

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1124**

A bill to amend 1939 PA 288, entitled

"An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties,"

by amending sections 2, 13a, 19, and 19b of chapter XIIIA

(MCL 712A.2, 712A.13a, 712A.19, and 712A.19b), section 2 as amended by 1996 PA 409, sections 13a and 19 as amended by 1997 PA 163, and section 19b as amended by 1997 PA 169, and by adding section 6b to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA

2 Sec. 2. The court has the following authority and
3 jurisdiction:

4 (a) Exclusive original jurisdiction superior to and regard-
5 less of the jurisdiction of any other court in proceedings con-
6 cerning a juvenile under 17 years of age who is found within the
7 county if 1 or more of the following applies:

8 (1) Except as otherwise provided in this sub-subdivision,
9 the juvenile has violated any municipal ordinance or law of the
10 state or of the United States. IF THE COURT ENTERS INTO AN
11 AGREEMENT UNDER SECTION 2E OF THIS CHAPTER, THE COURT HAS JURIS-
12 DICTION OVER A JUVENILE WHO COMMITTED A CIVIL INFRACTION AS PRO-
13 VIDED IN THAT SECTION. The court has jurisdiction over a juvenile
14 14 years of age or older who is charged with a specified juvenile
15 violation only if the prosecuting attorney files a petition in
16 the court instead of authorizing a complaint and warrant. As
17 used in this sub-subdivision, "specified juvenile violation"
18 means any of the following:

19 (A) A violation of section 72, 83, 86, 89, 91, 316, 317,
20 349, 520b, 529, 529a, or 531 of the Michigan penal code, ~~Act~~
21 ~~No. 328 of the Public Acts of 1931, being sections~~ 1931 PA 328,
22 MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,
23 750.349, 750.520b, 750.529, 750.529a, and 750.531. ~~of the~~
24 ~~Michigan Compiled Laws.~~

25 (B) A violation of section 84 or 110a(2) of ~~Act No. 328 of~~
26 ~~the Public Acts of 1931, being sections 750.84 and 750.110a of~~

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1 ~~the Michigan Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328,
2 MCL 750.84 AND 750.110A, if the juvenile is armed with a danger-
3 ous weapon. As used in this paragraph, "dangerous weapon" means
4 1 or more of the following:

5 (i) A loaded or unloaded firearm, whether operable or
6 inoperable.

7 (ii) A knife, stabbing instrument, brass knuckles, black-
8 jack, club, or other object specifically designed or customarily
9 carried or possessed for use as a weapon.

10 (iii) An object that is likely to cause death or bodily
11 injury when used as a weapon and that is used as a weapon or car-
12 ried or possessed for use as a weapon.

13 (iv) An object or device that is used or fashioned in a
14 manner to lead a person to believe the object or device is an
15 object or device described in subparagraphs (i) to (iii).

16 (C) A violation of section 186a of ~~Act No. 328 of the~~
17 ~~Public Acts of 1931, being section 750.186a of the Michigan~~
18 ~~Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
19 750.186A, regarding escape or attempted escape from a juvenile
20 facility, but only if the juvenile facility from which the indi-
21 vidual escaped or attempted to escape was 1 of the following:

22 (i) A high-security or medium-security facility operated by
23 the family independence agency OR A COUNTY JUVENILE AGENCY.

24 (ii) A high-security facility operated by a private agency
25 under contract with the family independence agency OR A COUNTY
26 JUVENILE AGENCY.

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1 (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
2 the public health code, ~~Act No. 368 of the Public Acts of 1978,~~
3 ~~being sections 333.7401 and 333.7403 of the Michigan Compiled~~
4 ~~Laws~~ 1978 PA 368, MCL 333.7401 AND 333.7403.

5 (E) An attempt to commit a violation described in paragraphs
6 (A) to (D).

7 (F) Conspiracy to commit a violation described in paragraphs
8 (A) to (D).

9 (G) Solicitation to commit a violation described in para-
10 graphs (A) to (D).

11 (H) Any lesser included offense of a violation described in
12 paragraphs (A) to (G) if the individual is charged with a viola-
13 tion described in paragraphs (A) to (G).

14 (I) Any other violation arising out of the same transaction
15 as a violation described in paragraphs (A) to (G) if the individ-
16 ual is charged with a violation described in paragraphs (A) to
17 (G).

18 (2) The juvenile has deserted his or her home without suffi-
19 cient cause and the court finds on the record that the juvenile
20 has been placed or refused alternative placement or the juvenile
21 and the juvenile's parent, guardian, or custodian have exhausted
22 or refused family counseling.

23 (3) The juvenile is repeatedly disobedient to the reasonable
24 and lawful commands of his or her parents, guardian, or custodian
25 and the court finds on the record by clear and convincing evi-
26 dence that court-accessed services are necessary.

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1 (4) The juvenile willfully and repeatedly absents himself or
2 herself from school or other learning program intended to meet
3 the juvenile's educational needs, or repeatedly violates rules
4 and regulations of the school or other learning program, and the
5 court finds on the record that the juvenile, the juvenile's
6 parent, guardian, or custodian, and school officials or learning
7 program personnel have met on the juvenile's educational problems
8 — and educational counseling and alternative agency help have
9 been sought. As used in this sub-subdivision only, "learning
10 program" means an organized educational program that is appropri-
11 ate, given the age, intelligence, ability, and any psychological
12 limitations of a juvenile, in the subject areas of reading,
13 spelling, mathematics, science, history, civics, writing, and
14 English grammar.

15 (b) Jurisdiction in proceedings concerning any juvenile
16 under 18 years of age found within the county:

17 (1) Whose parent or other person legally responsible for the
18 care and maintenance of the juvenile, when able to do so,
19 neglects or refuses to provide proper or necessary support, edu-
20 cation, medical, surgical, or other care necessary for his or her
21 health or morals, who is subject to a substantial risk of harm to
22 his or her mental well-being, who is abandoned by his or her par-
23 ents, guardian, or other custodian, or who is without proper cus-
24 tody or guardianship. As used in this sub-subdivision:

25 (A) "Education" means learning based on an organized educa-
26 tional program that is appropriate, given the age, intelligence,
27 ability, and any psychological limitations of a juvenile, in the

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1 subject areas of reading, spelling, mathematics, science,
2 history, civics, writing, and English grammar.

3 (B) "Without proper custody or guardianship" does not mean a
4 parent has placed the juvenile with another person who is legally
5 responsible for the care and maintenance of the juvenile and who
6 is able to and does provide the juvenile with proper care and
7 maintenance.

8 (2) Whose home or environment, by reason of neglect, cruel-
9 ty, drunkenness, criminality, or depravity on the part of a
10 parent, guardian, NONPARENT ADULT, or other custodian, is an
11 unfit place for the juvenile to live in.

12 (3) Whose parent has substantially failed, without good
13 cause, to comply with a limited guardianship placement plan
14 described in 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~~ 1978 PA 642, MCL 700.424A, regarding the
17 juvenile.

18 (4) Whose parent has substantially failed, without good
19 cause, to comply with a court-structured plan described in
20 section 424b or 424c of the revised probate code, ~~Act No. 642 of~~
21 ~~the Public Acts of 1978, being sections 700.424b and 700.424c of~~
22 ~~the Michigan Compiled Laws~~ 1978 PA 642, MCL 700.424B AND
23 700.424C, regarding the juvenile.

24 (5) If the juvenile has a guardian under the revised probate
25 code, ~~Act No. 642 of the Public Acts of 1978, being sections~~
26 ~~700.1 to 700.993 of the Michigan Compiled Laws~~ 1978 PA 642, MCL

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1 700.1 TO 700.993, and the juvenile's parent meets both of the
2 following criteria:

3 (A) The parent, having the ability to support or assist in
4 supporting the juvenile, has failed or neglected, without good
5 cause, to provide regular and substantial support for the juve-
6 nile for ~~a period of~~ 2 years or more before the filing of the
7 petition or, if a support order has been entered, has failed to
8 substantially comply with the order for ~~a period of~~ 2 years or
9 more before the filing of the petition.

10 (B) The parent, having the ability to visit, contact, or
11 communicate with the juvenile, has regularly and substantially
12 failed or neglected, without good cause, to do so for ~~a period~~
13 ~~of~~ 2 years or more before the filing of the petition.

14 If a petition is filed in the court alleging that a juvenile
15 is within the provisions of subdivision (b)(1), (2), (3), (4), or
16 (5) ~~,~~ and the custody of that juvenile is subject to the prior
17 or continuing order of another court of record of this state, the
18 manner of notice to the other court of record and the authority
19 of the court to proceed is governed by rule of the supreme
20 court.

21 (c) Jurisdiction over juveniles under 18 years of age,
22 jurisdiction of whom has been waived to the family division of
23 circuit court by a circuit court ~~pursuant to~~ UNDER a provision
24 in a temporary order for custody of juveniles based upon a com-
25 plaint for divorce or upon a motion pursuant to a complaint for
26 divorce by the prosecuting attorney, in a divorce judgment
27 dissolving a marriage between the parents of the juveniles, or by

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1 an amended judgment relative to the custody of the juvenile in a
2 divorce.

3 (d) If the court finds on the record that voluntary services
4 have been exhausted or refused, concurrent jurisdiction in pro-
5 ceedings concerning any juvenile between the ages of 17 and 18
6 found within the county WHO IS ANY OF THE FOLLOWING:

7 (1) ~~Who is repeatedly~~ REPEATEDLY addicted to the use of
8 drugs or the intemperate use of alcoholic liquors.

9 (2) ~~Who repeatedly associates~~ REPEATEDLY ASSOCIATING with
10 criminal, dissolute, or disorderly persons.

11 (3) ~~Who is found~~ FOUND of his or her own free will and
12 knowledge in a house of prostitution, assignation, or ill-fame.

13 (4) ~~Who repeatedly associates~~ REPEATEDLY ASSOCIATING with
14 thieves, prostitutes, pimps, or procurers.

15 (5) ~~Who is willfully~~ WILLFULLY disobedient to the reason-
16 able and lawful commands of his or her parents, guardian, or
17 other custodian and ~~is~~ in danger of becoming morally depraved.

18 If any juvenile is brought before the ~~family division of~~
19 ~~circuit~~ court in a county other than that in which the juvenile
20 resides, ~~the court may,~~ before a hearing and with the consent
21 of the judge of the ~~family division of circuit~~ court in the
22 county of residence, THE COURT MAY enter an order transferring
23 ~~the~~ jurisdiction of the matter to the court of the county of
24 residence. CONSENT TO TRANSFER JURISDICTION IS NOT REQUIRED IF
25 THE COUNTY OF RESIDENCE IS A COUNTY JUVENILE AGENCY AND SATISFAC-
26 TORY PROOF OF RESIDENCE IS FURNISHED TO THE COURT OF THE COUNTY
27 OF RESIDENCE. The order is not a legal settlement as defined in

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1 section 55 of the social welfare act, ~~Act No. 280 of the Public~~
2 ~~Acts of 1939, being section 400.55 of the Michigan Compiled Laws~~
3 1939 PA 280, MCL 400.55. The order ~~, together with~~ AND a cer-
4 tified copy of the proceedings in the transferring court ~~,~~
5 shall be delivered to the court of the county ~~or circuit~~ of
6 residence. A case designated as a case in which the juvenile
7 shall be tried in the same manner as an adult under section 2d of
8 this chapter may be transferred for venue or for juvenile dispo-
9 sition, but shall not be transferred on grounds of residency. If
10 the case is not transferred, the case shall be tried by the ~~the~~
11 ~~family division of circuit~~ court having jurisdiction of the
12 offense.

13 (e) Authority to establish or assist in developing a program
14 or programs within the county to prevent delinquency and provide
15 services to act upon reports submitted to the court related to
16 the behavior of juveniles who do not require formal court juris-
17 diction but otherwise fall within subdivision (a). These serv-
18 ices shall be used only if they are voluntarily accepted by the
19 juvenile and his or her parents, guardian, or custodian.

20 (f) If the court operates a detention home for juveniles
21 within the court's jurisdiction under subdivision (a)(1), author-
22 ity to place a juvenile within that home pending trial if the
23 juvenile is within the circuit court's jurisdiction under section
24 606 of the revised judicature act of 1961, ~~Act No. 236 of the~~
25 ~~Public Acts of 1961, being section 600.606 of the Michigan~~
26 ~~Compiled Laws, or within the recorder's court of the city of~~
27 ~~Detroit's jurisdiction under section 10a(1)(c) of Act No. 369 of~~

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1 ~~the Public Acts of 1919, being section 725.10a of the Michigan~~
2 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, and if the circuit court
3 ~~or the recorder's court of the city of Detroit~~ orders the
4 family division of circuit court in the same county to place the
5 juvenile in that home. The family division of circuit court
6 shall comply with that order.

7 (g) Authority to place a juvenile in a county jail under
8 section 27a of chapter IV of the code of criminal procedure, ~~Act~~
9 ~~No. 175 of the Public Acts of 1927, being section 764.27a of the~~
10 ~~Michigan Compiled Laws~~ 1927 PA 175, MCL 764.27A, if the COURT
11 DESIGNATES THE case ~~is designated by the court~~ under section 2d
12 of this chapter as a case in which the juvenile is to be tried in
13 the same manner as an adult ~~—~~ and the court ~~has determined~~
14 ~~that~~ DETERMINES there is probable cause to believe that the
15 offense was committed and ~~that there is~~ probable cause to
16 believe the juvenile committed that offense.

17 (H) JURISDICTION OVER A PROCEEDING UNDER SECTION 2950 OR
18 2950A OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
19 MCL 600.2950 AND 600.2950A, IN WHICH A MINOR LESS THAN 18 YEARS
20 OF AGE IS THE RESPONDENT. VENUE FOR AN INITIAL ACTION UNDER SEC-
21 TION 2950 OR 2950A OF THE REVISED JUDICATURE ACT OF 1961, 1961
22 PA 236, MCL 600.2950 AND 600.2950A, IS PROPER IN THE COUNTY OF
23 RESIDENCE OF EITHER THE PETITIONER OR RESPONDENT. IF THE RESPON-
24 DENT DOES NOT LIVE IN THIS STATE, VENUE FOR THE INITIAL ACTION IS
25 PROPER IN THE PETITIONER'S COUNTY OF RESIDENCE.

26 SEC. 6B. (1) THE COURT MAY ISSUE AN ORDER THAT AFFECTS A
27 NONPARENT ADULT AND THAT DOES 1 OR MORE OF THE FOLLOWING:

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1 (A) REQUIRES THE NONPARENT ADULT TO PARTICIPATE IN THE
2 DEVELOPMENT OF A CASE SERVICE PLAN.

3 (B) REQUIRES THE NONPARENT ADULT TO COMPLY WITH A CASE SERV-
4 ICE PLAN.

5 (C) PERMANENTLY REMOVES THE NONPARENT ADULT FROM THE HOME OF
6 THE CHILD AS PROVIDED IN SECTION 13A OF THIS CHAPTER.

7 (D) PERMANENTLY RESTRAINS THE NONPARENT ADULT FROM COMING
8 INTO CONTACT WITH OR WITHIN CLOSE PROXIMITY OF THE CHILD.

9 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A NONPARENT ADULT
10 WHO VIOLATES AN ORDER ISSUED UNDER THIS SECTION IS GUILTY OF A
11 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
12 OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

13 (3) A NONPARENT ADULT WHO VIOLATES AN ORDER ISSUED UNDER
14 THIS SECTION AND WHO HAS 1 OR MORE PRIOR CONVICTIONS FOR VIOLAT-
15 ING AN ORDER ISSUED UNDER THIS SECTION IS GUILTY OF A FELONY PUN-
16 ISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF
17 NOT MORE THAN \$2,000.00, OR BOTH.

18 (4) THIS SECTION DOES NOT PROHIBIT A NONPARENT ADULT FROM
19 BEING CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIO-
20 LATION OF LAW THE NONPARENT ADULT COMMITS WHILE VIOLATING AN
21 ORDER ISSUED UNDER THIS SECTION.

22 (5) THIS SECTION DOES NOT PROHIBIT THE COURT FROM EXERCISING
23 ITS CRIMINAL OR CIVIL CONTEMPT POWERS FOR A VIOLATION OF AN ORDER
24 ISSUED UNDER THIS SECTION.

25 (6) THIS SECTION DOES NOT IN ANY MANNER AFFECT THE AUTHORITY
26 OR JURISDICTION OF THE COURT AS PROVIDED IN SECTION 6.

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

3 (a) "Agency" means a public or private organization, insti-
4 tution, or facility responsible under court order or contractual
5 arrangement for ~~the~~ A JUVENILE'S care and supervision. ~~of a~~
6 ~~juvenile.~~

7 (B) "ATTORNEY" MEANS, IF APPOINTED TO REPRESENT A CHILD IN A
8 PROCEEDING UNDER SECTION 2(B) OR (C) OF THIS CHAPTER, AN ATTORNEY
9 SERVING AS THE CHILD'S LEGAL ADVOCATE IN A TRADITIONAL
10 ATTORNEY-CLIENT RELATIONSHIP WITH THE CHILD, AS GOVERNED BY THE
11 MICHIGAN RULES OF PROFESSIONAL CONDUCT. AN ATTORNEY DEFINED
12 UNDER THIS SUBDIVISION OWES THE SAME DUTIES OF UNDIVIDED LOYALTY,
13 CONFIDENTIALITY, AND ZEALOUS REPRESENTATION OF THE CHILD'S
14 EXPRESSED WISHES AS THE ATTORNEY WOULD TO AN ADULT CLIENT. FOR
15 THE PURPOSE OF A NOTICE REQUIRED UNDER THESE SECTIONS, ATTORNEY
16 INCLUDES A CHILD'S LAWYER-GUARDIAN AD LITEM.

17 (C) "CASE SERVICE PLAN" MEANS THE PLAN DEVELOPED BY AN
18 AGENCY AND PREPARED PURSUANT TO SECTION 18F OF THIS CHAPTER THAT
19 INCLUDES SERVICES TO BE PROVIDED BY AND RESPONSIBILITIES AND
20 OBLIGATIONS OF THE AGENCY AND ACTIVITIES, RESPONSIBILITIES, AND
21 OBLIGATIONS OF THE PARENT. THE CASE SERVICE PLAN MAY BE REFERRED
22 TO USING DIFFERENT NAMES THAN CASE SERVICE PLAN INCLUDING, BUT
23 NOT LIMITED TO, A PARENT/AGENCY AGREEMENT OR A PARENT/AGENCY
24 TREATMENT PLAN AND SERVICE AGREEMENT.

25 (D) ~~(b)~~ "Foster care" means care provided to a juvenile in
26 a foster family home, foster family group home, or juvenile
27 caring institution licensed or approved under 1973 PA 116,

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1 MCL 722.111 to 722.128, or care provided to a juvenile in a
2 relative's home under ~~an~~ A COURT order. ~~of the court.~~

3 (E) "GUARDIAN AD LITEM" MEANS AN INDIVIDUAL WHOM THE COURT
4 APPOINTS TO ASSIST THE COURT IN DETERMINING THE CHILD'S BEST
5 INTERESTS. A GUARDIAN AD LITEM DOES NOT NEED TO BE AN ATTORNEY.

6 (F) "LAWYER-GUARDIAN AD LITEM" MEANS AN ATTORNEY APPOINTED
7 UNDER SECTION 17C OF THIS CHAPTER. A LAWYER-GUARDIAN AD LITEM
8 REPRESENTS THE CHILD, AND HAS THE POWERS AND DUTIES, AS SET FORTH
9 IN SECTION 17D OF THIS CHAPTER. THE PROVISIONS OF SECTION 17D OF
10 THIS CHAPTER ALSO APPLY TO A LAWYER-GUARDIAN AD LITEM APPOINTED
11 UNDER EACH OF THE FOLLOWING:

12 (i) SECTION 427 OR 437 OF THE REVISED PROBATE CODE, 1978 PA
13 642, MCL 700.427 AND 700.437.

14 (ii) SECTION 4 OF THE CHILD CUSTODY ACT OF 1970, 1970 PA 91,
15 MCL 722.24.

16 (iii) SECTION 10 OF THE CHILD PROTECTION LAW, 1975 PA 238,
17 MCL 722.630.

18 (G) "NONPARENT ADULT" MEANS A PERSON WHO IS 18 YEARS OF AGE
19 OR OLDER AND WHO, REGARDLESS OF THE PERSON'S DOMICILE, MEETS ALL
20 OF THE FOLLOWING CRITERIA IN RELATION TO A CHILD OVER WHOM THE
21 COURT TAKES JURISDICTION UNDER THIS CHAPTER:

22 (i) HAS SUBSTANTIAL AND REGULAR CONTACT WITH THE CHILD.

23 (ii) HAS A CLOSE PERSONAL RELATIONSHIP WITH THE CHILD'S
24 PARENT OR WITH A PERSON RESPONSIBLE FOR THE CHILD'S HEALTH OR
25 WELFARE.

26 (iii) IS NOT THE CHILD'S PARENT OR A PERSON OTHERWISE
27 RELATED TO THE CHILD BY BLOOD OR AFFINITY TO THE THIRD DEGREE.

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1 (H) ~~(c)~~ "Permanent foster family agreement" means an
2 agreement for a child 14 years old or older to remain with a par-
3 ticular foster family until the child is 18 years old under stan-
4 dards and requirements established by the family independence
5 agency, which agreement is among all of the following:

6 (i) The child.

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

8 (iii) The foster family.

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

11 (2) If a juvenile is alleged to be within the provisions of
12 section 2(b) of this chapter, the court may authorize a petition
13 to be filed at the conclusion of the preliminary hearing or
14 inquiry. The court may authorize the petition upon a showing of
15 probable cause that 1 or more of the allegations in the petition
16 are true and fall within the provisions of section 2(b) of this
17 chapter. If a petition is before the court because the family
18 independence agency is required to submit the petition under sec-
19 tion 17 of THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.637,
20 the court shall hold a hearing on the petition within 24 hours or
21 on the next business day after the petition is submitted, at
22 which hearing the court shall CONSIDER at least ~~consider~~ the
23 matters governed by subsections (4) and (5).

24 (3) Except as provided in subsection (5), if a petition
25 under subsection (2) is authorized, the court may release the
26 juvenile in the custody of either of the juvenile's parents or
27 the juvenile's guardian or custodian under reasonable terms and

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1 conditions necessary for either the juvenile's physical health or
2 mental well-being.

3 (4) The court may order a parent, guardian, custodian,
4 NONPARENT ADULT, or other person residing in a child's home to
5 leave the home and, except as the court orders, not TO subse-
6 quently return to the home if all of the following take place:

7 (a) A petition alleging abuse of the child by the parent,
8 guardian, custodian, NONPARENT ADULT, or other person is autho-
9 rized under subsection (2).

10 (b) The court after a hearing finds probable cause to
11 believe the parent, guardian, custodian, NONPARENT ADULT, or
12 other person committed the abuse.

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

17 (5) If a petition alleges abuse by a person described in
18 subsection (4), regardless of whether the court orders the
19 alleged abuser to leave the child's home under subsection (4),
20 the court shall not leave the child in or return the child to the
21 child's home or place the child with a person not licensed under
22 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that
23 the conditions of custody at the placement and with the individ-
24 ual with whom the child is placed are adequate to safeguard the
25 child from the risk of harm to the child's life, physical health,
26 or mental well-being.

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

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

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

10 (b) The court may order the alleged abusive person, accord-
11 ing to terms the court may set, to surrender to a local law
12 enforcement agency any firearms or other potentially dangerous
13 weapons the alleged abusive person owns, possesses, or uses.

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

17 (8) If the court orders placement of the juvenile outside
18 the juvenile's home, the court shall inform the parties of the
19 following:

20 (a) ~~The~~ THAT THE agency has the responsibility to prepare
21 an initial services plan within 30 days of the juvenile's
22 placement.

23 (b) The general elements of an initial services plan as
24 required by the rules promulgated under 1973 PA 116, MCL 722.111
25 to 722.128.

26 (c) ~~Participation in an~~ THAT PARTICIPATION IN THE initial
27 services plan is voluntary without a court order.

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1 (9) Before or within 7 days after a child is placed in a
2 relative's home, the ~~department~~ FAMILY INDEPENDENCE AGENCY
3 shall perform a criminal record check and central registry
4 clearance. If the child is placed in the home of a relative, the
5 court shall order a home study to be performed and a copy of the
6 home study to be submitted to the court not more than 30 days
7 after the placement.

8 (10) In determining placement of a juvenile pending trial,
9 the court shall order the juvenile placed in the most family-like
10 setting available consistent with the JUVENILE'S needs. ~~of the~~
11 ~~juvenile.~~

12 (11) If a juvenile is removed from his or her home, THE
13 COURT SHALL PERMIT the juvenile's parent ~~shall be permitted~~ to
14 have FREQUENT parenting time ~~frequently~~ with the juvenile.
15 However, if parenting time, even if supervised, may be harmful to
16 the juvenile, the court shall order the child to have a psycho-
17 logical evaluation or counseling, or both, to determine the
18 appropriateness and the conditions of parenting time. The court
19 may suspend parenting time while the psychological evaluation or
20 counseling is conducted.

21 (12) Upon the motion of any party, the court shall review
22 custody and placement orders and initial services plans pending
23 trial and may modify those orders and plans as the court consid-
24 ers under this section are in the JUVENILE'S best interests. ~~of~~
25 ~~the juvenile.~~

26 (13) The court shall include in an order placing a child in
27 foster care an order directing the release of information

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1 concerning the child in accordance with this subsection. If a
2 child is placed in foster care, within 10 days after receipt of a
3 written request, the agency shall provide the person who is pro-
4 viding the foster care with copies of all initial, updated, and
5 revised case service plans and court orders relating to the child
6 and all of the child's medical, mental HEALTH, and education
7 reports, including reports compiled before the child was placed
8 with that person.

9 (14) In an order placing a child in foster care, the court
10 shall include both of the following:

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

14 (b) An order that each of the child's medical providers
15 release the child's medical records. The order may specify pro-
16 viders by profession or type of institution.

17 (15) As used in this section, "abuse" means 1 or more of the
18 following:

19 (a) Harm or threatened harm by a person to a juvenile's
20 health or welfare that occurs through nonaccidental physical or
21 mental injury.

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

25 (c) Sexual exploitation of a juvenile, which includes, but
26 is not limited to, allowing, permitting, or encouraging a
27 juvenile to engage in prostitution or allowing, permitting,

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1 encouraging, or engaging in photographing, filming, or depicting
2 a juvenile engaged in a listed sexual act as defined in section
3 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

4 (d) Maltreatment of a juvenile.

5 Sec. 19. (1) Subject to section 20 of this chapter, if a
6 child remains under the jurisdiction of the court, a cause may be
7 terminated or an order may be amended or supplemented, within the
8 authority granted to the court in section 18 of this chapter, at
9 any time as the court considers necessary and proper. An amended
10 or supplemented order shall be referred to as a "supplemental
11 order of disposition". If the family independence agency becomes
12 aware of additional abuse or neglect of a child who is under the
13 jurisdiction of the court and IF that abuse or neglect is sub-
14 stantiated as provided in the child protection law, 1975 PA 238,
15 MCL 722.621 to 722.638, the department shall file a supplemental
16 petition with the court.

17 (2) Except as otherwise provided in ~~subsections (3), (6),~~
18 ~~(7), (9), (10), and (11)~~ THIS SECTION, if a child is placed in
19 foster care, the cause shall be reheard not more than 182 days
20 after entry of the order of disposition. The showing shall be
21 recorded stenographically at a hearing held by the judge or
22 referee. If the child remains in foster care in the temporary
23 custody of the court following the hearing, the cause shall be
24 further reheard not more than 182 days after the hearing. In
25 conducting the review hearing, the court shall review the per-
26 formance of the child, the child's parent, guardian, or

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1 custodian, the juvenile worker, and other persons providing
2 assistance to the child and his or her family.

3 (3) Except as otherwise provided in subsection (4), if, in a
4 proceeding under section 2(b) of this chapter, a child is placed
5 and remains in foster care, a review hearing shall be held not
6 more than 91 days after entry of the order of disposition and
7 every 91 days after that ~~so~~ AS long as the child is subject to
8 the jurisdiction, control, or supervision of the court, or of the
9 Michigan children's institute or other agency. Upon motion by
10 any party or in the court's discretion, a review hearing may be
11 accelerated to review any element of the case service plan pre-
12 pared pursuant to section 18f of this chapter.

13 (4) If a child is in a permanent foster family agreement or
14 if a child is placed with a relative and the placement is
15 intended to be permanent, the court shall hold a review hearing
16 not more than 182 days after a permanency planning hearing held
17 pursuant to section 19a of this chapter and every 182 days after
18 that so long as the child is subject to the jurisdiction, con-
19 trol, or supervision of the court, or of the Michigan children's
20 institute or other agency. Upon the motion of any party or at
21 the court's discretion, a review hearing may be accelerated to
22 review any element of the case service plan. ~~prepared pursuant~~
23 ~~to section 18f of this chapter.~~

24 (5) Written notice of a review hearing under subsection (2),
25 (3), or (4) shall be served upon all of the following:

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

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- 1 (b) The foster parent or custodian of the child.
- 2 (c) If the parental rights to the child have not been termi-
3 nated, 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) A NONPARENT ADULT IF THE NONPARENT ADULT IS REQUIRED TO
9 COMPLY WITH THE CASE SERVICE PLAN.
- 10 (G) ~~(f)~~ If tribal affiliation has been determined, the
11 elected leader of the Indian tribe.
- 12 (H) ~~(g)~~ The attorney for the child, the attorneys for each
13 party, and the prosecuting attorney if the prosecuting attorney
14 has appeared in the case.
- 15 (I) ~~(h)~~ If the child is 11 years of age or older, the
16 child.
- 17 (J) ~~(i)~~ Other persons as the court may direct.
- 18 (6) At a review hearing under subsection (2), (3), or (4),
19 the court shall review on the record all of the following:
- 20 (a) Compliance with the case service plan with respect to
21 services provided or offered to the child and the child's parent,
22 guardian, ~~or~~ custodian, OR NONPARENT ADULT IF THE NONPARENT
23 ADULT IS REQUIRED TO COMPLY WITH THE CASE SERVICE PLAN and
24 whether the parent, guardian, ~~or~~ custodian, OR NONPARENT ADULT
25 IF THE NONPARENT ADULT IS REQUIRED TO COMPLY WITH THE CASE SERV-
26 ICE PLAN has complied with and benefited from those services.

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1 (b) Compliance with the case service plan with respect to
2 parenting time with the child. If parenting time did not occur
3 or was infrequent, the court shall determine why parenting time
4 did not occur or was infrequent.

5 (c) The extent to which the parent complied with each provi-
6 sion of the case service plan, prior court orders, and an agree-
7 ment between the parent and the agency.

8 (d) Likely harm to the child if the child continues to be
9 separated from the child's parent, guardian, or custodian.

10 (e) Likely harm to the child if the child is returned to the
11 child's parent, guardian, or custodian.

12 (7) After review of the case service plan, the court shall
13 determine the extent of progress made toward alleviating or miti-
14 gating the conditions that caused the child to be placed in
15 foster care or that caused the child to remain in foster care.
16 The court may modify any part of the case service plan including,
17 but not limited to, the following:

18 (a) Prescribing additional services that are necessary to
19 rectify the conditions that caused the child to be placed in
20 foster care or to remain in foster care.

21 (b) Prescribing additional actions to be taken by the
22 parent, guardian, NONPARENT ADULT, or custodian, to rectify the
23 conditions that caused the child to be placed in foster care or
24 to remain in foster care.

25 (8) At a review hearing under subsection (2), (3), or (4),
26 the court shall determine the continuing necessity and
27 appropriateness of the child's placement and shall order the

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1 return of the child to the custody of the parent, continue the
2 dispositional order, modify the dispositional order, or enter a
3 new dispositional order.

4 (9) If in a proceeding under section 2(b) of this chapter a
5 child is placed in foster care, the court shall determine at the
6 dispositional hearing and each review hearing whether the cause
7 should be reviewed before the next review hearing required by
8 subsection (2), (3), or (4). In making this determination, the
9 court shall consider ~~, but not be limited to,~~ AT LEAST all of
10 the following:

11 (a) The parent's ability and motivation to make necessary
12 changes to provide a suitable environment for the child.

13 (b) Whether there is a reasonable likelihood that the child
14 may be returned to his or her home prior to the next review hear-
15 ing required by subsection (2), (3), or (4).

16 (10) Unless waived, if not less than 7 days' notice is given
17 to all parties prior to the return of a child to the child's
18 home, and no party requests a hearing within the 7 days, the
19 court may issue an order without a hearing permitting the agency
20 to return the child to the child's home.

21 (11) An agency report filed with the court shall be accessi-
22 ble to all parties to the action and shall be offered into
23 evidence. The court shall consider any written or oral informa-
24 tion concerning the child from the child's parent, guardian, cus-
25 todian, foster parent, child caring institution, relative with
26 whom a child is placed, ATTORNEY, LAWYER-GUARDIAN AD LITEM, or

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1 guardian ad litem, in addition to any other evidence, including
2 the appropriateness of parenting time, offered at the hearing.

3 Sec. 19b. (1) Except as provided in subsection (4), if a
4 child remains in foster care in the temporary custody of the
5 court following a review hearing under section 19(3) of this
6 chapter or a permanency planning hearing under section 19a of
7 this chapter or if a child remains in the custody of a guardian
8 or limited guardian, upon petition of the prosecuting attorney,
9 whether or not the prosecuting attorney is representing or acting
10 as legal consultant to the agency or any other party, or PETITION
11 of the child, guardian, custodian, concerned person as defined in
12 subsection (6), agency, or ~~the~~ children's ombudsman ~~pursuant~~
13 ~~to~~ AS AUTHORIZED IN section 7 of the children's ombudsman act,
14 1994 PA 204, MCL 722.927, the court shall hold a hearing to
15 determine if the parental rights to a child should be terminated
16 and, if all parental rights to the child are terminated, the
17 child placed in permanent custody of the court. The court shall
18 state on the record or in writing its findings of fact and con-
19 clusions of law with respect to whether or not parental rights
20 should be terminated. The court shall issue an opinion or order
21 regarding a petition for termination of parental rights within 70
22 days after the commencement of the initial hearing on the
23 petition. However, the court's failure to issue an opinion
24 within 70 days does not dismiss the petition.

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

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

3 (b) The CHILD'S foster parent or custodian. ~~of the child.~~

4 (c) The child's parents.

5 (d) If the child has a guardian, the CHILD'S guardian. ~~for~~
6 ~~the child.~~

7 (e) If the child has a guardian ad litem, the CHILD'S guard-
8 ian ad litem. ~~for the child.~~

9 (f) If tribal affiliation has been determined, the INDIAN
10 TRIBE'S elected leader. ~~of the Indian tribe.~~

11 (g) The CHILD'S attorney ~~for the child and the attorneys~~
12 ~~for all parties~~ AND EACH PARTY'S ATTORNEY.

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

14 (i) The prosecutor.

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

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

20 (i) The CHILD'S parent ~~of the child~~ is unidentifiable, has
21 deserted the child for 28 or more days, and has not sought cus-
22 tody of the child during that period. For the purposes of this
23 section, a parent is unidentifiable if the parent's identity
24 cannot be ascertained after reasonable efforts have been made to
25 locate and identify the parent.

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

4 (b) The child or a sibling of the child has suffered physi-
5 cal injury or physical or sexual abuse under ~~either~~ 1 OR MORE
6 of the following circumstances:

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

11 (ii) The parent who had the opportunity to prevent the phys-
12 ical 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 (iii) A NONPARENT ADULT'S ACT CAUSED THE PHYSICAL INJURY OR
17 PHYSICAL OR SEXUAL ABUSE AND THE COURT FINDS THAT THERE IS A REA-
18 SONABLE LIKELIHOOD THAT THE CHILD WILL SUFFER FROM INJURY OR
19 ABUSE BY THE NONPARENT ADULT IN THE FORESEEABLE FUTURE IF PLACED
20 IN THE PARENT'S HOME.

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

25 (i) The conditions that led to the adjudication continue to
26 exist and there is no reasonable likelihood that the conditions

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1 will be rectified within a reasonable time considering the
2 CHILD'S age. ~~of the child.~~

3 (ii) Other conditions exist that cause the child to come
4 within the COURT'S jurisdiction, ~~of the court,~~ the parent has
5 received recommendations to rectify those conditions, the condi-
6 tions have not been rectified by the parent after the parent has
7 received notice ~~,~~ AND a hearing ~~,~~ and HAS been given a rea-
8 sonable opportunity to rectify the conditions, and there is no
9 reasonable likelihood that the conditions will be rectified
10 within a reasonable time considering the CHILD'S age. ~~of the~~
11 ~~child.~~

12 (d) The CHILD'S parent ~~of a child~~ has placed the child in
13 a limited guardianship under section 424a of the revised probate
14 code, 1978 PA 642, MCL 700.424a, and has substantially failed,
15 without good cause, to comply with a limited guardianship place-
16 ment plan described in section 424a of the revised probate code,
17 1978 PA 642, MCL 700.424a, regarding the child to the extent that
18 the noncompliance has resulted in a disruption of the
19 parent-child relationship.

20 (e) The child has a guardian under the revised probate code,
21 1978 PA 642, MCL 700.1 to 700.993, and the parent has substan-
22 tially failed, without good cause, to comply with a
23 court-structured plan described in section 424b or 424c of the
24 revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,
25 regarding the child to the extent that the noncompliance has
26 resulted in a disruption of the parent-child relationship.

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1 (f) The child has a guardian under the revised probate code,
2 1978 PA 642, MCL 700.1 to 700.993, and both of the following have
3 occurred:

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

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

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

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

26 (i) Parental rights to 1 or more siblings of the child have
27 been terminated due to serious and chronic neglect or physical or

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1 sexual abuse, and prior attempts to rehabilitate the parents have
2 been unsuccessful.

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

6 (k) The parent abused the child or a sibling of the child
7 and the abuse included 1 or more of the following:

8 (i) Abandonment of a young child.

9 (ii) Criminal sexual conduct involving penetration,
10 attempted penetration, or assault with intent to penetrate.

11 (iii) Battering, torture, or other severe physical abuse.

12 (iv) Loss or serious impairment of an organ or limb.

13 (v) Life threatening injury.

14 (vi) Murder or attempted murder.

15 (l) The parent's rights to another child were terminated as
16 a result of proceedings under section 2(b) of this chapter or a
17 similar law of another state.

18 (m) The parent's rights to another child were voluntarily
19 terminated following the initiation of proceedings under section
20 2(b) of this chapter or a similar law of another state.

21 (N) THE PARENT IS CONVICTED OF 1 OR MORE OF THE FOLLOWING,
22 AND THE COURT DETERMINES THAT TERMINATION IS IN THE CHILD'S BEST
23 INTERESTS BECAUSE CONTINUING THE PARENT-CHILD RELATIONSHIP WITH
24 THE PARENT WOULD BE HARMFUL TO THE CHILD:

25 (i) A VIOLATION OF SECTION 316, 317, 520B, 520C, 520D, 520E,
26 OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316,
27 750.317, 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.

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1 (ii) A VIOLATION OF A CRIMINAL STATUTE, AN ELEMENT OF WHICH
2 IS THE USE OF FORCE OR THE THREAT OF FORCE, AND WHICH SUBJECTS
3 THE PARENT TO SENTENCING UNDER SECTION 10, 11, OR 12 OF CHAPTER
4 IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10,
5 769.11, AND 769.12.

6 (iii) A FEDERAL LAW OR LAW OF ANOTHER STATE WITH PROVISIONS
7 SUBSTANTIALLY SIMILAR TO A CRIME OR PROCEDURE LISTED OR DESCRIBED
8 IN SUBPARAGRAPH (i) OR (ii).

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. IF A PETITION TO TERMINATE PARENTAL RIGHTS TO A CHILD
13 IS FILED, PARENTING TIME FOR A PARENT WHO IS A SUBJECT OF THE
14 PETITION IS AUTOMATICALLY SUSPENDED AND, EXCEPT AS OTHERWISE PRO-
15 VIDED IN THIS SUBSECTION, REMAINS SUSPENDED AT LEAST UNTIL A
16 DECISION IS ISSUED ON THE TERMINATION PETITION. IF A PARENT
17 WHOSE PARENTING TIME IS SUSPENDED UNDER THIS SUBSECTION ESTAB-
18 LISHES, AND THE COURT DETERMINES, THAT PARENTING TIME WILL NOT
19 HARM THE CHILD, THE COURT MAY ORDER PARENTING TIME IN THE AMOUNT
20 AND UNDER THE CONDITIONS THE COURT DETERMINES APPROPRIATE.

21 (5) If the court finds that there are grounds for termina-
22 tion of parental rights, the court shall order termination of
23 parental rights and order that additional efforts for reunifica-
24 tion of the child with the parent not be made, unless the court
25 finds that termination of parental rights to the child is clearly
26 not in the child's best interests.

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1 (6) As used in this section, "concerned person" means a
2 foster parent with whom the child is living or has lived who has
3 specific knowledge of behavior by the parent constituting grounds
4 for termination under subsection (3)(b) or (g) and who has con-
5 tacted the family independence agency, the prosecuting attorney,
6 the child's attorney, and the child's guardian ad litem, if any,
7 and is satisfied that none of these persons intend to file a
8 petition under this section.

9 Enacting section 1. This amendatory act takes effect
10 July 1, 1999.