



SENATE BILL No. 725

June 30, 1993, Introduced by Senators WELBORN, DINGELL, GEAKE, CISKY, DILLINGHAM, GOUGEON, MC MANUS, WARTNER, DE GROW, PRIDNIA, GAST, HOFFMAN, ARTHURHULTZ and HART and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 17c, 18f, and 19b of chapter XIIIA 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 17c as added by Act No. 92 of the Public Acts of 1988, section 18f as added 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.17c, 712A.18f, and 712A.19b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 17c, 18f, and 19b of chapter XIIIA of
2 Act No. 288 of the Public Acts of 1939, section 17c as added by
3 Act No. 92 of the Public Acts of 1988, section 18f as added by
4 Act No. 224 of the Public Acts of 1988, and section 19b as
5 amended by Act No. 314 of the Public Acts of 1990, being sections
6 712A.17c, 712A.18f, and 712A.19b of the Michigan Compiled Laws,
7 are amended to read as follows:

8 CHAPTER XIIIA

9 Sec. 17c. (1) In a proceeding under section 2(a) or (d) of
10 this chapter, the court shall advise the child that the child has
11 a right to an attorney at each stage of the proceeding.

12 (2) In a proceeding under section 2(a) or (d) of this chap-
13 ter, the court shall appoint an attorney to represent the child
14 if any 1 of the following applies:

15 (a) The child's parent refuses or fails to appear and par-
16 ticipate in the proceedings.

17 (b) The child's parent is the complainant or victim.

18 (c) The child and those responsible for his or her support
19 are financially unable to employ an attorney and the child does
20 not waive his or her right to an attorney.

21 (d) Those responsible for the child's support refuse or
22 neglect to employ an attorney for the child and the child does
23 not waive his or her right to an attorney.

1 (e) The court determines that the best interests of the
2 child or the public require appointment.

3 (3) Except as otherwise provided in this subsection, in a
4 proceeding under section 2(a) or (d) of this chapter, the child
5 may waive his or her right to an attorney. The waiver by a child
6 shall be made in open court, on the record, and shall not be made
7 unless the court finds on the record that the waiver was volun-
8 tarily and understandingly made. The child may not waive his or
9 her right to an attorney if the child's parent or guardian ad
10 litem objects or if the appointment is made pursuant to subsec-
11 tion (2)(e).

12 (4) In a proceeding under section 2(b) or (c) of this chap-
13 ter, the court shall advise the respondent at the respondent's
14 first court appearance of all of the following:

15 (a) The right to an attorney at each stage of the
16 proceeding.

17 (b) The right to a court-appointed attorney if the respon-
18 dent is financially unable to employ an attorney.

19 (c) If the respondent is not represented by an attorney, the
20 right to request and receive a court-appointed attorney at a
21 later proceeding.

22 (5) If it appears to the court in a proceeding under section
23 2(b) or (c) of this chapter that the respondent wants an attorney
24 and is financially unable to retain an attorney, the court shall
25 appoint an attorney to represent the respondent.

26 (6) Except as otherwise provided in this subsection, in a
27 proceeding under section 2(b) or (c) of this chapter, the

1 respondent may waive his or her right to an attorney. A
2 respondent who is a minor may not waive his or her right to an
3 attorney if the respondent's parent or guardian ad litem
4 objects.

5 (7) In a proceeding under section 2(b) or (c) of this chap-
6 ter, the court shall appoint an attorney to represent the child.
7 The child shall not waive the assistance of an attorney. THE
8 APPOINTED ATTORNEY SHALL INTERVIEW AND OBSERVE THE CHILD. IF THE
9 CHILD IS PLACED IN FOSTER CARE, THE ATTORNEY SHALL, BEFORE REPRE-
10 SENTING THE CHILD IN SUBSEQUENT PROCEEDINGS, MEET WITH THE FOSTER
11 PARENTS AND THE CASEWORKER.

12 (8) If an attorney is appointed for a party under this sec-
13 tion, the court may enter an order assessing attorney costs
14 against the party or the person responsible for the support of
15 that party. An order assessing attorney costs may be enforced
16 through contempt proceedings.

17 (9) An attorney appointed by the court under this section
18 shall serve until discharged by the court.

19 Sec. 18f. (1) If, in a proceeding under section 2(b) of
20 this chapter, an agency advises the court against placing a child
21 in the custody of the child's parent, guardian, or custodian, the
22 agency shall report in writing to the court what efforts were
23 made to prevent the child's removal from his or her home or the
24 efforts made to rectify the conditions that caused the child's
25 removal from his or her home. The report shall include all of
26 the following:

1 (a) If services were provided to the child and his or her
2 parent, guardian, or custodian, the services, including in-home
3 services, that were provided.

4 (b) If services were not provided to the child and his or
5 her parent, guardian, or custodian, the reasons why services were
6 not provided.

7 (c) Likely harm to the child if the child were to be sepa-
8 rated from his or her parent, guardian, or custodian.

9 (d) Likely harm to the child if the child were to be
10 returned to his or her parent, guardian, or custodian.

11 (2) Before the court enters an order of disposition in a
12 proceeding under section 2(b) of this chapter, the agency shall
13 prepare a case service plan which shall be available to the court
14 and all the parties to the proceeding.

15 (3) The case service plan shall provide for placing the
16 child in the most family-like setting available and in as close
17 proximity to the child's parents' home as is consistent with the
18 best interests and special needs of the child. The case service
19 plan shall include, but not be limited to, the following:

20 (a) The type of home or institution in which the child is to
21 be placed and the reasons for the selected placement.

22 (b) Efforts to be made by the child's parent to enable the
23 child to return to his or her home.

24 (c) Efforts to be made by the agency to return the child to
25 his or her home.

26 (d) Schedule of services to be provided to the parent,
27 child, and if the child is to be placed in foster care, the

1 foster parent, to facilitate the child's return to his or her
2 home or to facilitate the permanent placement of the child.

3 (e) Unless visitation, even if supervised, would be harmful
4 to the child, a schedule for regular and frequent visitation
5 between the child and his or her parent which shall not be less
6 than once every 7 days.

7 (4) The court shall consider the case service plan and the
8 evidence offered bearing on disposition before the court enters
9 an order of disposition. The order of disposition shall state
10 whether reasonable efforts have been made to prevent the child's
11 removal from his or her home or to rectify the conditions that
12 caused the child's removal from his or her home. The court may
13 order compliance with all or any part of the case service plan as
14 the court considers necessary.

15 (5) If a child continues in placement outside of the child's
16 home, the case service plan shall be updated and revised at
17 90-day intervals as required by the rules promulgated pursuant to
18 Act No. 116 of the Public Acts of 1973, being sections 722.111 to
19 722.128 of the Michigan Compiled Laws. THE AGENCY SHALL CONSULT
20 WITH THE FOSTER PARENTS WHEN IT UPDATES AND REVISES THE CASE
21 SERVICE PLAN, AND THE UPDATED AND REVISED CASE SERVICE PLAN SHALL
22 INCLUDE ANY INPUT FROM THE FOSTER PARENTS. Updated and revised
23 case service plans shall be available to the court and all the
24 parties to the proceeding.

25 Sec. 19b. (1) Except as provided in subsection (4), if a
26 child remains in foster care in the temporary custody of the
27 court following a review hearing under section 19(3) of this

1 chapter or a permanency planning hearing under section 19a of
2 this chapter or if a child remains in the custody of a guardian
3 or limited guardian, upon petition of the prosecuting attorney,
4 child, guardian, custodian, or agency, the court shall hold a
5 hearing to determine if the parental rights to a child should be
6 terminated and, if all parental rights to the child are termi-
7 nated, the child placed in permanent custody of the court.

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

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

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

14 (c) The child's parents.

15 (d) If the child has a guardian, the guardian for the
16 child.

17 (e) If the child has a guardian ad litem, the guardian ad
18 litem for the child.

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

21 (g) The attorney for the child.

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

23 (i) The prosecutor.

24 (3) The court may terminate the parental rights of a parent
25 to a child if the court finds, by clear and convincing evidence,
26 1 or more of the following:

1 (a) The child has been deserted under either of the
2 following circumstances:

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

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

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

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

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

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

1 (i) The conditions that led to the adjudication continue to
2 exist and there is no reasonable likelihood that the conditions
3 will be rectified within a reasonable time considering the age of
4 the child.

5 (ii) Other conditions exist that cause the child to come
6 within the jurisdiction of the court, the parent has received
7 recommendations to rectify those conditions, the conditions have
8 not been rectified by the parent after the parent has received
9 notice, a hearing, and been given a reasonable opportunity to
10 rectify the conditions, and there is no reasonable likelihood
11 that the conditions will be rectified within a reasonable time
12 considering the age of the child.

13 (d) The parent of a child has placed the child in a limited
14 guardianship under section 424a of the revised probate code, Act
15 No. 642 of the public acts of 1978, being section 700.424a of the
16 Michigan Compiled Laws, and has substantially failed, without
17 good cause, to comply with a limited guardianship placement plan
18 described in section 424a of Act No. 642 of the Public Acts of
19 1978 regarding the child to the extent that such noncompliance
20 has resulted in a disruption of the parent-child relationship.

21 (e) The parent of a child who has a guardian under the
22 revised probate code, Act No. 642 of the Public Acts of 1978,
23 being sections 700.1 to 700.993 of the Michigan Compiled Laws,
24 has substantially failed, without good cause, to comply with a
25 court-structured plan described in section 424b or 424c of Act
26 No. 642 of the Public Acts of 1978, being sections 700.424b and
27 700.424c of the Michigan Compiled Laws, regarding the child to

1 the extent that such noncompliance has resulted in a disruption
2 of the parent-child relationship.

3 (f) The child has a guardian under the revised probate code,
4 Act No. 642 of the Public Acts of 1978, being sections 700.1 to
5 700.993 of the Michigan Compiled Laws, OR THE CHILD HAS BEEN IN
6 THE CARE AND CUSTODY OF AN INDIVIDUAL OTHER THAN A PARENT FOR AT
7 LEAST 2 YEARS AND HAS DEVELOPED A RELATIONSHIP WITH THAT INDIVID-
8 UAL BASED UPON SIGNIFICANT EMOTIONAL AND PSYCHOLOGICAL TIES
9 BETWEEN THEM, and both of the following have occurred:

10 (i) The parent, having the ability to support or assist in
11 supporting the minor, has failed or neglected, without good
12 cause, to provide regular and substantial support for the minor
13 for a period of 2 years or more before the filing of the petition
14 or, if a support order has been entered, has failed to substan-
15 tially comply with the order for a period of 2 years or more
16 before the filing of the petition.

17 (ii) The parent, having the ability to visit, contact, or
18 communicate with the minor, has regularly and substantially
19 failed or neglected, without good cause, to do so for a period of
20 2 years or more before the filing of the petition.

21 (g) The parent, without regard to intent, fails to provide
22 proper care or custody for the child and there is no reasonable
23 expectation that the parent will be able to provide proper care
24 and custody within a reasonable time considering the age of the
25 child.

26 (h) The parent is imprisoned for such a period that the
27 child will be deprived of a normal home for a period exceeding 2

1 years, and the parent has not provided for the child's proper
2 care and custody, and there is no reasonable expectation that the
3 parent will be able to provide proper care and custody within a
4 reasonable time considering the age of the child.

5 (i) Parental rights to 1 or more siblings of the child have
6 been terminated due to serious and chronic neglect or physical or
7 sexual abuse, and prior attempts to rehabilitate the parents have
8 been unsuccessful.

9 (4) If a petition to terminate the parental rights to a
10 child is filed, the court may enter an order terminating parental
11 rights under subsection (3) at the initial dispositional
12 hearing.

13 Section 2. This amendatory act shall not take effect unless
14 all of the following bills of the 87th Legislature are enacted
15 into law:

16 (a) Senate Bill No. 299.

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18 (b) Senate Bill No. 721.

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20 (c) Senate Bill No. 722.

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22 (d) Senate Bill No. 724.

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24 (e) Senate Bill No. _____ or House Bill No. _____ (request no.
25 01175'93).

26 (f) Senate Bill No. _____ or House Bill No. _____ (request no.
27 01176'93).

1 (g) Senate Bill No. _____ or House Bill No. _____ (request no.
2 01177'93).

3 (h) Senate Bill No. _____ or House Bill No. _____ (request no.
4 01180'93).

5 (i) Senate Bill No. _____ or House Bill No. _____ (request no.
6 01181'93).

7 (j) Senate Bill No. _____ or House Bill No. _____ (request no.
8 01182'93).