under subsection (2), the  
2 order shall state where the child is to be placed, pending  
3 investigation and hearing, which placement may be in any of the  
4 following:

5 (a) In the home of the child's parent, guardian, or custodian.

6 (b) If a child is within the court's jurisdiction under  
7 section 2(a) of this chapter, in a suitable foster care home  
8 subject to the court's supervision. Except as otherwise provided in  
9 subsections (4) and (5), if a child is within the court's  
10 jurisdiction under section 2(b) of this chapter, the court shall  
11 not place a child in a foster care home subject to the court's  
12 supervision.

13 (c) In a child care institution or child placing agency  
14 licensed by the ~~state~~ department of ~~social~~**HUMAN** services to  
15 receive for care children within the jurisdiction of the court.

16 (d) In a suitable place of detention.

17 (4) Except as otherwise provided in subsection (5), if a court  
18 is providing at the time of the enactment of this subsection foster  
19 care home services subject to the court's supervision to children  
20 within section 2(b) of this chapter, the court may continue to  
21 provide those services through December 31, 1989. Beginning January  
22 1, 1990, the court shall discontinue providing those services.

23 (5) If a court located in a county with a population in excess  
24 of 650,000 is providing at the time of the enactment of this  
25 subsection foster care home services subject to the court's  
26 supervision to children within section 2(b) of this chapter, the  
27 court may continue to provide those services through December 31,

1 1991. Beginning January 1, 1992, the court shall discontinue those  
2 services.

3 SEC. 14A. (1) IF THERE IS REASONABLE CAUSE TO BELIEVE THAT A  
4 CHILD IS SUFFERING FROM SERIOUS HARM OR IS IN SURROUNDINGS THAT  
5 PRESENT AN IMMINENT RISK OF HARM AND THE CHILD'S IMMEDIATE REMOVAL  
6 FROM THOSE SURROUNDINGS IS NECESSARY TO PROTECT THE CHILD'S HEALTH  
7 AND SAFETY, AN OFFICER MAY, WITHOUT A COURT ORDER, IMMEDIATELY TAKE  
8 THAT CHILD INTO PROTECTIVE CUSTODY. AN OFFICER WHO TAKES A CHILD  
9 INTO PROTECTIVE CUSTODY UNDER THIS SECTION SHALL IMMEDIATELY NOTIFY  
10 THE DEPARTMENT OF HUMAN SERVICES. WHILE AWAITING THE ARRIVAL OF THE  
11 DEPARTMENT OF HUMAN SERVICES, THE CHILD SHALL NOT BE HELD IN A  
12 DETENTION FACILITY.

13 (2) IF A CHILD TAKEN INTO PROTECTIVE CUSTODY UNDER THIS  
14 SECTION IS NOT RELEASED, THE OFFICER OR THE DEPARTMENT OF HUMAN  
15 SERVICES SHALL IMMEDIATELY CONTACT THE DESIGNATED JUDGE OR REFEREE,  
16 AS PROVIDED IN SUBSECTION (3), TO SEEK A COURT ORDER FOR PLACEMENT  
17 OF THE CHILD PENDING A PRELIMINARY HEARING.

18 (3) THE CHIEF JUDGE OF THE CIRCUIT COURT SHALL DESIGNATE A  
19 JUDGE OR REFEREE WHO MAY BE CONTACTED WHEN A PLACEMENT ORDER IS  
20 SOUGHT FOR A CHILD IN PROTECTIVE CUSTODY UNDER THIS SECTION. IF THE  
21 COURT IS CLOSED, THE DESIGNATED JUDGE OR REFEREE MAY ORDER  
22 PLACEMENT IF THE PLACEMENT ORDER IS IMMEDIATELY COMMUNICATED,  
23 ELECTRONICALLY OR OTHERWISE, TO THE APPROPRIATE COUNTY DEPARTMENT  
24 OFFICE AND FILED WITH THE COURT THE NEXT BUSINESS DAY. WHEN A  
25 PLACEMENT ORDER IS ISSUED BY A DESIGNATED REFEREE, THE ORDER SHALL  
26 TAKE EFFECT AS AN INTERIM ORDER PENDING A PRELIMINARY HEARING.

27 (4) A PLACEMENT ORDER ISSUED UNDER SUBSECTION (3) SHALL

1 INDICATE THAT CONTINUATION IN THE HOME IS CONTRARY TO THE CHILD'S  
2 WELFARE AND MUST STATE THE BASIS FOR THAT DETERMINATION. THE  
3 PLACEMENT ORDER SHALL BE SERVED ON THE PARTIES BEFORE THE  
4 PRELIMINARY HEARING.

5 (5) AS USED IN THIS SECTION, "OFFICER" MEANS A LOCAL POLICE  
6 OFFICER, SHERIFF OR DEPUTY SHERIFF, STATE POLICE OFFICER, OR COUNTY  
7 AGENT OR PROBATION OFFICER OF A COURT OF RECORD.

8 SEC. 14B. (1) A JUDGE OR REFEREE MAY ISSUE AN EX PARTE ORDER  
9 AUTHORIZING THE DEPARTMENT OF HUMAN SERVICES TO IMMEDIATELY TAKE A  
10 CHILD INTO PROTECTIVE CUSTODY AND PLACE THE CHILD PENDING THE  
11 PRELIMINARY HEARING IF THE COURT FINDS ALL OF THE FOLLOWING:

12 (A) THERE IS REASONABLE CAUSE TO BELIEVE THAT THE CHILD IS  
13 SUFFERING FROM SERIOUS HARM OR IS IN SURROUNDINGS THAT PRESENT AN  
14 IMMINENT RISK OF HARM AND THE CHILD'S IMMEDIATE REMOVAL FROM THOSE  
15 SURROUNDINGS IS NECESSARY TO PROTECT THE CHILD'S HEALTH AND SAFETY.

16 (B) THE CIRCUMSTANCES WARRANT ISSUING AN EX PARTE ORDER  
17 PENDING THE PRELIMINARY HEARING.

18 (C) CONSISTENT WITH THE CIRCUMSTANCES, REASONABLE EFFORTS WERE  
19 MADE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD.

20 (D) NO REMEDY OTHER THAN PROTECTIVE CUSTODY IS REASONABLY  
21 AVAILABLE TO PROTECT THE CHILD.

22 (E) CONTINUING TO RESIDE IN THE HOME IS CONTRARY TO THE  
23 CHILD'S WELFARE.

24 (2) THE ORDER SHALL BE SUPPORTED BY WRITTEN FINDINGS OF FACT.