

SENATE BILL No. 622

November 21, 1991, Introduced by Senators CONROY, WELBORN, POLLACK, DINGELL, STABENOW, DILLINGHAM, HART, CARL, GEAKE, KELLY and CHERRY and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 19a and 19b of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

section 19a as amended by Act No. 224 of the Public Acts of 1988 and section 19b as amended by Act No. 314 of the Public Acts of

1990, being sections 712A.19a and 712A.19b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 19a and 19b of chapter XIIA of Act
2 No. 288 of the Public Acts of 1939, section 19a as amended by Act
3 No. 224 of the Public Acts of 1988 and section 19b as amended by
4 Act No. 314 of the Public Acts of 1990, being sections 712A.19a
5 and 712A.19b of the Michigan Compiled Laws, are amended to read
6 as follows:

7 CHAPTER XIIA

8 Sec. 19a. (1) If a child remains in foster care and paren-
9 tal rights to the child have not been terminated, the court shall
10 conduct a permanency planning hearing not more than 364 days
11 after entry of the order of disposition and every 364 days there-
12 after during the continuation of the child's placement in foster
13 care. A permanency planning hearing may be combined with a
14 review hearing held under section 19(3) of this chapter.

15 (2) A permanency planning hearing shall be conducted to
16 review the status of the child and the progress being made toward
17 the child's return home or to show why the child should not be
18 placed in the permanent custody of the court.

19 (3) Not less than 14 days before a permanency planning hear-
20 ing, notice of the hearing and a statement of the purposes of the
21 hearing shall be served upon all of the following:

22 (a) The agency. The agency shall advise the child of the
23 hearing if the child is 11 years of age or older.

1 (b) The foster parent or custodian of the child.

2 (c) If the parental rights to the child have not been
3 terminated, the child's parents.

4 (d) If the child has a guardian, the guardian for the
5 child.

6 (e) If the child has a guardian ad litem, the guardian ad
7 litem for the child.

8 (f) If tribal affiliation has been determined, the elected
9 leader of the Indian tribe.

10 (g) The attorney for the child.

11 (h) If the child is 11 years of age or older, the child.

12 (i) Other persons as the court may direct.

13 (4) If parental rights to the child have not been terminated
14 and the court determines at a permanency planning hearing that
15 the return of the child to his or her parent ~~would not cause a~~
16 ~~substantial risk of harm to the child's life, physical health, or~~
17 ~~mental well-being~~ IS IN THE BEST INTERESTS OF THE CHILD, the
18 court shall order the child returned to his or her parent. In
19 determining whether the return of the child ~~would cause a sub-~~
20 ~~stantial risk of harm to the child~~ IS IN THE BEST INTERESTS OF
21 THE CHILD, the court shall view the failure of the parent to sub-
22 stantially comply with the terms and conditions of the case serv-
23 ice plan prepared under section 18f of this chapter as evidence
24 that return of the child to his or her parent ~~would cause a sub-~~
25 ~~stantial risk of harm to the child's life, physical health, or~~
26 ~~mental well-being~~ IS NOT IN THE BEST INTERESTS OF THE CHILD.

1 (5) If the court determines at a permanency planning hearing
2 that the child should not be returned to his or her parent, the
3 agency shall initiate proceedings to terminate parental rights to
4 the child not later than 42 days after the permanency planning
5 hearing, unless the agency demonstrates to the court that initi-
6 ating the termination of parental rights to the child is clearly
7 not in the child's best interests.

8 (6) If the agency demonstrates under subsection (5) that
9 initiating the termination of parental rights to the child is
10 clearly not in the child's best interests, then the court shall
11 order either of the following alternative placement plans:

12 (a) If the court determines that other permanent placement
13 is not possible, the child's placement in foster care shall con-
14 tinue for a limited period to be stated by the court.

15 (b) If the court determines that it is in the child's best
16 interests, the child's placement in foster care shall continue on
17 a long-term basis.

18 Sec. 19b. (1) Except as provided in subsection (4), if a
19 child remains in foster care in the temporary custody of the
20 court following a review hearing under section 19(3) of this
21 chapter or a permanency planning hearing under section 19a of
22 this chapter or if a child remains in the custody of a guardian
23 or limited guardian, upon petition of the prosecuting attorney,
24 child, guardian, custodian, or agency, the court shall hold a
25 hearing to determine if the parental rights to a child should be
26 terminated and, if all parental rights to the child are
27 terminated, the child placed in permanent custody of the court.

1 (2) Not less than 14 days before a hearing to determine if
2 the parental rights to a child should be terminated, notice of
3 the hearing shall be served upon all of the following:

4 (a) The agency. The agency shall advise the child of the
5 hearing if the child is 11 years of age or older.

6 (b) The foster parent or custodian of the child.

7 (c) The child's parents.

8 (d) If the child has a guardian, the guardian for the
9 child.

10 (e) If the child has a guardian ad litem, the guardian ad
11 litem for the child.

12 (f) If tribal affiliation has been determined, the elected
13 leader of the Indian tribe.

14 (g) The attorney for the child.

15 (h) If the child is 11 years of age or older, the child.

16 (i) The prosecutor.

17 (3) The court may terminate the parental rights of a parent
18 to a child if the court finds, by clear and convincing evidence,
19 1 or more of the following:

20 (a) The child has been deserted under either of the follow-
21 ing circumstances:

22 (i) If the parent of a child is unidentifiable and has
23 deserted the child for 28 or more days and has not sought custody
24 of the child during that period. For the purposes of this sec-
25 tion, a parent is unidentifiable if the parent's identity cannot
26 be ascertained after reasonable efforts have been made to locate
27 and identify the parent.

1 (ii) The parent of a child has deserted the child for 91 or
2 more days and has not sought custody of the child during that
3 period.

4 (b) The child or a sibling of the child has suffered physi-
5 cal injury or physical or sexual abuse under either of the fol-
6 lowing circumstances:

7 (i) A parent's act caused the physical injury or physical or
8 sexual abuse and the court finds that there is a reasonable like-
9 lihood that the child will suffer from injury or abuse in the
10 foreseeable future if placed in the parent's home.

11 (ii) A parent who had the opportunity to prevent the physi-
12 cal injury or physical or sexual abuse failed to do so and the
13 court finds that there is a reasonable likelihood that the child
14 will suffer injury or abuse in the foreseeable future if placed
15 in the parent's home.

16 (c) The parent was a respondent in a proceeding brought
17 under this chapter, 182 or more days have elapsed since the issu-
18 ance of an initial dispositional order, and the court, by clear
19 and convincing evidence, finds either of the following:

20 (i) The conditions that led to the adjudication continue to
21 exist and there is no reasonable likelihood that the conditions
22 will be rectified within a reasonable time considering the age of
23 the child.

24 (ii) Other conditions exist that cause the child to come
25 within the jurisdiction of the court, the parent has received
26 recommendations to rectify those conditions, the conditions have
27 not been rectified by the parent after the parent has received

1 notice, a hearing, and been given a reasonable opportunity to
2 rectify the conditions, and there is no reasonable likelihood
3 that the conditions will be rectified within a reasonable time
4 considering the age of the child.

5 (d) The parent of a child has placed the child in a limited
6 guardianship under section 424a of the revised probate code, Act
7 No. 642 of the public acts of 1978, being section 700.424a of the
8 Michigan Compiled Laws, and has substantially failed, without
9 good cause, to comply with a limited guardianship placement plan
10 described in section 424a of Act No. 642 of the Public Acts of
11 1978 regarding the child to the extent that such noncompliance
12 has resulted in a disruption of the parent-child relationship.

13 (e) The parent of a child who has a guardian under the
14 revised probate code, Act No. 642 of the Public Acts of 1978,
15 being sections 700.1 to 700.993 of the Michigan Compiled Laws,
16 has substantially failed, without good cause, to comply with a
17 court-structured plan described in section 424b or 424c of Act
18 No. 642 of the Public Acts of 1978, being sections 700.424b and
19 700.424c of the Michigan Compiled Laws, regarding the child to
20 the extent that ~~such~~ THE noncompliance has resulted in a dis-
21 ruption of the parent-child relationship.

22 (f) The child has a guardian under the revised probate code,
23 Act No. 642 of the Public Acts of 1978, ~~being sections 700.1 to~~
24 ~~700.993 of the Michigan Compiled Laws,~~ and both of the following
25 have occurred:

26 (i) The parent, having the ability to support or assist in
27 supporting the minor, has failed or neglected, without good

1 cause, to provide regular and substantial support for the minor
2 for a period of 2 years or more before the filing of the petition
3 or, if a support order has been entered, has failed to substan-
4 tially comply with the order for a period of 2 years or more
5 before the filing of the petition.

6 (ii) The parent, having the ability to visit, contact, or
7 communicate with the minor, has regularly and substantially
8 failed or neglected, without good cause, to do so for a period of
9 2 years or more before the filing of the petition.

10 (g) The parent, without regard to intent, fails to provide
11 proper care or custody for the child, and there is no reasonable
12 expectation that the parent will be able to provide proper care
13 and custody within a reasonable time considering the age of the
14 child.

15 (h) The parent is imprisoned for such a period that the
16 child will be deprived of a normal home for a period exceeding 2
17 years, and the parent has not provided for the child's proper
18 care and custody, and there is no reasonable expectation that the
19 parent will be able to provide proper care and custody within a
20 reasonable time considering the age of the child.

21 (i) Parental rights to 1 or more siblings of the child have
22 been terminated due to serious and chronic neglect or physical or
23 sexual abuse, and prior attempts to rehabilitate the parents have
24 been unsuccessful.

25 (J) TERMINATION IS IN THE BEST INTERESTS OF THE CHILD.

26 (4) If a petition to terminate the parental rights to a
27 child is filed, the court may enter an order terminating parental

1 rights under subsection (3) at the initial dispositional
2 hearing.