

SENATE BILL NO. 1124

May 7, 1998, Introduced by Senators SHUGARS, GOUGEON, ROGERS, STEIL, EMMONS, MC MANUS, KOIVISTO and DINGELL and referred to the Committee on Judiciary.

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.

1 MCL 750.84 AND 750.110A, if the juvenile is armed with a
2 dangerous weapon. As used in this paragraph, "dangerous weapon"
3 means 1 or more of the following:

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

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

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

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

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

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

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

26 (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
27 the public health code, ~~Act No. 368 of the Public Acts of 1978,~~

1 ~~being sections 333.7401 and 333.7403 of the Michigan Compiled~~
2 ~~Laws~~ 1978 PA 368, MCL 333.7401 AND 333.7403.

3 (E) An attempt to commit a violation described in paragraphs
4 (A) to (D).

5 (F) Conspiracy to commit a violation described in paragraphs
6 (A) to (D).

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

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

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

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

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

25 (4) The juvenile willfully and repeatedly absents himself or
26 herself from school or other learning program intended to meet
27 the juvenile's educational needs, or repeatedly violates rules

1 and regulations of the school or other learning program, and the
2 court finds on the record that the juvenile, the juvenile's
3 parent, guardian, or custodian, and school officials or learning
4 program personnel have met on the juvenile's educational prob-
5 lems, and educational counseling and alternative agency help have
6 been sought. As used in this sub-subdivision only, "learning
7 program" means an organized educational program that is appropri-
8 ate, given the age, intelligence, ability, and any psychological
9 limitations of a juvenile, in the subject areas of reading,
10 spelling, mathematics, science, history, civics, writing, and
11 English grammar.

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

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

22 (A) "Education" means learning based on an organized educa-
23 tional program that is appropriate, given the age, intelligence,
24 ability, and any psychological limitations of a juvenile, in the
25 subject areas of reading, spelling, mathematics, science, histo-
26 ry, civics, writing, and English grammar.

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

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

10 (3) Whose parent has substantially failed, without good
11 cause, to comply with a limited guardianship placement plan
12 described in 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, regarding the
15 juvenile.

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

22 (5) If the juvenile has a guardian under the revised probate
23 code, ~~Act No. 642 of the Public Acts of 1978, being sections~~
24 ~~700.1 to 700.993 of the Michigan Compiled Laws~~ 1978 PA 642,
25 MCL 700.1 TO 700.993, and the juvenile's parent meets both of the
26 following criteria:

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

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

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

19 (c) Jurisdiction over juveniles under 18 years of age,
20 jurisdiction of whom has been waived to the family division of
21 circuit court by a circuit court pursuant to a provision in a
22 temporary order for custody of juveniles based upon a complaint
23 for divorce or upon a motion pursuant to a complaint for divorce
24 by the prosecuting attorney, in a divorce judgment dissolving a
25 marriage between the parents of the juveniles, or by an amended
26 judgment relative to the custody of the juvenile in a divorce.

1 (d) If the court finds on the record that voluntary services
2 have been exhausted or refused, concurrent jurisdiction in
3 proceedings concerning any juvenile between the ages of 17 and 18
4 found within the county:

5 (1) Who is repeatedly addicted to the use of drugs or the
6 intemperate use of alcoholic liquors.

7 (2) Who repeatedly associates with criminal, dissolute, or
8 disorderly persons.

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

11 (4) Who repeatedly associates with thieves, prostitutes,
12 pimps, or procurers.

13 (5) Who is willfully disobedient to the reasonable and
14 lawful commands of his or her parents, guardian, or other custo-
15 dian and is in danger of becoming morally depraved.

16 If any juvenile is brought before the family division of
17 circuit court in a county other than that in which the juvenile
18 resides, the court may, before a hearing and with the consent of
19 the judge of the family division of circuit court in the county
20 of residence, enter an order transferring the jurisdiction of the
21 matter to the court of the county of residence. The order is not
22 a legal settlement as defined in section 55 of the social welfare
23 act, ~~Act No. 280 of the Public Acts of 1939, being section~~
24 ~~400.55 of the Michigan Compiled Laws~~ 1939 PA 280, MCL 400.55.
25 The order, together with a certified copy of the proceedings in
26 the transferring court, shall be delivered to the court of the
27 county or circuit of residence. A case designated as a case in

1 which the juvenile shall be tried in the same manner as an adult
2 under section 2d of this chapter may be transferred for venue or
3 for juvenile disposition, but shall not be transferred on grounds
4 of residency. If the case is not transferred, the case shall be
5 tried by the the family division of circuit court having juris-
6 diction of the offense.

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

14 (f) If the court operates a detention home for juveniles
15 within the court's jurisdiction under subdivision (a)(1), author-
16 ity to place a juvenile within that home pending trial if the
17 juvenile is within the circuit court's jurisdiction under section
18 606 of the revised judicature act of 1961, ~~Act No. 236 of the~~
19 ~~Public Acts of 1961, being section 600.606 of the Michigan~~
20 ~~Compiled Laws, or within the recorder's court of the city of~~
21 ~~Detroit's jurisdiction under section 10a(1)(c) of Act No. 369 of~~
22 ~~the Public Acts of 1919, being section 725.10a of the Michigan~~
23 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, and if the circuit court
24 ~~or the recorder's court of the city of Detroit~~ orders the
25 family division of circuit court in the same county to place the
26 juvenile in that home. The family division of circuit court
27 shall comply with that order.

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

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

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

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

16 (C) PERMANENTLY REMOVES THE NONPARENT ADULT FROM THE HOME OF
17 THE CHILD.

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

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

24 (3) A NONPARENT ADULT WHO VIOLATES AN ORDER ISSUED UNDER
25 THIS SECTION AND WHO HAS 1 OR MORE PRIOR CONVICTIONS FOR VIOLAT-
26 ING AN ORDER ISSUED UNDER THIS SECTION IS GUILTY OF A FELONY

1 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF
2 NOT MORE THAN \$2,000.00, OR BOTH.

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

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

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

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

14 (a) "Agency" means a public or private organization, insti-
15 tution, or facility responsible under court order or contractual
16 arrangement for the care and supervision of a juvenile.

17 (B) "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 (C) ~~(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,

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

3 (D) "NONPARENT ADULT" MEANS A PERSON WHO MEETS ALL OF THE
4 FOLLOWING CRITERIA:

5 (i) IS 18 YEARS OF AGE OR OLDER.

6 (ii) HAS SUBSTANTIAL AND REGULAR CONTACT WITH A CHILD UNDER
7 THE JURISDICTION OF THE COURT PURSUANT TO THIS CHAPTER.

8 (iii) IS NOT THAT CHILD'S PARENT OR SOMEONE WHO ACTS IN LOCO
9 PARENTIS TO A CHILD UNDER THE JURISDICTION OF THE COURT PURSUANT
10 TO THIS CHAPTER.

11 (iv) IS NOT RELATED TO A CHILD UNDER THE JURISDICTION OF THE
12 COURT PURSUANT TO THIS CHAPTER BY BLOOD OR AFFINITY TO THE FOURTH
13 DEGREE.

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

19 (i) The child.

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

21 (iii) The foster family.

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

24 (2) If a juvenile is alleged to be within the provisions of
25 section 2(b) of this chapter, the court may authorize a petition
26 to be filed at the conclusion of the preliminary hearing or
27 inquiry. The court may authorize the petition upon a showing of

1 probable cause that 1 or more of the allegations in the petition
2 are true and fall within the provisions of section 2(b) of this
3 chapter. If a petition is before the court because the family
4 independence agency is required to submit the petition under sec-
5 tion 17 of THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.637,
6 the court shall hold a hearing on the petition within 24 hours or
7 on the next business day after the petition is submitted, at
8 which hearing the court shall at least consider the matters gov-
9 erned by subsections (4) and (5).

10 (3) Except as provided in subsection (5), if a petition
11 under subsection (2) is authorized, the court may release the
12 juvenile in the custody of either of the juvenile's parents or
13 the juvenile's guardian or custodian under reasonable terms and
14 conditions necessary for either the juvenile's physical health or
15 mental well-being.

16 (4) The court may order a parent, guardian, custodian,
17 NONPARENT ADULT, or other person residing in a child's home to
18 leave the home and, except as the court orders, not subsequently
19 return to the home if all of the following take place:

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

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

26 (c) The court finds on the record that the presence in the
27 home of the person alleged to have committed the abuse presents a

1 substantial risk of harm to the child's life, physical health, or
2 mental well-being.

3 (5) If a petition alleges abuse by a person described in
4 subsection (4), regardless of whether the court orders the
5 alleged abuser to leave the child's home under subsection (4),
6 the court shall not leave the child in or return the child to the
7 child's home or place the child with a person not licensed under
8 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that
9 the conditions of custody at the placement and with the individ-
10 ual with whom the child is placed are adequate to safeguard the
11 child from the risk of harm to the child's life, physical health,
12 or mental well-being.

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

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

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

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

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

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 1973 PA 116, MCL 722.111
11 to 722.128.

12 (c) Participation in an initial services plan is voluntary
13 without a court order.

14 (9) Before or within 7 days after a child is placed in a
15 relative's home, the department shall perform a criminal record
16 check and central registry clearance. If the child is placed in
17 the home of a relative, the court shall order a home study to be
18 performed and a copy of the home study to be submitted to the
19 court not more than 30 days after the placement.

20 (10) In determining placement of a juvenile pending trial,
21 the court shall order the juvenile placed in the most family-like
22 setting available consistent with the needs of the juvenile.

23 (11) If a juvenile is removed from his or her home, the
24 juvenile's parent shall be permitted to have parenting time fre-
25 quently with the juvenile. However, if parenting time, even if
26 supervised, may be harmful to the juvenile, the court shall order
27 the child to have a psychological evaluation or counseling, or

1 both, to determine the appropriateness and the conditions of
2 parenting time. The court may suspend parenting time while the
3 psychological evaluation or counseling is conducted.

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

9 (13) The court shall include in an order placing a child in
10 foster care an order directing the release of information con-
11 cerning the child in accordance with this subsection. If a child
12 is placed in foster care, within 10 days after receipt of a writ-
13 ten request, the agency shall provide the person who is providing
14 the foster care with copies of all initial, updated, and revised
15 case service plans and court orders relating to the child and all
16 of the child's medical, mental HEALTH, and education reports,
17 including reports compiled before the child was placed with that
18 person.

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

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

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

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

3 (a) Harm or threatened harm by a person to a juvenile's
4 health or welfare that occurs through nonaccidental physical or
5 mental injury.

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

9 (c) Sexual exploitation of a juvenile, which includes, but
10 is not limited to, allowing, permitting, or encouraging a juve-
11 nile to engage in prostitution or allowing, permitting, encourag-
12 ing, or engaging in photographing, filming, or depicting a juve-
13 nile engaged in a listed sexual act as defined in section 145c of
14 the Michigan penal code, 1931 PA 328, MCL 750.145c.

15 (d) Maltreatment of a juvenile.

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

1 (2) Except as otherwise provided in subsections (3), (6),
2 (7), (9), (10), and (11), if a child is placed in foster care,
3 the cause shall be reheard not more than 182 days after entry of
4 the order of disposition. The showing shall be recorded steno-
5 graphically at a hearing held by the judge or referee. If the
6 child remains in foster care in the temporary custody of the
7 court following the hearing, the cause shall be further reheard
8 not more than 182 days after the hearing. In conducting the
9 review hearing, the court shall review the performance of the
10 child, the child's parent, guardian, or custodian, the juvenile
11 worker, and other persons providing assistance to the child and
12 his or her family.

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

23 (4) If a child is in a permanent foster family agreement or
24 if a child is placed with a relative and the placement is
25 intended to be permanent, the court shall hold a review hearing
26 not more than 182 days after a permanency planning hearing held
27 pursuant to section 19a of this chapter and every 182 days after

1 that so long as the child is subject to the jurisdiction,
2 control, or supervision of the court, or of the Michigan
3 children's institute or other agency. Upon the motion of any
4 party or at the court's discretion, a review hearing may be
5 accelerated to review any element of the case service plan pre-
6 pared pursuant to section 18f of this chapter.

7 (5) Written notice of a review hearing under subsection (2),
8 (3), or (4) 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) If the parental rights to the child have not been termi-
13 nated, the child's parents.

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

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

18 (F) A NONPARENT ADULT IF THE NONPARENT ADULT IS REQUIRED TO
19 COMPLY WITH THE CASE SERVICE PLAN.

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

22 (H) ~~(g)~~ The attorney for the child, the attorneys for each
23 party, and the prosecuting attorney if the prosecuting attorney
24 has appeared in the case.

25 (I) ~~(h)~~ If the child is 11 years of age or older, the
26 child.

1 (J) ~~(i)~~ Other persons as the court may direct.

2 (6) At a review hearing under subsection (2), (3), or (4),
3 the court shall review on the record all of the following:

4 (a) Compliance with the case service plan PREPARED PURSUANT
5 TO SECTION 18F OF THIS CHAPTER with respect to services provided
6 or offered to the child and the child's parent, guardian, ~~or~~
7 custodian, OR NONPARENT ADULT IF THE NONPARENT ADULT IS REQUIRED
8 TO COMPLY WITH THE CASE SERVICE PLAN and whether the parent,
9 guardian, ~~or~~ custodian, OR NONPARENT ADULT IF THE NONPARENT
10 ADULT IS REQUIRED TO COMPLY WITH THE CASE SERVICE PLAN has com-
11 plied with and benefited from those services.

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

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

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

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

23 (7) After review of the case service plan PREPARED PURSUANT
24 TO SECTION 18F OF THIS CHAPTER, the court shall determine the
25 extent of progress made toward alleviating or mitigating the con-
26 ditions that caused the child to be placed in foster care or that
27 caused the child to remain in foster care. The court may modify

1 any part of the case service plan including, but not limited to,
2 the following:

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

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

10 (8) At a review hearing under subsection (2), (3), or (4),
11 the court shall determine the continuing necessity and appropri-
12 ateness of the child's placement and shall order the return of
13 the child to the custody of the parent, continue the disposi-
14 tional order, modify the dispositional order, or enter a new dis-
15 positional order.

16 (9) If in a proceeding under section 2(b) of this chapter a
17 child is placed in foster care, the court shall determine at the
18 dispositional hearing and each review hearing whether the cause
19 should be reviewed before the next review hearing required by
20 subsection (2), (3), or (4). In making this determination, the
21 court shall consider, but IS not ~~be~~ limited to, all of the
22 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 (2), (3), or (4).

1 (10) 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 (11) 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, relative with
11 whom a child is placed, or guardian ad litem, in addition to any
12 other evidence, including the appropriateness of parenting time,
13 offered at the hearing.

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

1 permanent custody of the court. The court shall state on the
2 record or in writing its findings of fact and conclusions of law
3 with respect to whether or not parental rights should be
4 terminated. The court shall issue an opinion or order regarding
5 a petition for termination of parental rights within 70 days
6 after the commencement of the initial hearing on the petition.
7 However, the court's failure to issue an opinion within 70 days
8 does not dismiss the petition.

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

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

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

15 (c) The child's parents.

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

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

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

22 (g) The attorney for the child and the attorneys for all
23 parties.

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

25 (i) The prosecutor.

26 (j) A NONPARENT ADULT.

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

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

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

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

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

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

22 (ii) The parent who had the opportunity to prevent the phys-
23 ical injury or physical or sexual abuse failed to do so and the
24 court finds that there is a reasonable likelihood that the child
25 will suffer injury or abuse in the foreseeable future if placed
26 in the parent's home.

1 (iii) A NONPARENT ADULT'S ACT CAUSED THE PHYSICAL INJURY OR
2 PHYSICAL OR SEXUAL ABUSE AND THE COURT FINDS THAT THERE IS A
3 REASONABLE LIKELIHOOD THAT THE CHILD WILL SUFFER FROM INJURY OR
4 ABUSE BY THE NONPARENT ADULT IN THE FORESEEABLE FUTURE IF PLACED
5 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 age of
13 the child.

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

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

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

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

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

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

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

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

1 and custody within a reasonable time considering the age of the
2 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 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 (4) If a petition to terminate the parental rights to a
5 child is filed, the court may enter an order terminating parental
6 rights under subsection (3) at the initial dispositional
7 hearing.

8 (5) If the court finds that there are grounds for termina-
9 tion of parental rights, the court shall order termination of
10 parental rights and order that additional efforts for reunifica-
11 tion of the child with the parent not be made, unless the court
12 finds that termination of parental rights to the child is clearly
13 not in the child's best interests.

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