

SENATE BILL NO. 516

May 21, 1997, Introduced by Senator GOUGEON 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 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 13a, 17, 17c, 18f, 19, and 19b of chapter XIIIA (MCL 712A.13a, 712A.17, 712A.17c, 712A.18f, 712A.19, and 712A.19b), sections 13a and 17 as amended by 1996 PA 409, sections 17c and 19b as amended by 1994 PA 264, and sections 18f

and 19 as amended by 1996 PA 16, and by adding sections 13b, 13c, 13d, and 19d to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIIA

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Sec. 13a. (1) As used in this section and sections 13B,

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13C, 18f, 19, 19a, 19b, ~~and~~ 19c, AND 19D of this chapter:

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(a) "Agency" means a public or private organization, insti-

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tution, or facility responsible under court order or contractual

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arrangement for the care and supervision of a juvenile.

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(b) "Foster care" means care provided to a juvenile in a

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foster family home, foster family group home, or juvenile caring

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institution licensed or approved under ~~Act No. 116 of the Public~~

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~~Acts of 1973, being sections 722.111 to 722.128 of the Michigan~~

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~~Compiled Laws~~ 1973 PA 116, MCL 722.111 TO 722.128, or care pro-

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vided to a juvenile in a relative's home under an order of the

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court.

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(2) If a juvenile is alleged to be within the provisions of

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section 2(b) of this chapter, the court may authorize a petition

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to be filed at the conclusion of the preliminary hearing or

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inquiry. The petition may be authorized upon a showing of proba-

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ble cause that 1 or more of the allegations in the petition are

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true and fall within the provisions of section 2(b) of this

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chapter. THE COURT SHALL AUTHORIZE A PETITION IF THE PETITION IS

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FILED UNDER SECTION 13C OF THIS CHAPTER.

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(3) If a petition under subsection (2) is authorized, the

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court may release the juvenile in the custody of either of the

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juvenile's parents or the juvenile's guardian or custodian under

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

3 (4) If a petition alleging abuse by a parent, guardian, cus-
4 todian, or other person residing in the juvenile's home is autho-
5 rized under subsection (2) and the court after a hearing finds
6 probable cause to believe the parent, guardian, custodian, or
7 other person committed the abuse, the court may order that
8 parent, guardian, custodian, or other person to leave the home
9 and not subsequently return to it, except as the court orders,
10 and may release the juvenile to the other parent or to another
11 guardian or custodian. The court shall not enter an order under
12 this subsection unless the court determines all of the
13 following:

14 (a) The presence in the home of the person who is alleged to
15 have committed the abuse presents a substantial risk of harm to
16 the juvenile's life, physical health, or mental well-being.

17 (b) Removing the person who is alleged to have committed the
18 abuse is necessary to adequately safeguard the juvenile from the
19 risk of harm to the juvenile's life, physical health, or mental
20 well-being.

21 (c) The conditions of custody with the other parent or
22 another guardian or custodian are adequate to safeguard the juve-
23 nile from the risk of harm to the juvenile's life, physical
24 health, or mental well-being.

25 (d) It is in the best interests of the juvenile for the
26 juvenile to remain in the home.

1 (5) 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 (6) 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 (7) If a petition under subsection (2) is authorized, the
18 court may order placement of the juvenile with someone other than
19 a parent if the court after hearing determines that both of the
20 following conditions exist:

21 (a) Custody of the juvenile with a parent, guardian, or cus-
22 todian presents a substantial risk of harm to the juvenile's
23 life, physical health, or mental well-being and no provision of
24 service or other arrangement except removal of the juvenile is
25 reasonably available to adequately safeguard the juvenile from
26 that risk.

1 (b) Conditions of custody of the juvenile away from a
2 parent, guardian, or custodian are adequate to safeguard the
3 juvenile's health and welfare.

4 (8) If the court orders placement of the juvenile outside
5 the juvenile's home, the court shall inform the parties of the
6 following:

7 (a) The agency has the responsibility to prepare an initial
8 services plan within 30 days of the juvenile's placement.

9 (b) The general elements of an initial services plan as
10 required by the rules promulgated under ~~Act No. 116 of the~~
11 ~~Public Acts of 1973~~ 1973 PA 116, MCL 722.111 TO 722.128.

12 (c) Without a court order, participation in an initial serv-
13 ices plan is voluntary.

14 (9) In determining placement of a juvenile pending trial,
15 the court shall order the juvenile placed in the most family-like
16 setting available consistent with the needs of the juvenile.

17 (10) Unless parenting time, even if supervised, would be
18 harmful to the juvenile, the juvenile's parent shall be permitted
19 to have parenting time frequently with the juvenile. HOWEVER, IF
20 A PETITION IS FILED FOR TERMINATION OF A PARENT'S PARENTAL RIGHTS
21 TO A CHILD, THE COURT SHALL ORDER PARENTING TIME BETWEEN THE
22 PARENT AND CHILD ONLY IF THE COURT FINDS THAT NO PARENTING TIME
23 IS NOT IN THE CHILD'S BEST INTEREST. FURTHER, IF FACTS ARE
24 BROUGHT TO THE COURT'S ATTENTION THAT PARENTING TIME MAY CAUSE
25 SIGNIFICANT HARM TO A CHILD, THE COURT SHALL ORDER PSYCHOLOGICAL
26 EVALUATION OR ONGOING COUNSELING TO DETERMINE THE APPROPRIATENESS
27 AND CONDITIONS FOR PARENTING TIME.

1 (11) Upon the motion of any party, the court shall review
2 custody and placement orders and initial services plans pending
3 trial and may modify those orders and plans as the court consid-
4 ers under this section are in the best interests of the
5 juvenile.

6 (12) IF A PETITION IS FILED UNDER SECTION 2(B) OF THIS CHAP-
7 TER, THE COURT SHALL ADHERE STRICTLY TO EACH TIME PERIOD PRE-
8 SCRIBED BY THIS ACT OR COURT RULE FOR MANAGEMENT AND DISPOSITION
9 OF THE CHILD'S CASE. THE STATE COURT ADMINISTRATIVE OFFICE SHALL
10 SPECIFICALLY MONITOR THE JUVENILE DIVISION OF THE PROBATE COURT
11 FOR ADHERENCE TO THOSE TIME PERIODS.

12 (13) ~~(12)~~ As used in subsection (4), "abuse" means 1 or
13 more of the following:

14 (a) Harm or threatened harm by a person to a juvenile's
15 health or welfare that occurs through nonaccidental physical or
16 mental injury.

17 (b) Engaging in sexual contact or sexual penetration as
18 defined in section 520a of the Michigan penal code, ~~Act No. 328~~
19 ~~of the Public Acts of 1931, being section 750.520a of the~~
20 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.520A, with a
21 juvenile.

22 (c) Sexual exploitation of a juvenile, which includes, but
23 is not limited to, allowing, permitting, or encouraging a juve-
24 nile to engage in prostitution or allowing, permitting, encourag-
25 ing, or engaging in photographing, filming, or depicting a juve-
26 nile engaged in a listed sexual act as defined in section 145c of
27 ~~Act No. 328 of the Public Acts of 1931, being section 750.145c~~

1 ~~of the Michigan Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA
2 328, MCL 750.145C.

3 (d) Maltreatment of a juvenile.

4 SEC. 13B. IN A PROCEEDING UNDER SECTION 2(B) OF THIS CHAP-
5 TER, THE FAMILY INDEPENDENCE AGENCY OR AN AGENCY SHALL NOT
6 ATTEMPT TO RECTIFY CONDITIONS THAT CAUSED THE CHILD'S REMOVAL
7 FROM HIS OR HER HOME OR TO REUNIFY THE CHILD WITH HIS OR HER
8 PARENT OR PARENTS IF THAT ACTION IS NOT IN THE CHILD'S BEST
9 INTEREST. IF THE FAMILY INDEPENDENCE AGENCY OR AGENCY IS NOT
10 ATTEMPTING TO RECTIFY THE CONDITIONS OR REUNIFY THE FAMILY, THE
11 DEPARTMENT OR AGENCY SHALL FIND A PERMANENT HOME FOR THE CHILD.

12 SEC. 13C. (1) EXCEPT AS PROVIDED IN SUBSECTION (3), THE
13 FAMILY INDEPENDENCE AGENCY SHALL PETITION FOR TERMINATION OF A
14 PARENT'S PARENTAL RIGHTS TO A CHILD IF 1 OR MORE OF THE FOLLOWING
15 APPLY:

16 (A) THE PARENT IS ALLEGED TO HAVE ABUSED THE CHILD OR A SIB-
17 LING OF THE CHILD AND THE ABUSE INCLUDED 1 OR MORE OF THE
18 FOLLOWING:

19 (i) ABANDONMENT, AND THE CHILD OR SIBLING IS VERY YOUNG OR
20 SEVERELY IMPAIRED.

21 (ii) CRIMINAL SEXUAL CONDUCT INVOLVING PENETRATION.

22 (iii) CHRONIC BATTERING, TORTURE, OR OTHER SEVERE PHYSICAL
23 ABUSE.

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

25 (v) LIFE THREATENING INJURY.

26 (vi) MURDER OR ATTEMPTED MURDER.

1 (B) THE PARENT'S PARENTAL RIGHTS TO ANOTHER CHILD HAVE BEEN
2 TERMINATED.

3 (C) THERE HAVE BEEN PREVIOUS FAILED ATTEMPTS TO RECTIFY
4 ABUSE IN THE FAMILY.

5 (D) THE PARENT HAS CHRONICALLY USED A CONTROLLED SUBSTANCE
6 OR ALCOHOL, THAT USE HAS NOT ABATED EVEN WITH TREATMENT, AND THAT
7 USE HAS RESULTED IN ABUSE OF THE CHILD OR A SIBLING OF THE
8 CHILD.

9 (2) THE FAMILY INDEPENDENCE AGENCY SHALL PETITION FOR TERMI-
10 NATION OF PARENTAL RIGHTS IMMEDIATELY UPON DISCOVERY THAT A CIR-
11 CUMSTANCE DESCRIBED IN SUBSECTION (1) EXISTS, EITHER AT THE INI-
12 TIAL DISPOSITIONAL HEARING OR AFTER A PETITION HAS BEEN FILED
13 UNDER THIS CHAPTER. IF A PETITION IS NOT REQUIRED UNDER SUBSEC-
14 TION (1) AND THE FAMILY INDEPENDENCE AGENCY IS CONSIDERING PETI-
15 TIONING FOR TERMINATION OF PARENTAL RIGHTS AT THE INITIAL DISPO-
16 SITIONAL HEARING, THE FAMILY INDEPENDENCE AGENCY SHALL HOLD A
17 CONFERENCE BETWEEN THE PROTECTIVE SERVICES SUPERVISOR, THE PRO-
18 TECTIVE SERVICES WORKER, AND THE FOSTER CARE WORKER, IF ANY, TO
19 AGREE UPON THE COURSE OF ACTION. IF AN AGREEMENT CANNOT BE
20 REACHED AT THIS CONFERENCE, THE FAMILY INDEPENDENCE AGENCY DIREC-
21 TOR OR THE DIRECTOR'S DESIGNEE SHALL RESOLVE THE DISAGREEMENT.

22 (3) SUBSECTION (1) DOES NOT APPLY IF THE FAMILY INDEPENDENCE
23 AGENCY ESTABLISHES ON THE RECORD, AND THE COURT DETERMINES, THAT
24 IT IS NOT IN THE CHILD'S BEST INTEREST TO FILE A PETITION FOR
25 TERMINATION OF PARENTAL RIGHTS.

26 (4) IF ANYONE FILES A PETITION FOR TERMINATION OF PARENTAL
27 RIGHTS, THE FAMILY INDEPENDENCE AGENCY SHALL NOT PROVIDE SERVICES

1 INTENDED TO REUNIFY THE PARENT AND CHILD UNLESS THE COURT
2 DETERMINES THAT PARENTAL RIGHTS SHALL NOT BE TERMINATED.

3 SEC. 13D. (1) EACH COUNTY SHALL ESTABLISH A TEAM TO REVIEW
4 PETITIONS FOR TERMINATION OF PARENTAL RIGHTS. THE REVIEW TEAM
5 SHALL INCLUDE AT LEAST THE PROSECUTING ATTORNEY FOR THE COUNTY
6 AND APPROPRIATE SPECIALISTS.

7 (2) IF THE REVIEW TEAM DECIDES THAT A CASE IS APPROPRIATE
8 FOR TERMINATION OF PARENTAL RIGHTS, THE TEAM SHALL FOCUS ON ACCU-
9 MULATING SUFFICIENT EVIDENCE TO SUSTAIN THE CLEAR AND CONVINCING
10 EVIDENCE BURDEN FOR THAT TERMINATION.

11 Sec. 17. (1) The court may conduct a hearing other than a
12 criminal hearing in an informal manner. ~~The court may adjourn a~~
13 ~~hearing under this chapter from time to time.~~ The court shall
14 require stenographic notes or ~~other~~ ANOTHER transcript to be
15 taken of the hearing. THE COURT SHALL ADJOURN A HEARING OR GRANT
16 A CONTINUANCE REGARDING A CASE UNDER SECTION 2(B) OF THIS CHAPTER
17 ONLY FOR GOOD CAUSE WITH FACTUAL FINDINGS ON THE RECORD AND NOT
18 SOLELY UPON STIPULATION OF COUNSEL OR FOR THE CONVENIENCE OF A
19 PARTY. IN ADDITION TO FACTUAL GOOD CAUSE, THE COURT SHALL ONLY
20 ADJOURN A HEARING OR GRANT A CONTINUANCE IF EITHER OF THE FOLLOW-
21 ING ARE TRUE:

22 (A) A PARTY MOVES FOR THE ADJOURNMENT OR CONTINUANCE IN
23 WRITING AT LEAST 10 DAYS BEFORE THE HEARING.

24 (B) UPON THE COURT'S OWN MOTION. AN ADJOURNMENT OR CONTINU-
25 ANCE UNDER THIS SUBDIVISION SHALL ONLY BE GRANTED IF THE DELAY IS
26 IN THE CHILD'S BEST INTEREST AND FOR A PERIOD OF NOT MORE THAN 30
27 DAYS.

1 (2) In a hearing other than a criminal trial under this
2 chapter, any person interested in the hearing may demand a jury
3 of 6 individuals, or the judge of the family division of probate
4 court, on his or her own motion, may order a jury of 6 individu-
5 als to try the case. In a criminal trial, a jury may be demanded
6 as provided by law. The jury shall be summoned and impaneled in
7 accordance with chapter 13 of the revised judicature act of 1961,
8 ~~Act No. 236 of the Public Acts of 1961, being sections 600.1300~~
9 ~~to 600.1376 of the Michigan Compiled Laws~~ 1961 PA 236, MCL
10 600.1300 TO 600.1376, and, in the case of a criminal trial, as
11 provided in chapter VIII of the code of criminal procedure, ~~Act~~
12 ~~No. 175 of the Public Acts of 1927, being sections 768.1 to~~
13 ~~768.36 of the Michigan Compiled Laws~~ 1927 PA 175, MCL 768.1 TO
14 768.36.

15 (3) A parent, guardian, or other custodian of a juvenile
16 held under this chapter has the right to give bond or other
17 security for the appearance of the juvenile at the hearing of the
18 case.

19 (4) The prosecuting attorney shall appear for the people
20 when requested by the court, and in a proceeding under section
21 2(a)(1) of this chapter, the prosecuting attorney shall appear if
22 the proceeding requires a hearing and the taking of testimony.

23 (5) In a proceeding under section 2(b) of this chapter, upon
24 request of the family independence agency or an agent of the
25 family independence agency under contract with the family inde-
26 pendence agency, the prosecuting attorney shall serve as a legal
27 consultant to the family independence agency or its agent at all

1 stages of the proceeding. If in a proceeding under section 2(b)
2 of this chapter the prosecuting attorney does not appear on
3 behalf of the family independence agency or its agent, the family
4 independence agency may contract with an attorney of its choice
5 for legal representation.

6 (6) A member of a local foster care review board established
7 under ~~Act No. 422 of the Public Acts of 1984, being sections~~
8 ~~722.131 to 722.140 of the Michigan Compiled Laws~~ 1984 PA 422,
9 MCL 722.131 TO 722.139A, shall be admitted to a hearing under
10 subsection (1).

11 (7) Upon motion of any party or a victim, the court may
12 close the hearing of a case brought under this chapter to members
13 of the general public during the testimony of a juvenile witness
14 or the victim if the court finds that closing the hearing is nec-
15 essary to protect the welfare of the juvenile witness or the
16 victim. In determining whether closing the hearing is necessary
17 to protect the welfare of the juvenile witness or the victim, the
18 court shall consider the following:

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

20 (b) The psychological maturity of the juvenile witness or
21 the victim.

22 (c) The nature of the proceeding.

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

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

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

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

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

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

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

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

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

21 (3) Except as otherwise provided in this subsection, in a
22 proceeding under section 2(a) or (d) of this chapter, the child
23 may waive his or her right to an attorney. The waiver by a child
24 shall be made in open court, on the record, and shall not be made
25 unless the court finds on the record that the waiver was volun-
26 tarily and understandingly made. The child may not waive his or
27 her right to an attorney if the child's parent or guardian ad

1 litem objects or if the appointment is made pursuant to
2 subsection (2)(e).

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

6 (a) The right to an attorney at each stage of the
7 proceeding.

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

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

13 (5) If it appears to the court in a proceeding under section
14 2(b) or (c) of this chapter that the respondent wants an attorney
15 and is financially unable to retain an attorney, the court shall
16 appoint an attorney to represent the respondent.

17 (6) Except as otherwise provided in this subsection, in a
18 proceeding under section 2(b) or (c) of this chapter, the respon-
19 dent may waive his or her right to an attorney. A respondent who
20 is a minor may not waive his or her right to an attorney if the
21 respondent's parent or guardian ad litem objects. IF THE COURT
22 DOES NOT APPOINT AN ATTORNEY FOR A CHILD IN A PROCEEDING UNDER
23 SECTION 2(B) OF THIS CHAPTER, THE COURT SHALL APPOINT A GUARDIAN
24 AD LITEM OR OTHER PERSON TO REPRESENT THE CHILD DURING THE ENTIRE
25 PERIOD THAT THE CHILD IS UNDER THE JURISDICTION OF THE COURT.

26 (7) In a proceeding under section 2(b) or (c) of this
27 chapter, the court shall appoint an attorney to represent the

1 child. The child shall not waive the assistance of an attorney.
2 The appointed attorney shall observe and, dependent upon the
3 child's age and capability, interview the child. If the child is
4 placed in foster care, the attorney shall, before representing
5 the child in each subsequent proceeding or hearing, review the
6 agency case file and consult with the foster parents and the
7 caseworker. THE CHILD'S ATTORNEY SHALL BE PRESENT AT ALL HEAR-
8 INGS CONCERNING THE CHILD AND SHALL NOT SUBSTITUTE COUNSEL UNLESS
9 THE COURT APPROVES.

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

15 (9) An attorney appointed by the court under this section
16 shall serve until discharged by the court. THE COURT SHALL NOT
17 DISCHARGE THE ATTORNEY UNTIL THE CHILD IS ADOPTED, HAS A PER-
18 MANENT GUARDIAN, OR IS NO LONGER A STATE WARD.

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 that 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 parenting time, even if supervised, would be
4 harmful to the child, a schedule for regular and frequent parent-
5 ing time between the child and his or her parent which shall not
6 be less than once every 7 days. HOWEVER, IF A PETITION IS FILED
7 FOR TERMINATION OF A PARENT'S PARENTAL RIGHTS TO A CHILD, THE
8 COURT SHALL ORDER PARENTING TIME BETWEEN THE PARENT AND CHILD
9 ONLY IF THE COURT FINDS THAT NO PARENTING TIME IS NOT IN THE
10 CHILD'S BEST INTEREST. FURTHER, IF FACTS ARE BROUGHT TO THE
11 COURT'S ATTENTION THAT PARENTING TIME MAY CAUSE SIGNIFICANT HARM
12 TO A CHILD, THE COURT SHALL ORDER PSYCHOLOGICAL EVALUATION OR
13 ONGOING COUNSELING TO DETERMINE THE APPROPRIATENESS AND CONDI-
14 TIONS FOR PARENTING TIME.

15 (4) The court shall consider the case service plan, any
16 written or oral information concerning the child from the child's
17 parent, guardian, custodian, foster parent, child caring institu-
18 tion, or relative with whom the child is placed, and any other
19 evidence offered bearing on disposition before the court enters
20 an order of disposition. The order of disposition shall state
21 whether reasonable efforts have been made to prevent the child's
22 removal from his or her home or to rectify the conditions that
23 caused the child's removal from his or her home. The court may
24 order compliance with all or any part of the case service plan as
25 the court considers necessary.

26 (5) If a child continues in placement outside of the child's
27 home, the case service plan shall be updated and revised at

1 90-day intervals as required by the rules promulgated pursuant to
2 ~~Act No. 116 of the Public Acts of 1973, being sections 722.111~~
3 ~~to 722.128 of the Michigan Compiled Laws~~ 1973 PA 116, MCL
4 722.111 TO 722.128. The agency shall consult with the foster
5 parents when it updates and revises the case service plan, and
6 shall attach a statement summarizing the information received
7 from the foster parents to the updated and revised case service
8 plan. Updated and revised case service plans shall be available
9 to the court and all the parties to the proceeding. Written
10 reports, other than those portions made confidential by law, case
11 service plans, and court orders, including all updates and revi-
12 sions, shall be available to the foster parent, child caring
13 institution, or relative with whom the child is placed.

14 (6) IF ABUSE OR NEGLECT OF A CHILD IS SUBSTANTIATED, THE
15 REVIEW TEAM ESTABLISHED UNDER SECTION 13D OF THIS CHAPTER SHALL
16 REVIEW THE CASE SERVICE PLAN TO ENSURE THAT THE SERVICES PROVIDED
17 BY THE PLAN ADDRESS THE CHILD'S NEEDS GIVEN THE PROBLEM
18 PRESENTED. THIS SUBSECTION APPLIES ONLY IF THE CHILD'S HOME IS
19 THE SITE OF DOCUMENTED CRIMINAL VIOLENCE OR IF THE ABUSE OR
20 NEGLECT IS, OR RESULTS IN, 1 OR MORE OF THE FOLLOWING:

21 (A) FAILURE TO THRIVE.

22 (B) MUNCHAUSEN SYNDROME BY PROXY.

23 (C) SHAKEN BABY SYNDROME.

24 (D) A BONE FRACTURE THAT A MEDICAL PROFESSIONAL PRESUMES TO
25 BE A RESULT OF ABUSE OR NEGLECT.

26 (E) PLACEMENT OF THE CHILD IN FOSTER CARE AFTER 1 OR MORE
27 PREVIOUS FOSTER CARE PLACEMENTS.

1 (F) A MEDICALLY FRAGILE, MULTIPLY IMPAIRED, OR SEVERELY
2 MENTALLY IMPAIRED CHILD.

3 (G) SEXUAL ABUSE.

4 (H) DRUG EXPOSURE.

5 (7) IF A REVIEW IS REQUIRED UNDER SUBSECTION (6) AND THE
6 CHILD WAS PLACED OUTSIDE OF HIS OR HER HOME, THE TEAM REQUIRED TO
7 REVIEW THE CASE SERVICE PLAN UNDER SUBSECTION (6) SHALL REVIEW
8 THE CHILD'S CASE BEFORE THE CHILD IS PLACED BACK IN THE HOME.

9 Sec. 19. (1) Subject to section 20 of this chapter, if a
10 child remains under the jurisdiction of the court, a cause may be
11 terminated or an order may be amended or supplemented, within the
12 authority granted to the court in section 18 of this chapter, at
13 any time as the court considers necessary and proper. An amended
14 or supplemented order shall be referred to as a "supplemental
15 order of disposition". IF THE FAMILY INDEPENDENCE AGENCY BECOMES
16 AWARE OF AN OCCURRENCE OF ABUSE OR NEGLECT OF A CHILD WHO IS
17 UNDER THE JURISDICTION OF THE COURT AND AN INVESTIGATION CONFIRMS
18 THAT THE OCCURRENCE HAS A BASIS IN FACT, THE DEPARTMENT SHALL
19 FILE A SUPPLEMENTAL PETITION WITH THE COURT.

20 (2) Except as otherwise provided in subsections (3), (5),
21 (6), (8), (9), and (10), if a child is placed in foster care, the
22 cause shall be reheard not more than 182 days after entry of the
23 order of disposition. The showing shall be recorded stenographi-
24 cally at a hearing held by the judge or referee. If the child
25 remains in foster care in the temporary custody of the court fol-
26 lowing the hearing, the cause shall be further reheard not more
27 than 182 days after the hearing. In conducting the review

1 hearing, the court shall review the performance of the child, the
2 child's parent, guardian, or custodian, the juvenile worker, and
3 other persons providing assistance to the child and his or her
4 family.

5 (3) If, in a proceeding under section 2(b) of this chapter,
6 a child is placed and remains in foster care, a review hearing
7 shall be held not more than 91 days after entry of the order of
8 disposition and every 91 days thereafter for the first year fol-
9 lowing the entry of the order of disposition. After the first
10 year following the entry of the order of disposition, a review
11 hearing shall be held not more than 182 days after a permanency
12 planning hearing held pursuant to section 19a of this chapter.
13 Upon motion by any party or in the court's discretion, a review
14 hearing may be accelerated to review any element of the case
15 service plan prepared pursuant to section 18f of this chapter.

16 (4) Written notice of a review hearing under subsection (2)
17 or (3) shall be served upon all of the following:

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

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

21 (c) If the parental rights to the child have not been termi-
22 nated, the child's parents.

23 (d) If the child has a guardian, the guardian for the
24 child.

25 (e) If the child has a guardian ad litem, the guardian ad
26 litem for the child.

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

3 (g) The attorney for the child, the attorneys for each
4 party, and the prosecuting attorney if the prosecuting attorney
5 has appeared in the case.

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

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

8 (5) At a review hearing under subsection (3), the court
9 shall review on the record all of the following:

10 (a) Compliance with the case service plan with respect to
11 services provided or offered to the child and the child's parent,
12 guardian, or custodian and whether the parent, guardian, or cus-
13 todian has complied with and benefited from those services.

14 (b) Compliance with the case service plan with respect to
15 parenting time with the child. If parenting time did not occur
16 or was infrequent, the court shall determine why parenting time
17 did not occur or was infrequent.

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

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

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

25 (6) After review of the case service plan, the court shall
26 determine the extent of progress made toward alleviating or
27 mitigating the conditions that caused the child to be placed in

1 foster care or that caused the child to remain in foster care.
2 The court may modify any part of the case service plan including,
3 but not limited to, the following:

4 (a) Prescribing additional services that are necessary to
5 rectify the conditions that caused the child to be placed in
6 foster care or to remain in foster care.

7 (b) Prescribing additional actions to be taken by the
8 parent, guardian, or custodian to rectify the conditions that
9 caused the child to be placed in foster care or to remain in
10 foster care.

11 (7) At a review hearing under subsection (2) or (3), the
12 court shall determine the continuing necessity and appropriate-
13 ness of the child's placement and shall order the return of the
14 child to the custody of the parent, continue the dispositional
15 order, modify the dispositional order, or enter a new disposi-
16 tional order.

17 (8) If in a proceeding under section 2(b) of this chapter a
18 child is placed in foster care, the court shall determine at the
19 dispositional hearing and each review hearing whether the cause
20 should be reviewed before the next review hearing required by
21 subsection (3). In making this determination, the court shall
22 consider, but not be limited to, all of the following:

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

25 (b) Whether there is a reasonable likelihood that the child
26 may be returned to his or her home prior to the next review
27 hearing required by subsection (3).

1 (9) Unless waived, if not less than 7 days' notice is given
2 to all parties prior to the return of a child to the child's
3 home, and no party requests a hearing within the 7 days, the
4 court may issue an order without a hearing permitting the agency
5 to return the child to the child's home.

6 (10) An agency report filed with the court shall be accessi-
7 ble to all parties to the action and shall be offered into
8 evidence. The court shall consider any written or oral informa-
9 tion concerning the child from the child's parent, guardian, cus-
10 todian, foster parent, child caring institution, or relative with
11 whom a child is placed, in addition to any other evidence offered
12 at the hearing.

13 Sec. 19b. (1) Except as provided in subsection (4), if a
14 child remains in foster care in the temporary custody of the
15 court following a review hearing under section 19(3) of this
16 chapter or a permanency planning hearing under section 19a of
17 this chapter or if a child remains in the custody of a guardian
18 or limited guardian, upon petition of the prosecuting attorney,
19 whether or not the prosecuting attorney is representing or acting
20 as legal consultant to the agency or any other party, or of the
21 child, guardian, custodian, concerned person as defined in sub-
22 section (6), agency, or the children's ombudsman pursuant to sec-
23 tion 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927,
24 the court shall hold a hearing to determine if the parental
25 rights to a child should be terminated and, if all parental
26 rights to the child are terminated, the child placed in permanent
27 custody of the court. The court shall state on the record or in

1 writing its findings of fact and conclusions of law with respect
2 to whether or not parental rights should be terminated. THE
3 COURT SHALL ISSUE A DECISION REGARDING A PETITION FOR TERMINATION
4 OF PARENTAL RIGHTS WITHIN 70 DAYS AFTER THE COMMENCEMENT OF THE
5 INITIAL HEARING ON THE PETITION.

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

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

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

12 (c) The child's parents.

13 (d) If the child has a guardian, the guardian for the
14 child.

15 (e) If the child has a guardian ad litem, the guardian ad
16 litem for the child.

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

19 (g) The attorney for the child and the attorneys for all
20 parties.

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

22 (i) The prosecutor.

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

26 (a) The child has been deserted under either of the
27 following circumstances:

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

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

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

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

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

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

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

1 will be rectified within a reasonable time considering the age of
2 the child.

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

11 (d) The parent of a child has placed the child in a limited
12 guardianship under section 424a of the revised probate code, ~~Act~~
13 ~~No. 642 of the Public Acts of 1978, being section 700.424a of the~~
14 ~~Michigan Compiled Laws~~ 1978 PA 642, MCL 700.424A, and has sub-
15 stantially failed, without good cause, to comply with a limited
16 guardianship placement plan described in section 424a of ~~Act~~
17 ~~No. 642 of the Public Acts of 1978~~ THE REVISED PROBATE CODE,
18 1978 PA 642, MCL 700.424A, regarding the child to the extent that
19 ~~such~~ THE noncompliance has resulted in a disruption of the
20 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 1978 PA 642, MCL 700.1 TO 700.993, AND THE PARENT has substan-
25 tially failed, without good cause, to comply with a
26 court-structured plan described in section 424b or 424c of ~~Act~~
27 ~~No. 642 of the Public Acts of 1978, being sections 700.424b and~~

1 ~~700.424c of the Michigan Compiled Laws~~ THE REVISED PROBATE CODE,
2 1978 PA 642, MCL 700.424B AND 700.424C, regarding the child to
3 the extent that ~~such~~ THE noncompliance has resulted in a dis-
4 ruption of the parent-child relationship.

5 (f) The child has a guardian under the revised probate code,
6 ~~Act No. 642 of the Public Acts of 1978~~ 1978 PA 642, MCL 700.1
7 TO 700.993, and both of the following have occurred:

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

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

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

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

1 parent will be able to provide proper care and custody within a
2 reasonable time considering the age of the child.

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

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

10 (K) THE PARENT IS CONVICTED OF A CRIME WHOSE VICTIM WAS A
11 CHILD AND THE NATURE OF WHICH MAKES THE PARENT UNFIT TO ASSOCIATE
12 WITH CHILDREN.

13 (4) If a petition to terminate the parental rights to a
14 child is filed, the court may enter an order terminating parental
15 rights under subsection (3) at the initial dispositional
16 hearing.

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

23 (6) As used in this section, "concerned person" means a
24 foster parent with whom the child is living or has lived who has
25 specific knowledge of behavior by the parent constituting grounds
26 for termination under subsection (3)(b) or (g) and who has
27 contacted the ~~department of social services~~ FAMILY INDEPENDENCE

1 AGENCY, the prosecuting attorney, the child's attorney, and the
2 child's guardian ad litem, if any, and is satisfied that none of
3 these persons intend to file a petition under this section.

4 SEC. 19D. IF THE FAMILY INDEPENDENCE AGENCY OR AN AGENCY
5 HAS INFORMATION THAT A PREGNANT WOMAN WHO IS IN A HOSPITAL HAS
6 HAD HER PARENTAL RIGHTS TO A CHILD TERMINATED, THE FAMILY INDE-
7 PENDENCE AGENCY OR AGENCY SHALL TRANSMIT THAT INFORMATION TO THE
8 HOSPITAL.