

REPRINT
SUBSTITUTE FOR
HOUSE BILL NO. 5145
(As passed the House, February 9, 2000)

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 1, 13b, 19a, 19b, and 19c of chapter XIIIA
(MCL 712A.1, 712A.13b, 712A.19a, 712A.19b, and 712A.19c), section
1 as amended by 1998 PA 478, section 13b as added and section 19a
as amended by 1997 PA 163, section 19b as amended by 1998 PA 530,
and section 19c as amended by 1998 PA 479.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA
2 Sec. 1. (1) As used in this chapter:
3 (a) "Civil infraction" means that term as defined in
4 section 113 of the revised judicature act of 1961, 1961 PA 236,
5 MCL 600.113.

1 (b) "County juvenile agency" means that term as defined in
2 section 2 of the county juvenile agency act, 1998 PA 518, MCL
3 45.622.

4 (c) "Court" means the family division of circuit court.

5 (D) "MCI" MEANS THE MICHIGAN CHILDREN'S INSTITUTE CREATED
6 AND ESTABLISHED BY 1935 PA 220, MCL 400.201 TO 400.214.

7 (2) Except as otherwise provided, proceedings under this
8 chapter are not criminal proceedings.

9 (3) This chapter shall be liberally construed so that each
10 juvenile coming within the court's jurisdiction receives the
11 care, guidance, and control, preferably in his or her own home,
12 conducive to the juvenile's welfare and the best interest of the
13 state. If a juvenile is removed from the control of his or her
14 parents, the juvenile shall be placed in care as nearly as possi-
15 ble equivalent to the care that should have been given to the
16 juvenile by his or her parents.

17 Sec. 13b. (1) If a child under the court's jurisdiction
18 under section 2(b) of this chapter, OR UNDER MCI JURISDICTION,
19 CONTROL, OR SUPERVISION, is placed in foster care, the agency
20 shall not change the child's placement except under 1 of the fol-
21 lowing circumstances:

22 (a) The person providing the foster care requests or agrees
23 to the change.

24 (b) Even though the person providing the foster care objects
25 to a proposed change in placement, 1 of the following applies:

26 (i) The court orders the child returned home.

1 (ii) The change in placement is less than 30 days after the
2 child's initial removal from his or her home.

3 (iii) The change in placement is less than 90 days after the
4 child's initial removal from his or her home, and the new place-
5 ment is with a relative.

6 (iv) The change in placement is in accordance with other
7 provisions of this section.

8 (2) Except as provided in ~~subsection~~ SUBSECTIONS (1) AND
9 (7), before a change in foster care placement takes effect, the
10 agency shall do all of the following:

11 (a) Notify the state court administrative office of the pro-
12 posed change in placement.

13 (b) Notify the foster parents of the intended change in
14 placement and inform them that, if they disagree with the deci-
15 sion, they may appeal within 3 days to a foster care review
16 board. A foster parent may appeal orally, but must submit the
17 appeal in writing immediately following the oral appeal. The
18 agency shall provide the foster parents with the address and
19 telephone number of a foster care review board with jurisdiction
20 over the child.

21 (c) Maintain the current placement for not less than the
22 time for appeal to the foster care review board and if a foster
23 parent appeals, until the foster care review board
24 determination.

25 (3) Upon receipt of an appeal from foster parents under sub-
26 section (2) or (7), the foster care review board shall
27 investigate the change in foster care placement and shall report

1 its findings and recommendations within 3 days to the court OR,
2 IF THE CHILD IS UNDER MCI JURISDICTION, CONTROL, OR SUPERVISION,
3 THE MCI SUPERINTENDENT, TO the foster care parents, TO the par-
4 ents, and TO the agency.

5 (4) If after investigation the foster care review board
6 determines that the move is in the child's best interests, the
7 agency may move the child.

8 (5) If after investigation the foster care review board
9 determines that the move is not in the child's best interest, the
10 agency shall maintain the current placement until a finding and
11 order by the court OR, IF THE CHILD IS UNDER MCI JURISDICTION,
12 CONTROL, OR SUPERVISION, A DECISION BY THE MCI SUPERINTENDENT.
13 However, the agency shall not return a child to a placement from
14 which the child was removed under subsection (7) unless the court
15 orders that placement's restoration under subsection (6) OR THE
16 MCI SUPERINTENDENT APPROVES THAT PLACEMENT'S RESTORATION UNDER
17 THIS SUBSECTION. The foster care review board shall notify the
18 court, OR IF THE CHILD IS UNDER MCI JURISDICTION, CONTROL, OR
19 SUPERVISION, THE MCI SUPERINTENDENT, about the board's and
20 agency's disagreement. The court shall set a hearing date and
21 provide notice to the foster parents, each interested party, and
22 the prosecuting attorney if the prosecuting attorney has appeared
23 in the case. The court shall set the hearing no sooner than 7
24 and no later than 14 days after receipt of the notice from the
25 foster care review board. The rules of evidence do not apply to
26 a hearing required by this subsection. WITHIN 14 DAYS AFTER
27 NOTIFICATION UNDER THIS SUBSECTION, THE MCI SUPERINTENDENT SHALL

1 MAKE A DECISION REGARDING THE CHILD'S PLACEMENT AND SHALL INFORM
2 EACH INTERESTED PARTY WHAT THE DECISION IS.

3 (6) After hearing testimony from the agency and any other
4 interested party and considering any other evidence bearing upon
5 the proposed change in placement, the court shall order the con-
6 tinuation or restoration of the placement unless the court finds
7 that the proposed change in placement is in the child's best
8 interests.

9 (7) If the agency has reasonable cause to believe that the
10 child has suffered sexual abuse or nonaccidental physical injury,
11 or that there is substantial risk of harm to the child's emo-
12 tional well-being, the agency may change the child's foster care
13 placement without complying with subsection (1) or (2)(b) or
14 (c). The agency shall include in the child's file documentation
15 of its justification for action under this subsection. If a
16 foster parent objects to the removal of a child under this sub-
17 section, he or she may appeal to the foster care review board
18 within 3 days after the child's removal. The foster parent may
19 appeal orally, but must submit the appeal in writing immediately
20 following the oral appeal.

21 (8) At the time of or immediately following a child's
22 removal under subsection (7), the agency shall inform the foster
23 parents about the removal and that, if they disagree with the
24 decision, they may appeal within 3 days to a foster care review
25 board in the manner provided in subsection (7). The agency shall
26 provide the foster parents with the address and telephone number
27 of a foster care review board with jurisdiction over the child.

1 Sec. 19a. (1) ~~—If—~~ SUBJECT TO SUBSECTION (2), IF a child
2 remains in foster care and parental rights to the child have not
3 been terminated, the court shall conduct a permanency planning
4 hearing ~~not more than 364 days~~ WITHIN 1 YEAR after an original
5 petition has been filed. Except as otherwise provided in section
6 19(4) OF THIS CHAPTER, the court shall hold a review hearing not
7 more than 91 days after the original permanency planning hearing
8 and every 91 days after that so long as the child is subject to
9 the jurisdiction, control, or supervision of the court, or of the
10 Michigan children's institute or other agency. A permanency
11 planning hearing may be combined with a review hearing held under
12 section 19(3) of this chapter.

13 (2) THE COURT SHALL CONDUCT A PERMANENCY PLANNING HEARING
14 WITHIN 28 DAYS AFTER A PETITION IS ADJUDICATED AND THE PARENT IS
15 FOUND TO HAVE ABUSED THE CHILD OR A SIBLING OF THE CHILD AND THE
16 ABUSE INCLUDED 1 OR MORE OF THE FOLLOWING:

17 (A) ABANDONMENT OF A YOUNG CHILD.

18 (B) CRIMINAL SEXUAL CONDUCT INVOLVING PENETRATION, ATTEMPTED
19 PENETRATION, OR ASSAULT WITH INTENT TO PENETRATE.

20 (C) BATTERING, TORTURE, OR OTHER SEVERE PHYSICAL ABUSE.

21 (D) LOSS OR SERIOUS IMPAIRMENT OF AN ORGAN OR LIMB.

22 (E) LIFE THREATENING INJURY.

23 (F) MURDER OR ATTEMPTED MURDER.

24 (G) VOLUNTARY MANSLAUGHTER.

25 (H) AIDING, ABETTING, ATTEMPTING, CONSPIRING, OR SOLICITING
26 THE COMMISSION OF MURDER OR VOLUNTARY MANSLAUGHTER.

1 (3) IF A CHILD REMAINS IN FOSTER CARE AND PARENTAL RIGHTS TO
2 THE CHILD HAVE NOT BEEN TERMINATED, THE COURT SHALL CONDUCT A
3 PERMANENCY PLANNING HEARING WITHIN 1 YEAR AFTER AN INITIAL HEAR-
4 ING UNDER SUBSECTION (1) OR (2), AND WITHIN 1 YEAR AFTER EACH
5 SUBSEQUENT HEARING.

6 (4) ~~-(2)-~~ A permanency planning hearing shall be conducted
7 to review the status of the child and the progress being made
8 toward the child's return home or to show why the child should
9 not be placed in the permanent custody of the court.

10 (5) ~~-(3)-~~ Not less than 14 days before a permanency planning
11 hearing, written notice of the hearing and a statement of the
12 purposes of the hearing, including a notice that the hearing may
13 result in further proceedings to terminate parental rights, shall
14 be served upon all of the following:

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

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

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

20 (d) If the child has a guardian, the guardian for the
21 child.

22 (e) If the child has a guardian ad litem, the guardian ad
23 litem for the child.

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

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

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

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

6 (6) ~~-(4)-~~ If parental rights to the child have not been ter-
7 minated and the court determines at a permanency planning hearing
8 that the return of the child to his or her parent would not cause
9 a substantial risk of harm to the child's life, physical health,
10 or mental well-being, the court shall order the child returned to
11 his or her parent. In determining whether the return of the
12 child would cause a substantial risk of harm to the child, the
13 court shall view the failure of the parent to substantially
14 comply with the terms and conditions of the case service plan
15 prepared under section 18f of this chapter as evidence that
16 return of the child to his or her parent would cause a substan-
17 tial risk of harm to the child's life, physical health, or mental
18 well-being. In addition to considering conduct of the parent as
19 evidence of substantial risk of harm, the court shall consider
20 any condition or circumstance of the child that may be evidence
21 that a return to the parent would cause a substantial risk of
22 harm to the child's life, physical health, or mental well-being.

23 (7) ~~-(5)-~~ If the court determines at a permanency planning
24 hearing that the child should not be returned to his or her
25 parent, the court shall order the agency to initiate proceedings
26 to terminate parental rights to the child not later than 42 days
27 after the permanency planning hearing, unless the court finds

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

3 (8) ~~-(6)-~~ If the agency demonstrates under subsection ~~-(5)-~~
4 (7) that initiating the termination of parental rights to the
5 child is clearly not in the child's best interests, then the
6 court shall order either of the following alternative placement
7 plans:

8 (a) If the court determines that other permanent placement
9 is not possible, the child's placement in foster care shall con-
10 tinue for a limited period to be stated by the court.

11 (b) If the court determines that it is in the child's best
12 interests, the child's placement in foster care shall continue on
13 a long-term basis.

14 (9) ~~-(7)-~~ In making the determinations under this section,
15 the court shall consider any written or oral information concern-
16 ing the child from the child's parent, guardian, custodian,
17 foster parent, child caring institution, relative with whom the
18 child is placed, or guardian ad litem in addition to any other
19 evidence, including the appropriateness of parenting time,
20 offered at the hearing.

21 Sec. 19b. (1) Except as provided in subsection (4), if a
22 child remains in foster care in the temporary custody of the
23 court following a review hearing under section 19(3) of this
24 chapter or a permanency planning hearing under section 19a of
25 this chapter or if a child remains in the custody of a guardian
26 or limited guardian, upon petition of the prosecuting attorney,
27 whether or not the prosecuting attorney is representing or acting

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

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

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

21 (b) The child's foster parent or custodian.

22 (c) The child's parents.

23 (d) If the child has a guardian, the child's guardian.

24 (e) If the child has a guardian ad litem, the child's guard-
25 ian ad litem.

26 (f) If tribal affiliation has been determined, the Indian
27 tribe's elected leader.

1 (g) The child's attorney and each party's attorney.

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

3 (i) The prosecutor.

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

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

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

15 (ii) The child's parent has deserted the child for 91 or
16 more days and has not sought custody of the child during that
17 period.

18 (b) The child or a sibling of the child has suffered physi-
19 cal injury or physical or sexual abuse under 1 or more of the
20 following circumstances:

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

25 (ii) The parent who had the opportunity to prevent the phys-
26 ical injury or physical or sexual abuse failed to do so and the
27 court finds that there is a reasonable likelihood that the child

1 will suffer injury or abuse in the foreseeable future if placed
2 in the parent's home.

3 (iii) A nonparent adult's act caused the physical injury or
4 physical or sexual abuse and the court finds that there is a rea-
5 sonable likelihood that the child will suffer from injury or
6 abuse by the nonparent adult in the foreseeable future if placed
7 in the parent's home.

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

12 (i) The conditions that led to the adjudication continue to
13 exist and there is no reasonable likelihood that the conditions
14 will be rectified within a reasonable time considering the
15 child's age.

16 (ii) Other conditions exist that cause the child to come
17 within the court's jurisdiction, the parent has received recom-
18 mendations to rectify those conditions, the conditions have not
19 been rectified by the parent after the parent has received notice
20 and a hearing and has been given a reasonable opportunity to rec-
21 tify the conditions, and there is no reasonable likelihood that
22 the conditions will be rectified within a reasonable time consid-
23 ering the child's age.

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

1 described in section 424a of the revised probate code, 1978 PA
2 642, MCL 700.424a, OR SECTION 5205 OF THE ESTATES AND PROTECTED
3 INDIVIDUALS CODE, 1998 PA 386, MCL 700.5205, regarding the child
4 to the extent that the noncompliance has resulted in a disruption
5 of the parent-child relationship.

6 (e) The child has a guardian under the revised probate code,
7 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED
8 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and the
9 parent has substantially failed, without good cause, to comply
10 with a court-structured plan described in section 424b or 424c of
11 the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,
12 OR SECTION 5207 OR 5209 OF THE ESTATES AND PROTECTED INDIVIDUALS
13 CODE, 1998 PA 386, MCL 700.5207 AND 700.5209, regarding the child
14 to the extent that the noncompliance has resulted in a disruption
15 of the parent-child relationship.

16 (f) The child has a guardian under the revised probate code,
17 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED
18 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and both
19 of the following have occurred:

20 (i) The parent, having the ability to support or assist in
21 supporting the minor, has failed or neglected, without good
22 cause, to provide regular and substantial support for the minor
23 for a period of 2 years or more before the filing of the petition
24 or, if a support order has been entered, has failed to substan-
25 tially comply with the order for a period of 2 years or more
26 before the filing of the petition.

1 (ii) The parent, having the ability to visit, contact, or
2 communicate with the minor, has regularly and substantially
3 failed or neglected, without good cause, to do so for a period of
4 2 years or more before the filing of the petition.

5 (g) The parent, without regard to intent, fails to provide
6 proper care or custody for the child and there is no reasonable
7 expectation that the parent will be able to provide proper care
8 and custody within a reasonable time considering the child's
9 age.

10 (h) The parent is imprisoned for such a period that the
11 child will be deprived of a normal home for a period exceeding 2
12 years, and the parent has not provided for the child's proper
13 care and custody, and there is no reasonable expectation that the
14 parent will be able to provide proper care and custody within a
15 reasonable time considering the child's age.

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

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

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

25 (i) Abandonment of a young child.

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

- 1 (iii) Battering, torture, or other severe physical abuse.
2 (iv) Loss or serious impairment of an organ or limb.
3 (v) Life threatening injury.
4 (vi) Murder or attempted murder.
5 (vii) VOLUNTARY MANSLAUGHTER.
6 (viii) AIDING AND ABETTING, ATTEMPTING TO COMMIT, CONSPIRING
7 TO COMMIT, OR SOLICITING MURDER OR VOLUNTARY MANSLAUGHTER.
8 (l) The parent's rights to another child were terminated as
9 a result of proceedings under section 2(b) of this chapter or a
10 similar law of another state.
11 (m) The parent's rights to another child were voluntarily
12 terminated following the initiation of proceedings under section
13 2(b) of this chapter or a similar law of another state.
14 (n) The parent is convicted of 1 or more of the following,
15 and the court determines that termination is in the child's best
16 interests because continuing the parent-child relationship with
17 the parent would be harmful to the child:
18 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,
19 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,
20 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.
21 (ii) A violation of a criminal statute, an element of which
22 is the use of force or the threat of force, and which subjects
23 the parent to sentencing under section 10, 11, or 12 of chapter
24 IX of the code of criminal procedure, 1927 PA 175, MCL 769.10,
25 769.11, and 769.12.

1 (iii) A federal law or law of another state with provisions
2 substantially similar to a crime or procedure listed or described
3 in subparagraph (i) or (ii).

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. If a petition to terminate parental rights to a child
8 is filed, parenting time for a parent who is a subject of the
9 petition is automatically suspended and, except as otherwise pro-
10 vided in this subsection, remains suspended at least until a
11 decision is issued on the termination petition. If a parent
12 whose parenting time is suspended under this subsection estab-
13 lishes, and the court determines, that parenting time will not
14 harm the child, the court may order parenting time in the amount
15 and under the conditions the court determines appropriate.

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

22 (6) As used in this section, "concerned person" means a
23 foster parent with whom the child is living or has lived who has
24 specific knowledge of behavior by the parent constituting grounds
25 for termination under subsection (3)(b) or (g) and who has con-
26 tacted the family independence agency, the prosecuting attorney,
27 the child's attorney, and the child's guardian ad litem, if any,

1 and is satisfied that none of these persons intend to file a
2 petition under this section.

3 Sec. 19c. (1) Except as provided in section 19(4) AND
4 SUBJECT TO SUBSECTION (2), if a child remains in foster care fol-
5 lowing the termination of parental rights to the child, the court
6 shall conduct a hearing not more than 91 days after the termina-
7 tion of parental rights and at least every 91 days after that
8 hearing. ~~to review the child's~~ AT A HEARING UNDER THIS SECTION,
9 THE COURT SHALL REVIEW ALL OF THE FOLLOWING:

10 (A) THE APPROPRIATENESS OF THE PERMANENCY PLANNING GOAL FOR
11 THE CHILD.

12 (B) THE APPROPRIATENESS OF THE CHILD'S placement in foster
13 care. ~~and the progress~~

14 (C) THE REASONABLE EFFORTS being made ~~toward the child's~~
15 TO PLACE THE CHILD FOR adoption or IN other permanent placement
16 IN A TIMELY MANNER.

17 (2) ~~Except as otherwise provided in this subsection, this~~
18 THIS SECTION APPLIES ONLY TO A CHILD'S CASE IN WHICH PARENTAL
19 RIGHTS TO THE CHILD WERE EITHER TERMINATED AS THE RESULT OF A
20 PROCEEDING UNDER SECTION 2(B) OF THIS CHAPTER OR A SIMILAR LAW OF
21 ANOTHER STATE OR TERMINATED VOLUNTARILY FOLLOWING THE INITIATION
22 OF A PROCEEDING UNDER SECTION 2(B) OF THIS CHAPTER OR A SIMILAR
23 LAW OF ANOTHER STATE. THIS section applies as long as the child
24 is subject to the jurisdiction, control, or supervision of the
25 court or of the Michigan children's institute or other agency.
26 ~~This section does not apply to a court that is providing to a~~
27 ~~child within the court's jurisdiction under section 2(b) of this~~

~~1 chapter foster care home services subject to the court's
2 supervision. However, this section does apply to that court
3 beginning January 1, 1990 or when the court is no longer provid-
4 ing to a child within the court's jurisdiction under section 2(b)
5 of this chapter foster care home services subject to the court's
6 supervision, whichever occurs first.~~