

HOUSE BILL No. 4535

March 10, 2009, Introduced by Reps. Byrnes and Lori and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 19b of chapter XIIA (MCL 712A.19b), as amended
by 2008 PA 199.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIA

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

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1 prosecuting attorney is representing or acting as legal consultant
2 to the agency or any other party, or petition of the child,
3 guardian, custodian, concerned person as defined in subsection (6),
4 agency, or children's ombudsman as authorized in section 7 of the
5 children's ombudsman act, 1994 PA 204, MCL 722.927, the court shall
6 hold a hearing to determine if the parental rights to a child
7 should be terminated and, if all parental rights to the child are
8 terminated, the child placed in permanent custody of the court. The
9 court shall state on the record or in writing its findings of fact
10 and conclusions of law with respect to whether or not parental
11 rights should be terminated. The court shall issue an opinion or
12 order regarding a petition for termination of parental rights
13 within 70 days after the commencement of the initial hearing on the
14 petition. 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 the
17 parental rights to a child should be terminated, written notice of
18 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 guardian
25 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 any of the following
8 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 child
11 during that period. For the purposes of this section, a parent is
12 unidentifiable if the parent's identity cannot be ascertained after
13 reasonable efforts have been made to locate and identify the
14 parent.

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

17 (iii) The child's parent voluntarily surrendered the child to an
18 emergency service provider under chapter XII and did not petition
19 the court to regain custody within 28 days after surrendering the
20 child.

21 (b) The child or a sibling of the child has suffered physical
22 injury or physical or sexual abuse under 1 or more of the following
23 circumstances:

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

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

6 (iii) A nonparent adult's act caused the physical injury or
7 physical or sexual abuse and the court finds that there is a
8 reasonable likelihood that the child will suffer from injury or
9 abuse by the nonparent adult in the foreseeable future if placed in
10 the parent's home.

11 (c) The parent was a respondent in a proceeding brought under
12 this chapter, 182 or more days have elapsed since the issuance of
13 an initial dispositional order, and the court, by clear and
14 convincing evidence, finds either of the following:

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

19 (ii) Other conditions exist that cause the child to come within
20 the court's jurisdiction, the parent has received recommendations
21 to rectify those conditions, the conditions have not been rectified
22 by the parent after the parent has received notice and a hearing
23 and has been given a reasonable opportunity to rectify the
24 conditions, and there is no reasonable likelihood that the
25 conditions will be rectified within a reasonable time considering
26 the child's age.

27 (d) The child's parent has placed the child in a limited

1 guardianship under section 5205 of the estates and protected
2 individuals code, 1998 PA 386, MCL 700.5205, and has substantially
3 failed, without good cause, to comply with a limited guardianship
4 placement plan described in section 5205 of the estates and
5 protected individuals code, 1998 PA 386, MCL 700.5205, regarding
6 the child to the extent that the noncompliance has resulted in a
7 disruption of the parent-child relationship.

8 (e) The child has a guardian under the estates and protected
9 individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the
10 parent has substantially failed, without good cause, to comply with
11 a court-structured plan described in section 5207 or 5209 of the
12 estates and protected individuals code, 1998 PA 386, MCL 700.5207
13 and 700.5209, regarding the child to the extent that the
14 noncompliance has resulted in a disruption of the parent-child
15 relationship.

16 (f) The child has a guardian under the estates and protected
17 individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both
18 of the following have occurred:

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

26 (ii) The parent, having the ability to visit, contact, or
27 communicate with the minor, has regularly and substantially failed

1 or neglected, without good cause, to do so for a period of 2 years
2 or more before the filing of the petition.

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

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

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

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

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

22 (i) Abandonment of a young child.

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

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

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

27 (v) Life threatening injury.

1 (vi) Murder or attempted murder.

2 (vii) Voluntary manslaughter.

3 (viii) Aiding and abetting, attempting to commit, conspiring to
4 commit, or soliciting murder or voluntary manslaughter.

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

8 (m) The parent's rights to another child were voluntarily
9 terminated following the initiation of proceedings under section
10 2(b) of this chapter or a similar law of another state ~~—AND THE~~
11 **PROCEEDING INVOLVED ABUSE THAT INCLUDED 1 OR MORE OF THE FOLLOWING:**

12 (i) **ABANDONMENT OF A YOUNG CHILD.**

13 (ii) **CRIMINAL SEXUAL CONDUCT INVOLVING PENETRATION, ATTEMPTED**
14 **PENETRATION, OR ASSAULT WITH INTENT TO PENETRATE.**

15 (iii) **BATTERING, TORTURE, OR OTHER SEVERE PHYSICAL ABUSE.**

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

17 (v) **LIFE-THREATENING INJURY.**

18 (vi) **MURDER OR ATTEMPTED MURDER.**

19 (vii) **VOLUNTARY MANSLAUGHTER.**

20 (viii) **AIDING AND ABETTING, ATTEMPTING TO COMMIT, CONSPIRING TO**
21 **COMMIT, OR SOLICITING MURDER OR VOLUNTARY MANSLAUGHTER.**

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

26 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or
27 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317,

1 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

2 (ii) A violation of a criminal statute that includes as an
3 element the use of force or the threat of force and that subjects
4 the parent to sentencing under section 10, 11, or 12 of chapter IX
5 of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
6 and 769.12.

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

10 (4) If a petition to terminate the parental rights to a child
11 is filed, the court may enter an order terminating parental rights
12 under subsection (3) at the initial dispositional hearing. If a
13 petition to terminate parental rights to a child is filed, the
14 court may suspend parenting time for a parent who is a subject of
15 the petition.

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

21 (6) As used in this section, "concerned person" means a foster
22 parent with whom the child is living or has lived who has specific
23 knowledge of behavior by the parent constituting grounds for
24 termination under subsection (3)(b) or (g) and who has contacted
25 the ~~family independence agency~~ **DEPARTMENT**, the prosecuting
26 attorney, the child's attorney, and the child's guardian ad litem,
27 if any, and is satisfied that none of these persons intend to file

1 a petition under this section.