



HOUSE BILL No. 5145

November 30, 1999, Introduced by Rep. Voorhees and referred to the Committee on Family and Children Services.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

Sec. 13b. (1) If a child under the court's jurisdiction under section 2(b) of this chapter is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

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

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

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

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

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

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

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

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

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

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

1 (3) Upon receipt of an appeal from foster parents under
2 subsection (2) or (7), the foster care review board shall inves-
3 tigate the change in foster care placement and shall report its
4 findings and recommendations within 3 days to the court, the
5 foster care parents, the parents, and the agency.

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

9 (5) If after investigation the foster care review board
10 determines that the move is not in the child's best interest, the
11 agency shall maintain the current placement until a finding and
12 order by the court. However, the agency shall not return a child
13 to a placement from which the child was removed under
14 subsection (7) unless the court orders that placement's restora-
15 tion under subsection (6). The foster care review board shall
16 notify the court about the board's and agency's disagreement.
17 The court shall set a hearing date and provide notice to the
18 foster parents, each interested party, and the prosecuting attor-
19 ney if the prosecuting attorney has appeared in the case. The
20 court shall set the hearing no sooner than 7 and no later than 14
21 days after receipt of the notice from the foster care review
22 board. The rules of evidence do not apply to a hearing required
23 by this subsection.

24 (6) After hearing testimony from the agency and any other
25 interested party and considering any other evidence bearing upon
26 the proposed change in placement, the court shall order the
27 continuation or restoration of the placement unless the court

1 finds that the proposed change in placement is in the child's
2 best interests.

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

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

22 Sec. 19a. (1) ~~if~~ SUBJECT TO SUBSECTION (2), IF a child
23 remains in foster care and parental rights to the child have not
24 been terminated, the court shall conduct a permanency planning
25 hearing ~~not more than 364 days~~ WITHIN 1 YEAR after an original
26 petition has been filed. Except as otherwise provided in section
27 19(4) OF THIS CHAPTER, the court shall hold a review hearing not

1 more than 91 days after the original permanency planning hearing
2 and every 91 days after that so long as the child is subject to
3 the jurisdiction, control, or supervision of the court, or of the
4 Michigan children's institute or other agency. A permanency
5 planning hearing may be combined with a review hearing held under
6 section 19(3) of this chapter.

7 (2) THE COURT SHALL CONDUCT A PERMANENCY PLANNING HEARING
8 WITHIN 28 DAYS AFTER A PETITION IS FILED IN WHICH THE PARENT IS
9 ALLEGED TO HAVE ABUSED THE CHILD OR A SIBLING OF THE CHILD AND
10 THE ABUSE INCLUDED 1 OR MORE OF THE FOLLOWING:

11 (A) ABANDONMENT OF A YOUNG CHILD.

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

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

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

16 (E) LIFE THREATENING INJURY.

17 (F) MURDER OR ATTEMPTED MURDER.

18 (G) VOLUNTARY MANSLAUGHTER.

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

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

26 (4) ~~(2)~~ A permanency planning hearing shall be conducted
27 to review the status of the child and the progress being made

1 toward the child's return home or to show why the child should
2 not be placed in the permanent custody of the court.

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

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

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

11 (c) If the parental rights to the child have not been termi-
12 nated, 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, the attorneys for each
20 party, and the prosecuting attorney if the prosecuting attorney
21 has appeared in the case.

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

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

24 (6) ~~-(4)-~~ If parental rights to the child have not been ter-
25 minated and the court determines at a permanency planning hearing
26 that the return of the child to his or her parent would not cause
27 a substantial risk of harm to the child's life, physical health,

1 or mental well-being, the court shall order the child returned to
2 his or her parent. In determining whether the return of the
3 child would cause a substantial risk of harm to the child, the
4 court shall view the failure of the parent to substantially
5 comply with the terms and conditions of the case service plan
6 prepared under section 18f of this chapter as evidence that
7 return of the child to his or her parent would cause a substan-
8 tial risk of harm to the child's life, physical health, or mental
9 well-being. In addition to considering conduct of the parent as
10 evidence of substantial risk of harm, the court shall consider
11 any condition or circumstance of the child that may be evidence
12 that a return to the parent would cause a substantial risk of
13 harm to the child's life, physical health, or mental well-being.

14 (7) ~~(5)~~ If the court determines at a permanency planning
15 hearing that the child should not be returned to his or her
16 parent, the court shall order the agency to initiate proceedings
17 to terminate parental rights to the child not later than 42 days
18 after the permanency planning hearing, unless the court finds
19 that initiating the termination of parental rights to the child
20 is clearly not in the child's best interests.

21 (8) ~~(6)~~ If the agency demonstrates under subsection ~~(5)~~
22 (7) that initiating the termination of parental rights to the
23 child is clearly not in the child's best interests, then the
24 court shall order either of the following alternative placement
25 plans:

1 (a) If the court determines that other permanent placement
2 is not possible, the child's placement in foster care shall
3 continue for a limited period to be stated by the court.

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

7 (9) ~~(7)~~ In making the determinations under this section,
8 the court shall consider any written or oral information concern-
9 ing the child from the child's parent, guardian, custodian,
10 foster parent, child caring institution, relative with whom the
11 child is placed, or guardian ad litem in addition to any other
12 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 petition
22 of the child, guardian, custodian, concerned person as defined in
23 subsection (6), agency, or children's ombudsman as authorized in
24 section 7 of the children's ombudsman act, 1994 PA 204, MCL
25 722.927, 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 child's foster parent or custodian.

15 (c) The child's parents.

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

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

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

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

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

23 (i) The prosecutor.

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

1 (a) The child has been deserted under either of the
2 following circumstances:

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

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

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

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

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

24 (iii) A nonparent adult's act caused the physical injury or
25 physical or sexual abuse and the court finds that there is a rea-
26 sonable likelihood that the child will suffer from injury or

1 abuse by the nonparent adult in the foreseeable future if placed
2 in the parent's home.

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

7 (i) The conditions that led to the adjudication continue to
8 exist and there is no reasonable likelihood that the conditions
9 will be rectified within a reasonable time considering the
10 child's age.

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

19 (d) The child's parent has placed the child in a limited
20 guardianship under section 424a of the revised probate code, 1978
21 PA 642, MCL 700.424a, and has substantially failed, without good
22 cause, to comply with a limited guardianship placement plan
23 described in section 424a of the revised probate code, 1978 PA
24 642, MCL 700.424a, OR SECTION 5205 OF THE ESTATES AND PROTECTED
25 INDIVIDUALS CODE, 1998 PA 386, MCL 700.5205, regarding the child
26 to the extent that the noncompliance has resulted in a disruption
27 of the parent-child relationship.

1 (e) The child has a guardian under the revised probate code,
2 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED
3 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and the
4 parent has substantially failed, without good cause, to comply
5 with a court-structured plan described in section 424b or 424c of
6 the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,
7 OR SECTION 5207 OR 5209 OF THE ESTATES AND PROTECTED INDIVIDUALS
8 CODE, 1998 PA 386, MCL 700.5207 AND 700.5209, regarding the child
9 to the extent that the noncompliance has resulted in a disruption
10 of the parent-child relationship.

11 (f) The child has a guardian under the revised probate code,
12 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED
13 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and both
14 of the following have occurred:

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

22 (ii) The parent, having the ability to visit, contact, or
23 communicate with the minor, has regularly and substantially
24 failed or neglected, without good cause, to do so for a period of
25 2 years or more before the filing of the petition.

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

1 expectation that the parent will be able to provide proper care
2 and custody within a reasonable time considering the child's
3 age.

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

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

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

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

19 (i) Abandonment of a young child.

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

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

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

24 (v) Life threatening injury.

25 (vi) Murder or attempted murder.

26 (vii) VOLUNTARY MANSLAUGHTER.

1 (viii) AIDING AND ABETTING, ATTEMPTING TO COMMIT, CONSPIRING
2 TO COMMIT, OR SOLICITING MURDER OR VOLUNTARY MANSLAUGHTER.

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

6 (m) The parent's rights to another child were voluntarily
7 terminated following the initiation of proceedings under section
8 2(b) of this chapter or a similar law of another state.

9 (n) The parent is convicted of 1 or more of the following,
10 and the court determines that termination is in the child's best
11 interests because continuing the parent-child relationship with
12 the parent would be harmful to the child:

13 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,
14 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,
15 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

16 (ii) A violation of a criminal statute, an element of which
17 is the use of force or the threat of force, and which subjects
18 the parent to sentencing under section 10, 11, or 12 of chapter
19 IX of the code of criminal procedure, 1927 PA 175, MCL 769.10,
20 769.11, and 769.12.

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

24 (4) If a petition to terminate the parental rights to a
25 child is filed, the court may enter an order terminating parental
26 rights under subsection (3) at the initial dispositional
27 hearing. If a petition to terminate parental rights to a child

1 is filed, parenting time for a parent who is a subject of the
2 petition is automatically suspended and, except as otherwise pro-
3 vided in this subsection, remains suspended at least until a
4 decision is issued on the termination petition. If a parent
5 whose parenting time is suspended under this subsection estab-
6 lishes, and the court determines, that parenting time will not
7 harm the child, the court may order parenting time in the amount
8 and under the conditions the court determines appropriate.

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

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