

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 516

A bill to amend 1939 PA 288, entitled

"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,"

by amending sections 17, 17c, and 19b of chapter XIIIA (MCL 712A.17, 712A.17c, and 712A.19b), section 17 as amended by 1996 PA 409 and sections 17c and 19b as amended by 1994 PA 264, and by adding section 22 to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA

2 Sec. 17. (1) The court may conduct a hearing other than a  
3 criminal hearing in an informal manner. ~~The court may adjourn a~~  
4 ~~hearing under this chapter from time to time.~~ The court shall  
5 require stenographic notes or ~~other~~ ANOTHER transcript to be  
6 taken of the hearing. THE COURT SHALL ADJOURN A HEARING OR GRANT  
7 A CONTINUANCE REGARDING A CASE UNDER SECTION 2(B) OF THIS CHAPTER  
8 ONLY FOR GOOD CAUSE WITH FACTUAL FINDINGS ON THE RECORD AND NOT  
9 SOLELY UPON STIPULATION OF COUNSEL OR FOR THE CONVENIENCE OF A  
10 PARTY. IN ADDITION TO A FACTUAL FINDING OF GOOD CAUSE, THE COURT  
11 SHALL NOT ADJOURN THE HEARING OR GRANT A CONTINUANCE UNLESS 1 OF  
12 THE FOLLOWING IS ALSO TRUE:

13 (A) THE MOTION FOR THE ADJOURNMENT OR CONTINUANCE IS MADE IN  
14 WRITING NOT LESS THAN 14 DAYS BEFORE THE HEARING.

15 (B) THE COURT GRANTS THE ADJOURNMENT OR CONTINUANCE UPON ITS  
16 OWN MOTION AFTER TAKING INTO CONSIDERATION THE CHILD'S BEST  
17 INTERESTS. AN ADJOURNMENT OR CONTINUANCE GRANTED UNDER THIS SUB-  
18 DIVISION SHALL NOT LAST MORE THAN 28 DAYS [UNLESS THE COURT STATES  
ON THE RECORD THE SPECIFIC REASONS WHY A LONGER ADJOURNMENT OR  
CONTINUANCE IS NECESSARY].

19 (2) In a hearing other than a criminal trial under this  
20 chapter, any person interested in the hearing may demand a jury  
21 of 6 individuals, or the ~~judge of the family division of~~  
22 ~~probate~~ court, on ~~his or her~~ ITS own motion, may order a jury  
23 of 6 individuals to try the case. In a criminal trial, a jury  
24 may be demanded as provided by law. The jury shall be summoned  
25 and impaneled in accordance with chapter 13 of the revised

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

3

1 judicature act of 1961, ~~Act No. 236 of the Public Acts of 1961,~~  
2 ~~being sections 600.1300 to 600.1376 of the Michigan Compiled~~  
3 ~~Laws~~ 1961 PA 236, MCL 600.1300 TO 600.1376, and, in the case of  
4 a criminal trial, as provided in chapter VIII of the code of  
5 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~  
6 ~~being sections 768.1 to 768.36 of the Michigan Compiled Laws~~  
7 1927 PA 175, MCL 768.1 TO 768.36.

8 (3) A parent, guardian, or other custodian of a juvenile  
9 held under this chapter has the right to give bond or other  
10 security for the appearance of the juvenile at the hearing of the  
11 case.

12 (4) The prosecuting attorney shall appear for the people  
13 when requested by the court, and in a proceeding under section  
14 2(a)(1) of this chapter, the prosecuting attorney shall appear if  
15 the proceeding requires a hearing and the taking of testimony.

16 (5) In a proceeding under section 2(b) of this chapter, upon  
17 request of the family independence agency or an agent of the  
18 family independence agency under contract with the family inde-  
19 pendence agency, the prosecuting attorney shall serve as a legal  
20 consultant to the family independence agency or its agent at all  
21 stages of the proceeding. If in a proceeding under section 2(b)  
22 of this chapter the prosecuting attorney does not appear on  
23 behalf of the family independence agency or its agent, the family  
24 independence agency may contract with an attorney of its choice  
25 for legal representation.

26 (6) A member of a local foster care review board established  
27 under ~~Act No. 422 of the Public Acts of 1984, being sections~~

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

4

1 ~~722.131 to 722.140 of the Michigan Compiled Laws~~ 1984 PA 422,  
2 MCL 722.131 TO 722.139A, shall be admitted to a hearing under  
3 subsection (1).

4 (7) Upon motion of any party or a victim, the court may  
5 close the hearing of a case brought under this chapter to members  
6 of the general public during the testimony of a juvenile witness  
7 or the victim if the court finds that closing the hearing is nec-  
8 essary to protect the welfare of the juvenile witness or the  
9 victim. In determining whether closing the hearing is necessary  
10 to protect the welfare of the juvenile witness or the victim, the  
11 court shall consider the following:

12 (a) The age of the juvenile witness or the victim.

13 (b) The psychological maturity of the juvenile witness or  
14 the victim.

15 (c) The nature of the proceeding.

16 (d) The desire of the juvenile witness or his or her family  
17 or guardian or the desire of the victim to have the testimony  
18 taken in a room closed to the public.

19 (8) As used in subsection (7), "juvenile witness" does not  
20 include a juvenile against whom a proceeding is brought under  
21 section 2(a)(1) of this chapter.

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

25 (2) In a proceeding under section 2(a) or (d) of this chap-  
26 ter, the court shall appoint an attorney to represent the child  
27 if 1 or more of the following apply:

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

5

1 (a) The child's parent refuses or fails to appear and  
2 participate in the proceedings.

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

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

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

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

12 (3) Except as otherwise provided in this subsection, in a  
13 proceeding under section 2(a) or (d) of this chapter, the child  
14 may waive his or her right to an attorney. The waiver by a child  
15 shall be made in open court, on the record, and shall not be made  
16 unless the court finds on the record that the waiver was volun-  
17 tarily and understandingly made. The child may not waive his or  
18 her right to an attorney if the child's parent or guardian ad  
19 litem objects or if the appointment is made pursuant to subsec-  
20 tion (2)(e).

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

24 (a) The right to an attorney at each stage of the  
25 proceeding.

26 (b) The right to a court-appointed attorney if the  
27 respondent is financially unable to employ an attorney.

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

6

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

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

8 (6) Except as otherwise provided in this subsection, in a  
9 proceeding under section 2(b) or (c) of this chapter, the respon-  
10 dent may waive his or her right to an attorney. A respondent who  
11 is a minor may not waive his or her right to an attorney if the  
12 respondent's parent or guardian ad litem objects.

13 (7) In a proceeding under section 2(b) or (c) of this chap-  
14 ter, the court shall appoint an attorney to represent the child.  
15 The child shall not waive the assistance of an attorney. The  
16 appointed attorney shall observe and, dependent upon the child's  
17 age and capability, interview the child. If the child is placed  
18 in foster care, the attorney shall, before representing the child  
19 in each subsequent proceeding or hearing, review the agency case  
20 file and consult with the foster parents and the caseworker. THE  
21 CHILD'S ATTORNEY SHALL BE PRESENT AT ALL HEARINGS CONCERNING THE  
22 CHILD AND SHALL NOT SUBSTITUTE COUNSEL UNLESS THE COURT APPROVES.

23 (8) If an attorney is appointed for a party under this sec-  
24 tion, the court may enter an order assessing attorney costs  
25 against the party or the person responsible for the support of  
26 that party. An order assessing attorney costs may be enforced  
27 through contempt proceedings.

**SB0516, As Passed House, December 4, 1997**

Sub. S.B. 516 (H-4) as amended December 4, 1997

7

1 (9) An attorney appointed by the court under this section  
2 shall serve until discharged by the court. IF THE CHILD'S CASE  
3 WAS PETITIONED UNDER SECTION 2(B) OF THIS CHAPTER, THE COURT  
4 SHALL NOT DISCHARGE THE ATTORNEY [FOR THE CHILD] AS LONG AS THE  
CHILD IS SUBJECT  
5 TO THE JURISDICTION, CONTROL, OR SUPERVISION OF THE COURT, OR OF  
6 THE MICHIGAN CHILDREN'S INSTITUTE OR OTHER AGENCY [, UNLESS THE  
COURT DISCHARGES THE ATTORNEY FOR GOOD CAUSE SHOWN ON THE RECORD.  
IF THE CHILD REMAINS SUBJECT TO THE JURISDICTION, CONTROL, OR  
SUPERVISION OF THE COURT, OR THE MICHIGAN CHILDREN'S INSTITUTE OR  
OTHER AGENCY, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER ATTORNEY  
TO REPRESENT THE CHILD].

7 Sec. 19b. (1) Except as provided in subsection (4), if a  
8 child remains in foster care in the temporary custody of the  
9 court following a review hearing under section 19(3) of this  
10 chapter or a permanency planning hearing under section 19a of  
11 this chapter or if a child remains in the custody of a guardian  
12 or limited guardian, upon petition of the prosecuting attorney,  
13 whether or not the prosecuting attorney is representing or acting  
14 as legal consultant to the agency or any other party, or of the  
15 child, guardian, custodian, concerned person as defined in sub-  
16 section (6), agency, or the children's ombudsman pursuant to sec-  
17 tion 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927,  
18 the court shall hold a hearing to determine if the parental  
19 rights to a child should be terminated and, if all parental  
20 rights to the child are terminated, the child placed in permanent  
21 custody of the court. The court shall state on the record or in  
22 writing its findings of fact and conclusions of law with respect  
23 to whether or not parental rights should be terminated. THE  
24 COURT SHALL ISSUE AN OPINION OR ORDER REGARDING A PETITION FOR  
25 TERMINATION OF PARENTAL RIGHTS WITHIN 70 DAYS AFTER THE COMMENCE-  
26 MENT OF THE INITIAL HEARING ON THE PETITION. HOWEVER, THE COURT'S

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

8

1 FAILURE TO ISSUE AN OPINION WITHIN 70 DAYS DOES NOT DISMISS THE  
2 PETITION.

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

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

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

9 (c) The child's parents.

10 (d) If the child has a guardian, the guardian for the  
11 child.

12 (e) If the child has a guardian ad litem, the guardian ad  
13 litem for the child.

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

16 (g) The attorney for the child and the attorneys for all  
17 parties.

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

19 (i) The prosecutor.

20 (3) The court may terminate ~~the~~ A PARENT'S parental rights  
21 ~~of a parent~~ to a child if the court finds, by clear and con-  
22 vincing evidence, 1 or more of the following:

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

25 (i) ~~If the~~ THE parent of ~~a~~ THE child is unidentifiable,  
26 ~~and~~ has deserted the child for 28 or more days, and has not  
27 sought custody of the child during that period. For the purposes

1 of this section, a parent is unidentifiable if the parent's  
2 identity cannot be ascertained after reasonable efforts have been  
3 made to locate and identify the parent.

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

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

10 (i) ~~A~~ THE parent's act caused the physical injury or phys-  
11 ical or sexual abuse and the court finds that there is a reason-  
12 able likelihood that the child will suffer from injury or abuse  
13 in the foreseeable future if placed in the parent's home.

14 (ii) ~~A~~ THE parent who had the opportunity to prevent the  
15 physical injury or physical or sexual abuse failed to do so and  
16 the court finds that there is a reasonable likelihood that the  
17 child will suffer injury or abuse in the foreseeable future if  
18 placed in the parent's home.

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

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

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

10

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

9       (d) The parent of a child has placed the child in a limited  
10 guardianship under section 424a of the revised probate code, ~~Act~~  
11 ~~No. 642 of the Public Acts of 1978, being section 700.424a of the~~  
12 ~~Michigan Compiled Laws~~ 1978 PA 642, MCL 700.424A, and has sub-  
13 stantially failed, without good cause, to comply with a limited  
14 guardianship placement plan described in section 424a of ~~Act~~  
15 ~~No. 642 of the Public Acts of 1978~~ THE REVISED PROBATE CODE,  
16 1978 PA 642, MCL 700.424A, regarding the child to the extent that  
17 ~~such~~ THE noncompliance has resulted in a disruption of the  
18 parent-child relationship.

19       (e) The ~~parent of a~~ child ~~who~~ has a guardian under the  
20 revised probate code, ~~Act No. 642 of the Public Acts of 1978,~~  
21 ~~being sections 700.1 to 700.993 of the Michigan Compiled Laws~~  
22 1978 PA 642, MCL 700.1 TO 700.993, AND THE PARENT has substan-  
23 tially failed, without good cause, to comply with a  
24 court-structured plan described in section 424b or 424c of ~~Act~~  
25 ~~No. 642 of the Public Acts of 1978, being sections 700.424b and~~  
26 ~~700.424c of the Michigan Compiled Laws~~ THE REVISED PROBATE CODE,  
27 1978 PA 642, MCL 700.424B AND 700.424C, regarding the child to

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

11

1 the extent that ~~such~~ THE noncompliance has resulted in a  
2 disruption 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~~ 1978 PA 642, MCL 700.1  
5 TO 700.993, and both of the following have occurred:

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

13 (ii) The parent, having the ability to visit, contact, or  
14 communicate with the minor, has regularly and substantially  
15 failed or neglected, without good cause, to do so for a period of  
16 2 years or more before the filing of the petition.

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

22 (h) The parent is imprisoned for such a period that the  
23 child will be deprived of a normal home for a period exceeding 2  
24 years, and the parent has not provided for the child's proper  
25 care and custody, and there is no reasonable expectation that the  
26 parent will be able to provide proper care and custody within a  
27 reasonable time considering the age of the child.

**SB0516, As Passed House, December 4, 1997**

Sub. S.B. 516 (H-4) as amended December 4, 1997 12

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

5 (j) There is a reasonable likelihood, based on the conduct  
6 or capacity of the child's parent, that the child will be harmed  
7 if he or she is returned to the home of the parent.

8 (K) THE PARENT ABUSED THE CHILD OR A SIBLING OF THE CHILD  
9 AND THE ABUSE INCLUDED 1 OR MORE OF THE FOLLOWING:

10 (i) ABANDONMENT [OF A YOUNG CHILD].

11 (ii) CRIMINAL SEXUAL CONDUCT INVOLVING PENETRATION,  
12 ATTEMPTED PENETRATION, OR ASSAULT WITH INTENT TO PENETRATE.

13 (iii) BATTERING, TORTURE, OR OTHER SEVERE PHYSICAL ABUSE.

14 (iv) LOSS OR SERIOUS IMPAIRMENT OF AN ORGAN OR LIMB.

15 (v) LIFE THREATENING INJURY.

16 (vi) MURDER OR ATTEMPTED MURDER.

17 (l) THE PARENT'S RIGHTS TO ANOTHER CHILD WERE TERMINATED AS  
18 A RESULT OF PROCEEDINGS UNDER SECTION 2(B) OF THIS CHAPTER OR A  
19 SIMILAR LAW OF ANOTHER STATE.

20 (M) THE PARENT'S RIGHTS TO ANOTHER CHILD WERE VOLUNTARILY  
21 TERMINATED FOLLOWING THE INITIATION OF PROCEEDINGS UNDER SECTION  
22 2(B) OF THIS CHAPTER OR A SIMILAR LAW OF ANOTHER STATE.

23 (4) If a petition to terminate the parental rights to a  
24 child is filed, the court may enter an order terminating parental  
25 rights under subsection (3) at the initial dispositional  
26 hearing.

**SB0516, As Passed House, December 4, 1997**

Senate Bill No. 516

13

1 (5) If the court finds that there are grounds for  
2 termination of parental rights, the court shall order termination  
3 of parental rights and order that additional efforts for reunifi-  
4 cation of the child with the parent ~~shall~~ not be made, unless  
5 the court finds that termination of parental rights to the child  
6 is clearly not in the child's best interests.

7 (6) As used in this section, "concerned person" means a  
8 foster parent with whom the child is living or has lived who has  
9 specific knowledge of behavior by the parent constituting grounds  
10 for termination under subsection (3)(b) or (g) and who has con-  
11 tacted the ~~department of social services~~ FAMILY INDEPENDENCE  
12 AGENCY, the prosecuting attorney, the child's attorney, and the  
13 child's guardian ad litem, if any, and is satisfied that none of  
14 these persons intend to file a petition under this section.

15 SEC. 22. THE STATE COURT ADMINISTRATIVE OFFICE SHALL PUB-  
16 LISH AN ANNUAL REPORT EVALUATING THE COURT REGARDING ITS DUTY  
17 UNDER THIS ACT TO ENGAGE IN OBTAINING PERMANENCY FOR CHILDREN.  
18 THE REPORT SHALL INCLUDE AT LEAST INFORMATION AND STATISTICS  
19 DETAILING THE COURT'S ADHERENCE TO EACH TIME PERIOD PRESCRIBED BY  
20 THIS ACT OR COURT RULE FOR THE MANAGEMENT AND DISPOSITION OF  
21 CHILDREN'S CASES THAT ARE PETITIONED UNDER SECTION 2(B) OF THIS  
22 CHAPTER AND, IF THE COURT FAILS TO ADHERE TO A TIME PERIOD, THE  
23 SPECIFIC REASONS FOR THAT FAILURE.