

SENATE BILL NO. 1152

May 20, 1998, Introduced by Senators GOUGEON, EMMONS, MC MANUS, STEIL and STILLE and referred to the Committee on Families, Mental Health and Human Services.

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 18f, 19b, and 19c of chapter XIIIA (MCL 712A.18f, 712A.19b, and 712A.19c), section 18f as amended by 1997 PA 163, section 19b as amended by 1997 PA 169, and section 19c as added by 1988 PA 224.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SB 1152, As Passed Senate, June 9, 1998

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GWH

CHAPTER XIIA

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

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

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

(c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.

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

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

(3) The case service plan shall provide for placing the child in the most family-like setting available and in as close proximity to the child's parents' home as is consistent with the CHILD'S best interests and special needs. ~~of the child.~~ The

1 case service plan shall include, but not be limited to, the
2 following:

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

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

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

9 (d) Schedule of services to be provided to the parent,
10 child, and if the child is to be placed in foster care, the
11 foster parent, to facilitate the child's return to his or her
12 home or to facilitate the CHILD'S permanent placement. ~~of the~~
13 ~~child.~~

14 (e) Except as OTHERWISE provided in THIS subdivision, ~~(f),~~
15 unless parenting time, even if supervised, would be harmful to
16 the child as determined by the court under section 13a of this
17 chapter or otherwise, a schedule for regular and frequent parent-
18 ing time between the child and his or her parent which shall not
19 be less than once every 7 days. ~~(f)~~ At the time of the initial
20 termination hearing held to consider termination of parental
21 rights, parenting time is automatically suspended unless the
22 parent establishes and the court determines that the exercise of
23 parenting time will not harm the child. If the court adjourns or
24 continues the termination hearing beyond the original scheduled
25 date for any reason, the court shall suspend parenting time in
26 the interim, unless the court determines that the exercise of
27 parenting time will not harm the child.

1 (4) ~~The~~ BEFORE THE COURT ENTERS AN ORDER OF DISPOSITION,
2 THE court shall consider the case service plan ~~,~~ AND any writ-
3 ten or oral information OFFERED concerning the child from the
4 child's parent, guardian, custodian, foster parent, child caring
5 institution, relative with whom the child is placed, or ~~the~~
6 ~~child's~~ guardian ad litem and any other evidence OFFERED,
7 including the appropriateness of parenting time, ~~offered bearing~~
8 ~~on~~ WHICH INFORMATION OR EVIDENCE BEARS ON THE disposition.
9 ~~before the court enters an order of disposition.~~ The order of
10 disposition shall state whether reasonable efforts have been made
11 to prevent the child's removal from his or her home or to rectify
12 the conditions that caused the child's removal from his or her
13 home. The court may order compliance with all or any part of the
14 case service plan as 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 under 1973
18 PA 116, MCL 722.111 to 722.128. The agency shall consult with
19 the foster parents when it updates and revises the case service
20 plan, and shall attach a statement summarizing the information
21 received from the foster parents to the updated and revised case
22 service plan. Updated and revised case service plans shall be
23 available to the court and all the parties to the proceeding.
24 Within 10 days after receipt of a written request, the agency
25 shall provide the person who is providing the foster care with
26 the information itemized in section 13a(13) of this chapter.

1 (6) TO ENSURE THAT THE CASE SERVICE PLAN ADDRESSES THE
2 CHILD'S MEDICAL NEEDS IN RELATION TO ABUSE AND NEGLECT, THE
3 FAMILY INDEPENDENCE AGENCY SHALL REVIEW A CHILD'S CASE WITH THE
4 CHILD'S ATTENDING PHYSICIAN OF RECORD DURING A HOSPITALIZATION OR
5 WITH THE CHILD'S PRIMARY CARE PHYSICIAN, BUT ONLY IF A PHYSICIAN
6 HAS DIAGNOSED THE CHILD'S ABUSE OR NEGLECT AS INVOLVING 1 OR MORE
7 OF THE FOLLOWING:

8 (A) FAILURE TO THRIVE.

9 (B) MUNCHAUSEN SYNDROME BY PROXY.

10 (C) SHAKEN BABY SYNDROME.

11 (D) A BONE FRACTURE THAT IS DIAGNOSED AS BEING THE RESULT OF
12 ABUSE OR NEGLECT.

13 (E) DRUG EXPOSURE.

14 (7) IF A CHILD IS PLACED OUTSIDE OF HIS OR HER HOME AND THE
15 FAMILY INDEPENDENCE AGENCY IS REQUIRED TO REVIEW THE CHILD'S CASE
16 WITH A PHYSICIAN UNDER SUBSECTION (6), THEN IN A JUDICIAL PRO-
17 CEEDING TO DETERMINE IF THE CHILD IS TO BE RETURNED TO HIS OR HER
18 HOME THE COURT MUST ALLOW THE CHILD'S ATTENDING PHYSICIAN OF
19 RECORD DURING A HOSPITALIZATION OR THE CHILD'S PRIMARY CARE PHY-
20 SICIAN TO TESTIFY REGARDING THE CASE SERVICE PLAN. THE COURT
21 SHALL NOTIFY EACH PHYSICIAN OF THE HEARING'S TIME AND PLACE.

22 Sec. 19b. (1) Except as provided in subsection (4), if a
23 child remains in foster care in the temporary custody of the
24 court following a review hearing under section 19(3) of this
25 chapter or a permanency planning hearing under section 19a of
26 this chapter or if a child remains in the custody of a guardian
27 or limited guardian, upon petition of the prosecuting attorney,

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

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

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

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

23 (c) The child's parents.

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

26 (e) If the child has a guardian ad litem, the CHILD'S
27 guardian ad litem. ~~for the child.~~

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

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

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

6 (i) The prosecutor.

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

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

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

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

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

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

1 (ii) The parent who had the opportunity to prevent the
2 physical injury or physical or sexual abuse failed to do so and
3 the court finds that there is a reasonable likelihood that the
4 child will suffer injury or abuse in the foreseeable future if
5 placed in the parent's home.

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

10 (i) The conditions that led to the adjudication continue to
11 exist and there is no reasonable likelihood that the conditions
12 will be rectified within a reasonable time considering the
13 CHILD'S age. ~~of the child.~~

14 (ii) Other conditions exist that cause the child to come
15 within the COURT'S jurisdiction, ~~of the court,~~ the parent has
16 received recommendations to rectify those conditions, the condi-
17 tions have not been rectified by the parent after the parent has
18 received notice ~~,~~ AND a hearing ~~,~~ and HAS been given a rea-
19 sonable opportunity to rectify the conditions, and there is no
20 reasonable likelihood that the conditions will be rectified
21 within a reasonable time considering the CHILD'S age. ~~of the~~
22 ~~child.~~

23 (d) The CHILD'S parent ~~of a child~~ has placed the child in
24 a limited guardianship under section 424a of the revised probate
25 code, 1978 PA 642, MCL 700.424a, and has substantially failed,
26 without good cause, to comply with a limited guardianship
27 placement plan described in section 424a of the revised probate

1 code, 1978 PA 642, MCL 700.424a, regarding the child to the
2 extent that the noncompliance has resulted in a disruption of the
3 parent-child relationship.

4 (e) The child has a guardian under the revised probate code,
5 1978 PA 642, MCL 700.1 to 700.993, and the parent has substan-
6 tially failed, without good cause, to comply with a
7 court-structured plan described in section 424b or 424c of the
8 revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,
9 regarding the child to the extent that the noncompliance has
10 resulted in a disruption of the parent-child relationship.

11 (f) The child has a guardian under the revised probate code,
12 1978 PA 642, MCL 700.1 to 700.993, and both of the following have
13 occurred:

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

21 (ii) The parent, having the ability to visit, contact, or
22 communicate with the minor, has regularly and substantially
23 failed or neglected, without good cause, to do so for a period of
24 2 years or more before the filing of the petition.

25 (g) The parent, without regard to intent, fails to provide
26 proper care or custody for the child and there is no reasonable
27 expectation that the parent will be able to provide proper care

1 and custody within a reasonable time considering the CHILD'S age.
2 ~~of the child.~~

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

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

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

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

18 (i) Abandonment of a young child.

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

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

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

23 (v) Life threatening injury.

24 (vi) Murder or attempted murder.

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

1 (m) The parent's rights to another child were voluntarily
2 terminated following the initiation of proceedings under section
3 2(b) of this chapter or a similar law of another state.

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

8 (i) A VIOLATION OF SECTION 316, 317, 520B, 520C, 520D, 520E,
9 OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316,
10 750.317, 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.

11 (ii) A VIOLATION OF A CRIMINAL STATUTE, AN ELEMENT OF WHICH
12 IS THE USE OF FORCE OR THE THREAT OF FORCE, AND WHICH SUBJECTS
13 THE PARENT TO SENTENCING UNDER SECTION 10, 11, OR 12 OF CHAPTER
14 IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10,
15 769.11, AND 769.12.

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

19 (4) If a petition to terminate the parental rights to a
20 child is filed, the court may enter an order terminating parental
21 rights under subsection (3) at the initial dispositional
22 hearing.

23 (5) If the court finds that there are grounds for termina-
24 tion of parental rights, the court shall order termination of
25 parental rights and order that additional efforts for reunifica-
26 tion of the child with the parent not be made, unless the court

1 finds that termination of parental rights to the child is clearly
2 not in the child's best interests.

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

11 Sec. 19c. (1) ~~if~~ EXCEPT AS PROVIDED IN SECTION 19(4), IF
12 a child remains in foster care following the termination of
13 parental rights to the child, the court shall conduct a hearing
14 not more than ~~182~~ 91 days after the termination of parental
15 rights and at least every ~~182~~ 91 days ~~thereafter~~ AFTER THAT
16 HEARING to review the child's placement in foster care and the
17 progress being made toward the child's adoption or other per-
18 manent placement.

19 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THIS
20 SECTION APPLIES AS LONG AS THE CHILD IS SUBJECT TO THE JURISDIC-
21 TION, CONTROL, OR SUPERVISION OF THE COURT OR OF THE MICHIGAN
22 CHILDREN'S INSTITUTE OR OTHER AGENCY. This section does not apply
23 to a court that is providing to a child within the court's juris-
24 diction under section 2(b) of this chapter foster care home serv-
25 ices subject to the court's supervision. However, this section
26 does apply to that court beginning January 1, 1990 or when the
27 court is no longer providing to a child within the court's

1 jurisdiction under section 2(b) of this chapter foster care home
2 services subject to the court's supervision, whichever occurs
3 first.