

**PROBATE CODE OF 1939 (EXCERPT)**  
**Act 288 of 1939**  
Chapter XII  
SAFE DELIVERY OF NEWBORNS

**712.1 Short title of chapter; definitions.**

Sec. 1.

- (1) This chapter shall be known and may be cited as the "safe delivery of newborns law".
- (2) As used in this chapter:
  - (a) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
  - (b) "Court" means the family division of circuit court.
  - (c) "Department" means the department of human services.
  - (d) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 1 of the paternity act, 1956 PA 205, MCL 722.711.
  - (e) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.
  - (f) "Emergency service provider" means a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty. Emergency service provider also includes a paramedic or an emergency medical technician when either of those individuals is responding to a 9-1-1 emergency call.
  - (g) "Fire department" means an organized fire department as that term is defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.
  - (h) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.
  - (i) "Hospital" means a hospital that is licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.
  - (j) "Lawyer-guardian ad litem" means an attorney appointed under section 2 of this chapter. A lawyer-guardian ad litem represents the newborn, and has the powers and duties, as set forth in section 17d of chapter XIA.
  - (k) "Newborn" means a child who a physician reasonably believes to be not more than 72 hours old.
  - (l) "Police station" means that term as defined in section 43 of the Michigan vehicle code, 1949 PA 300, MCL 257.43.
  - (m) "Preplacement assessment" means an assessment of a prospective adoptive parent as described in section 23f of chapter X.
  - (n) "Surrender" means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act." The heading to Chapter XII added by 2000 PA 232 ("SAFE DELIVERY OF NEWBORNS") was incorrectly referenced in 2000 PA 235 as "SURRENDERED NEWBORNS." The chapter heading evidently should read "SAFE DELIVERY OF NEWBORNS."

**Popular Name:** Baby Abandonment

**Popular Name:** Baby Drop Off

**712.2 Newborn surrendered to emergency service provider; court jurisdiction; effect of other provisions of law; immunity from civil action.**

Sec. 2.

(1) The court has jurisdiction over a newborn who is surrendered to an emergency service provider as provided in section 3 of this chapter. The court may appoint a lawyer-guardian ad litem to represent a newborn in proceedings under this chapter.

(2) Except as provided in section 5 of this chapter, the reporting requirement of section 3 of the child protection law, 1975 PA 238, MCL 722.623, does not apply regarding a child surrendered to an emergency service provider as provided in section 3 of this chapter.

(3) Unless this chapter specifically provides otherwise, a provision in another chapter of this act does not apply

to a proceeding under this chapter. Unless this chapter specifically provides otherwise, the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, does not apply to a proceeding under this chapter.

(4) A hospital and a child placing agency, and their agents and employees, are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under this chapter, except for an act or omission constituting gross negligence or willful or wanton misconduct. To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an employee or contractor of a fire department or police station has the same immunity that this subsection provides to a hospital's or child placing agency's agent or employee.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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## **712.2a Confidentiality.**

### **Sec. 2a.**

(1) A hearing under this chapter is closed to the public. A record of a proceeding under this chapter is confidential, except that the record is available to any individual who is a party to that proceeding.

(2) All child placing agency records created under this chapter are confidential except as otherwise provided in the provisions of this chapter.

(3) An individual who discloses information made confidential under subsection (1) or (2) without a court order or specific authorization under federal or state law is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both. An individual who discloses information made confidential under subsection (1) or (2) without a court order or specific authorization under federal or state law is civilly liable for damages proximately caused by disclosure of that information.

**History:** Add. 2006, Act 488, Eff. Jan. 1, 2007

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## **712.3 Conduct of emergency service provider.**

### **Sec. 3.**

(1) If a parent surrenders a child who may be a newborn to an emergency service provider, the emergency service provider shall comply with the requirements of this section under the assumption that the child is a newborn. The emergency service provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody. The emergency service provider shall make a reasonable effort to do all of the following:

(a) Take action necessary to protect the physical health and safety of the newborn.

(b) Inform the parent that by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(c) Inform the parent that the parent has 28 days to petition the court to regain custody of the newborn.

(d) Provide the parent with written material approved by or produced by the department that includes, but is not limited to, all of the following statements:

(i) By surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(ii) The parent has 28 days after surrendering the newborn to petition the court to regain custody of the newborn.

(iii) After the 28-day period to petition for custody elapses, there will be a hearing to determine and terminate parental rights.

- (iv) There will be public notice of this hearing, and the notice will not contain the parent's name.
  - (v) The parent will not receive personal notice of this hearing.
  - (vi) Information the parent provides to an emergency service provider will not be made public.
  - (vii) A parent can contact the safe delivery line established under section 20 of this chapter for more information.
- (2) After providing a parent with the information described in subsection (1), an emergency service provider shall make a reasonable attempt to do all of the following:
- (a) Encourage the parent to provide any relevant family or medical information.
  - (b) Provide the parent with the pamphlet produced under section 20 of this chapter and inform the parent that he or she can receive counseling or medical attention.
  - (c) Inform the parent that information that he or she provides will not be made public.
  - (d) Ask the parent to identify himself or herself.
  - (e) Inform the parent that in order to place the newborn for adoption the state is required to make a reasonable attempt to identify the other parent, and then ask the parent to identify the other parent.
  - (f) Inform the parent that the child placing agency that takes temporary protective custody of the newborn can provide confidential services to the parent.
  - (g) Inform the parent that the parent may sign a release for the newborn that may be used at the parental rights termination hearing under this chapter.
- (3) A newborn whose birth is described in the born alive infant protection act, 2002 PA 687, MCL 333.1071 to 333.1073, and who is in a hospital setting or transferred to a hospital under section 3(1) of the born alive infant protection act, 2002 PA 687, MCL 333.1073, is a newborn surrendered as provided in this chapter. An emergency service provider who has received a newborn under the born alive infant protection act, 2002 PA 687, MCL 333.1071 to 333.1073, shall do all of the following:
- (a) Comply with the requirements of subsections (1) and (2) to obtain information from or supply information to the surrendering parent by requesting the information from or supplying the information to the attending physician who delivered the newborn.
  - (b) Make no attempt to directly contact the parent or parents of the newborn.
  - (c) Provide humane comfort care if the newborn is determined to have no chance of survival due to gestational immaturity in light of available neonatal medical treatment or other condition incompatible with life.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2002, Act 688, Eff. Mar. 31, 2003 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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## **712.5 Transfer of newborn to hospital; physician report of abuse, neglect, or child not a newborn; notice to child placing agency.**

### **Sec. 5.**

- (1) An emergency service provider that is not a hospital and that takes a newborn into temporary protective custody under section 3 of this chapter shall transfer the newborn to a hospital. The hospital shall accept a newborn who an emergency service provider transfers to the hospital in compliance with this chapter, taking the newborn into temporary protective custody.
- (2) A hospital that takes a newborn into temporary protective custody under this chapter shall have the newborn examined by a physician. If a physician who examines the newborn either determines that there is reason to suspect the newborn has experienced child abuse or child neglect, other than being surrendered to an emergency service provider under section 3 of this chapter, or comes to a reasonable belief that the child is not a newborn, the physician shall immediately report to the department as required by section 3 of the child protection law, 1975 PA 238, MCL 722.623.
- (3) If a physician is not required to report to the department as provided in subsection (2), the hospital shall notify a child placing agency that the hospital has taken a newborn into temporary protective custody under this chapter.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as

added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act.”

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## **712.7 Duties of child placing agency.**

### **Sec. 7.**

Upon receipt of notice from a hospital under section 5 of this chapter, the child placing agency shall do all of the following:

(a) Immediately assume the care, control, and temporary protective custody of the newborn.  
(b) If a parent is known and willing, immediately meet with the parent.  
(c) Unless otherwise provided in this subdivision, make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment. If a petition for custody is filed under section 10 of this chapter, the child placing agency may make a temporary placement of the newborn with a licensed foster parent.

(d) Unless the birth was witnessed by the emergency service provider, immediately request assistance from law enforcement officials to investigate and determine, through the missing children information clearinghouse, the national center for missing and exploited children, and any other national and state resources, whether the newborn is a missing child.

(e) Not later than 48 hours after a transfer of physical custody to a prospective adoptive parent, petition the court in the county in which the prospective adoptive parent resides to provide authority to place the newborn and provide care for the newborn. The petition shall include all of the following:

(i) The date of the transfer of physical custody.  
(ii) The name and address of the emergency service provider to whom the newborn was surrendered.  
(iii) Any information, either written or verbal, that was provided by and to the parent who surrendered the newborn. The emergency service provider that originally accepted the newborn as required by section 3 of this chapter shall provide this information to the child placing agency.

(f) Within 28 days, make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent. The child placing agency shall file a written report with the court that issued the order placing the child. The report shall state the efforts the child placing agency made in attempting to identify and locate the nonsurrendering parent and the results of those efforts. If the identity and address of the nonsurrendering parent are unknown, the child placing agency shall provide notice of the surrender of the newborn by publication in a newspaper of general circulation in the county where the newborn was surrendered.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides:“Enacting section 1. Section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act.”

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## **712.10 Custody action by surrendering or nonsurrendering parent; filing; hearing; determination of paternity or maternity.**

### **Sec. 10.**

(1) If a surrendering parent wants custody of a newborn who was surrendered under section 3 of this chapter, the parent shall, within 28 days after the newborn was surrendered, file a petition with the court for custody. Not later than 28 days after notice of surrender of a newborn has been published, an individual claiming to be the nonsurrendering parent of that newborn may file a petition with the court for custody. The surrendering parent or nonsurrendering parent shall file the petition for custody in 1 of the following counties:

(a) If the parent has located the newborn, the county where the newborn is located.  
(b) If subdivision (a) does not apply and the parent knows the location of the emergency service provider to whom the newborn was surrendered, the county where the emergency service provider is located.

- (c) If neither subdivision (a) nor (b) applies, the county where the parent is located.
- (2) If the court in which the petition for custody is filed did not issue the order placing the newborn, the court in which the petition for custody is filed shall locate and contact the court that issued the order and shall transfer the proceedings to that court.
- (3) Before holding a custody hearing on a petition filed under this section and not later than 7 days after a petition for custody under this section has been filed, the court shall conduct a hearing to make the determinations of paternity or maternity as described in section 11.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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### **712.11 Blood or tissue typing or DNA identification profiling; presumption; costs; dismissal of custody petition.**

#### **Sec. 11.**

- (1) In a petition for custody filed under this chapter, the court shall order the child and each party claiming paternity to submit to blood or tissue typing determinations or DNA identification profiling, as described in section 16 of the paternity act, 1958 PA 205, MCL 722.716.
- (2) Unless the birth was witnessed by the emergency service provider and sufficient documentation exists to support maternity, in a petition for custody filed under this chapter, the court shall order the child and each party claiming maternity to submit to blood or tissue typing determinations or DNA identification profiling, as described in section 16 of the paternity act, 1958 PA 205, MCL 722.716.
- (3) If the probability of paternity or maternity determined by the blood or tissue typing or DNA identification profiling is 99% or higher and the DNA identification profile and summary report are admissible, paternity or maternity is presumed and the petitioner may move for summary disposition on the issue of paternity or maternity.
- (4) The court may order the petitioner to pay all or part of the cost of the paternity or maternity testing.
- (5) If the result of the paternity or maternity testing is admissible and establishes that the petitioner could not be the parent of the newborn, the court shall dismiss the petition for custody.

**History:** Add. 2000, Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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### **712.12, 712.13 Repealed. 2006, Act 488, Eff. Jan. 1, 2007.**

**Compiler's Notes:** The repealed sections pertained to blood or tissue typing or DNA identification profile and disclosure of information.

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### **712.14 Determination of custody; basis; newborn's best interest; factors.**

#### **Sec. 14.**

(1) In a custody action under this chapter, the court shall determine custody of the newborn based on the newborn's best interest. The court shall consider, evaluate, and make findings on each factor of the newborn's best interest with the goal of achieving permanence for the newborn at the earliest possible date.

(2) A newborn's best interest in a custody action under this chapter is all of the following factors regarding a parent claiming parenthood of the newborn:

- (a) The love, affection, and other emotional ties existing between the newborn and the parent.
- (b) The parent's capacity to give the newborn love, affection, and guidance.
- (c) The parent's capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The permanence, as a family unit, of the existing or proposed custodial home.
- (e) The parent's moral fitness.
- (f) The parent's mental and physical health.
- (g) Whether the parent has a history of domestic violence.
- (h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn's birth or surrender.
- (i) Any other factor considered by the court to be relevant to the determination of the newborn's best interest.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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## **712.15 Court order.**

### **Sec. 15.**

Based on the court's finding under section 14 of this chapter, the court may issue an order that does 1 of the following:

- (a) Grants legal or physical custody, or both, of the newborn to the parent and either retains or relinquishes jurisdiction.
- (b) Determines that the best interests of the newborn are not served by granting custody to the petitioner parent and orders the child placing agency to petition the court for jurisdiction under section 2(b) of chapter XIIA.
- (c) Dismisses the petition.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007 ;-- Am. 2010, Act 349, Imd. Eff. Dec. 22, 2010

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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## **712.17 Release or termination of parental rights to newborn.**

### **Sec. 17.**

(1) A parent who surrenders a newborn under section 3 of this chapter and who does not file a custody action under section 10 of this chapter is presumed to have knowingly released his or her parental rights to the newborn.

(2) If the surrendering parent has not filed a petition for custody of the newborn within 28 days of the surrender, the child placing agency with authority to place the newborn shall immediately file a petition with the court to determine whether the release shall be accepted and whether the court shall enter an order terminating the rights of the surrendering parent.

(3) If the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of notice of

surrender of a newborn under section 10 of this chapter, the child placing agency with authority to place the newborn shall immediately file a petition with the court to determine whether the court shall enter an order terminating the rights of the nonsurrendering parent.

(4) The court shall schedule a hearing on the petition from the child placing agency within 14 days of receipt of that petition. At the hearing, the child placing agency shall present evidence that demonstrates that the surrendering parent released the newborn and that demonstrates the efforts made by the child placing agency to identify, locate, and provide notice to the nonsurrendering parent.

(5) If the court finds by a preponderance of the evidence that the surrendering parent has knowingly released his or her rights to the child and that reasonable efforts were made to locate the nonsurrendering parent and a custody action has not been filed, the court shall enter an order terminating parental rights of the surrendering parent and the nonsurrendering parent under this chapter.

**History:** Add. 2000 Act 232, Eff. Jan. 1, 2001 ;-- Am. 2006, Act 488, Eff. Jan. 1, 2007 ;-- Am. 2010, Act 348, Imd. Eff. Dec. 22, 2010

**Compiler's Notes:** Enacting section 1 of Act 232 of 2000 provides: "Enacting section 1. Section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

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## **712.20 Safe delivery program; establishment.**

### **Sec. 20.**

The department of community health in conjunction with the department shall establish a safe delivery program. The safe delivery program shall include, but is not limited to, both of the following:

(a) A toll-free, 24-hour telephone line. The information provided with this telephone line shall include, but is not limited to, all of the following:

(i) Information on prenatal care and the delivery of a newborn.

(ii) Names of health agencies that can assist in obtaining services and supports that provide for the pregnancy-related health of the mother and the health of the baby.

(iii) Information on adoption options and the name and telephone number of a child placing agency that can assist a parent or expecting parent in obtaining adoption services.

(iv) Information that, in order to safely provide for the health of the mother and her newborn, the best place for the delivery of a child is in a hospital, hospital-based birthing center, or birthing center that is accredited by the commission for the accreditation of birth centers.

(v) An explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system, if requested by the mother.

(vi) Information that a hospital will take into protective custody a newborn that is surrendered as provided for in this chapter and, if needed, provide emergency medical assistance to the mother, the newborn, or both.

(vii) Information regarding legal and procedural requirements related to the voluntary surrender of a child as provided for in this chapter.

(viii) Information regarding the legal consequences for endangering a child, including child protective service investigations and potential criminal penalties.

(ix) Information that surrendering a newborn for adoption as provided in this chapter is an affirmative defense to charges of abandonment as provided in section 135 of the Michigan penal code, 1931 PA 328, MCL 750.135.

(x) Information about resources for counseling and assistance with crisis management.

(b) A pamphlet that provides information to the public concerning the safe delivery program. The department of community health and the department shall jointly publish and distribute the pamphlet. The pamphlet shall prominently display the toll-free telephone number prescribed by subdivision (a).

**History:** Add. 2000, Act 235, Eff. Jan. 1, 2001 ;-- Am. 2003, Act 245, Imd. Eff. Dec. 29, 2003

**Popular Name:** Baby Abandonment

**Popular Name:** Baby Drop Off