

# SENATE BILL No. 1576

November 4, 2010, Introduced by Senator JACOBS and referred to the Committee on Families and Human Services.

A bill to amend 1939 PA 288, entitled  
"Probate code of 1939,"  
by amending sections 19a and 19c of chapter XIIA (MCL 712A.19a and 712A.19c), section 19a as amended by 2008 PA 200 and section 19c as amended by 2008 PA 203.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER XIIA

Sec. 19a. (1) Subject to subsection (2), if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing

1 during the continuation of foster care. If proper notice for a  
2 permanency planning hearing is provided, a permanency planning  
3 hearing may be combined with a review hearing held under section  
4 19(2) to (4) of this chapter, but no later than 12 months from the  
5 removal of the child from his or her home, from the preceding  
6 permanency planning hearing, or from the number of days required  
7 under subsection (2). A permanency planning hearing shall not be  
8 canceled or delayed beyond the number of months required by this  
9 subsection or days as required under subsection (2), regardless of  
10 whether there is a petition for termination of parental rights  
11 pending.

12 (2) The court shall conduct a permanency planning hearing  
13 within 30 days after there is a judicial determination that  
14 reasonable efforts to reunite the child and family are not  
15 required. Reasonable efforts to reunify the child and family must  
16 be made in all cases except if any of the following apply:

17 (a) There is a judicial determination that the parent has  
18 subjected the child to aggravated circumstances as provided in  
19 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL  
20 722.638.

21 (b) The parent has been convicted of 1 or more of the  
22 following:

23 (i) Murder of another child of the parent.

24 (ii) Voluntary manslaughter of another child of the parent.

25 (iii) Aiding or abetting in the murder of another child of the  
26 parent or voluntary manslaughter of another child of the parent,  
27 the attempted murder of the child or another child of the parent,

1 or the conspiracy or solicitation to commit the murder of the child  
2 or another child of the parent.

3 (iv) A felony assault that results in serious bodily injury to  
4 the child or another child of the parent.

5 (c) The parent has had rights to the child's siblings  
6 involuntarily terminated.

7 (3) A permanency planning hearing shall be conducted to review  
8 the status of the child and the progress being made toward the  
9 child's return home or to show why the child should not be placed  
10 in the permanent custody of the court. The court shall obtain the  
11 child's views regarding the permanency plan in a manner that is  
12 appropriate to the child's age. In the case of a child who will not  
13 be returned home, the court shall consider in-state and out-of-  
14 state placement options. In the case of a child placed out-of-  
15 state, the court shall determine whether the out-of-state placement  
16 continues to be appropriate and in the child's best interests. The  
17 court shall ensure that the agency is providing appropriate  
18 services to assist a child who will transition from foster care to  
19 independent living.

20 (4) Not less than 14 days before a permanency planning  
21 hearing, written notice of the hearing and a statement of the  
22 purposes of the hearing, including a notice that the hearing may  
23 result in further proceedings to terminate parental rights, shall  
24 be served upon all of the following:

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

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

1 (c) If the parental rights to the child have not been  
2 terminated, the child's parents.

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

4 (e) If the child has a guardian ad litem, the guardian ad  
5 litem for the child.

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

8 (g) The attorney for the child, the attorneys for each party,  
9 and the prosecuting attorney if the prosecuting attorney has  
10 appeared in the case.

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

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

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

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

3 (6) If the court determines at a permanency planning hearing  
4 that a child should not be returned to his or her parent, the court  
5 may order the agency to initiate proceedings to terminate parental  
6 rights. Except as otherwise provided in this subsection, if the  
7 child has been in foster care under the responsibility of the state  
8 for 15 of the most recent 22 months, the court shall order the  
9 agency to initiate proceedings to terminate parental rights. The  
10 court is not required to order the agency to initiate proceedings  
11 to terminate parental rights if 1 or more of the following apply:

12 (a) The child is being cared for by relatives.

13 (b) The case service plan documents a compelling reason for  
14 determining that filing a petition to terminate parental rights  
15 would not be in the best interest of the child. Compelling reasons  
16 for not filing a petition to terminate parental rights include, but  
17 are not limited to, all of the following:

18 (i) Adoption is not the appropriate permanency goal for the  
19 child.

20 (ii) No grounds to file a petition to terminate parental rights  
21 exist.

22 (iii) The child is an unaccompanied refugee minor as defined in  
23 45 CFR 400.11.

24 (iv) There are international legal obligations or compelling  
25 foreign policy reasons that preclude terminating parental rights.

26 (c) The state has not provided the child's family, consistent  
27 with the time period in the case service plan, with the services

1 the state considers necessary for the child's safe return to his or  
2 her home, if reasonable efforts are required.

3 (7) If the agency demonstrates under subsection (6) that  
4 initiating the termination of parental rights to the child is  
5 clearly not in the child's best interests, or the court does not  
6 order the agency to initiate termination of parental rights to the  
7 child under subsection (6), then the court shall order 1 or more of  
8 the following alternative placement plans:

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

12 (b) If the court determines that it is in the child's best  
13 interests based upon compelling reasons, the child's placement in  
14 foster care may continue on a long-term basis.

15 (c) Subject to subsection (9), if the court determines that it  
16 is in the child's best interests, appoint a guardian for the child,  
17 which guardianship may continue until the child is emancipated.

18 (8) A guardian appointed under subsection (7)(c) has all of  
19 the powers and duties set forth under section 15 of the estates and  
20 protected individuals code, 1998 PA 386, MCL 700.5215.

21 (9) If a child is placed in a guardian's or a proposed  
22 guardian's home under subsection (7)(c), the court shall order the  
23 department of human services to perform an investigation and file a  
24 written report of the investigation for a review under subsection  
25 (10) and the court shall order the department of human services to  
26 do all of the following:

27 (a) Perform a criminal record check within 7 days.

1 (b) Perform a central registry clearance within 7 days.

2 (c) Perform a home study and file a copy of the home study  
3 with the court within 30 days unless a home study has been  
4 performed within the immediately preceding 365 days, under section  
5 13a(9) of this chapter. If a home study has been performed within  
6 the immediately preceding 365 days, a copy of that home study shall  
7 be submitted to the court.

8 (10) The court's jurisdiction over a juvenile under section  
9 2(b) of this chapter shall be terminated after the court appoints a  
10 guardian under this section. ~~and conducts a review hearing under~~  
11 ~~section 19 of this chapter, unless the juvenile is released sooner~~  
12 ~~by the court.~~

13 (11) The court's jurisdiction over a guardianship created  
14 under this section shall continue until released by court order.  
15 The court shall review a guardianship created under this section  
16 annually and may conduct additional reviews as the court considers  
17 necessary. The court may order the department or a court employee  
18 to conduct an investigation and file a written report of the  
19 investigation.

20 (12) In making the determinations under this section, the  
21 court shall consider any written or oral information concerning the  
22 child from the child's parent, guardian, custodian, foster parent,  
23 child caring institution, relative with whom the child is placed,  
24 or guardian ad litem in addition to any other evidence, including  
25 the appropriateness of parenting time, offered at the hearing.

26 (13) The court may, on its own motion or upon petition from  
27 the department of human services or the child's lawyer guardian ad

1 litem, hold a hearing to determine whether a guardianship appointed  
2 under this section shall be revoked.

3 (14) A guardian may petition the court for permission to  
4 terminate the guardianship. A petition may include a request for  
5 appointment of a successor guardian.

6 (15) After notice and hearing on a petition for revocation or  
7 permission to terminate the guardianship, if the court finds by a  
8 preponderance of evidence that continuation of the guardianship is  
9 not in the child's best interests, the court shall revoke or  
10 terminate the guardianship and appoint a successor guardian or  
11 restore temporary legal custody to the department of human  
12 services.

13 Sec. 19c. (1) Except as provided in section 19(4) of this  
14 chapter and subject to subsection (14), if a child remains in  
15 placement following the termination of parental rights to the  
16 child, the court shall conduct a review hearing not more than 91  
17 days after the termination of parental rights and no later than  
18 every 91 days after that hearing for the first year following  
19 termination of parental rights to the child. If a child remains in  
20 a placement for more than 1 year following termination of parental  
21 rights to the child, a review hearing shall be held no later than  
22 182 days from the immediately preceding review hearing before the  
23 end of the first year and no later than every 182 days from each  
24 preceding review hearing thereafter until the case is dismissed. A  
25 review hearing under this subsection shall not be canceled or  
26 delayed beyond the number of days required in this subsection,  
27 regardless of whether any other matters are pending. Upon motion by



1 any party or in the court's discretion, a review hearing may be  
2 accelerated to review any element of the case. The court shall  
3 conduct the first permanency planning hearing within 12 months from  
4 the date that the child was originally removed from the home.  
5 Subsequent permanency planning hearings shall be held within 12  
6 months of the preceding permanency planning hearing. If proper  
7 notice for a permanency planning hearing is provided, a permanency  
8 planning hearing may be combined with a review hearing held under  
9 section 19(2) to (4) of this chapter. A permanency planning hearing  
10 under this section shall not be canceled or delayed beyond the  
11 number of months required in this subsection, regardless of whether  
12 any other matters are pending. At a hearing under this section, the  
13 court shall review all of the following:

14 (a) The appropriateness of the permanency planning goal for  
15 the child.

16 (b) The appropriateness of the child's placement.

17 (c) The reasonable efforts being made to place the child for  
18 adoption or in other permanent placement in a timely manner.

19 (2) Subject to subsection (3), if the court determines that it  
20 is in the child's best interests, the court may appoint a guardian  
21 for the child.

22 (3) The court shall not appoint a guardian for the child  
23 without the written consent of the MCI superintendent. The MCI  
24 superintendent shall consult with the child's lawyer guardian ad  
25 litem when considering whether to grant written consent.

26 (4) If a person believes that the decision to withhold the  
27 consent required in subsection (3) is arbitrary or capricious, the

1 person may file a motion with the court. A motion under this  
2 subsection shall contain information regarding both of the  
3 following:

4 (a) The specific steps taken by the person to obtain the  
5 consent required and the results, if any.

6 (b) The specific reasons why the person believes that the  
7 decision to withhold consent was arbitrary or capricious.

8 (5) If a motion is filed under subsection (4), the court shall  
9 set a hearing date and provide notice to the MCI superintendent,  
10 the foster parents, the prospective guardian, the child, and the  
11 child's lawyer guardian ad litem.

12 (6) Subject to subsection (8), if a hearing is held under  
13 subsection (5) and the court finds by clear and convincing evidence  
14 that the decision to withhold consent was arbitrary or capricious,  
15 the court may approve the guardianship without the consent of the  
16 MCI superintendent.

17 (7) A guardian appointed under this section has all of the  
18 powers and duties set forth under section 15 of the estates and  
19 protected individuals code, 1998 PA 386, MCL 700.5215.

20 (8) If a child is placed in a guardian's or a proposed  
21 guardian's home under subsection (2) or (6), the court shall order  
22 the department of human services to perform an investigation and  
23 file a written report of the investigation for a review under  
24 subsection (10) and the court shall order the department of human  
25 services to do all of the following:

26 (a) Perform a criminal record check within 7 days.

27 (b) Perform a central registry clearance within 7 days.

1 (c) Perform a home study and file a copy of the home study  
2 with the court within 30 days unless a home study has been  
3 performed within the immediately preceding 365 days, under section  
4 13a(9) of this chapter. If a home study has been performed within  
5 the immediately preceding 365 days, a copy of that home study shall  
6 be submitted to the court.

7 (9) The court's jurisdiction over a juvenile under section  
8 2(b) of this chapter and the jurisdiction of the Michigan  
9 children's institute under section 3 of 1935 PA 220, MCL 400.203,  
10 shall be terminated after the court appoints a guardian under this  
11 section. ~~and conducts a review hearing under section 19 of this~~  
12 ~~chapter, unless the juvenile is released sooner by the court.~~

13 (10) The court's jurisdiction over a guardianship created  
14 under this section shall continue until released by court order.  
15 The court shall review a guardianship created under this section  
16 annually and may conduct additional reviews as the court considers  
17 necessary. The court may order the department or a court employee  
18 to conduct an investigation and file a written report of the  
19 investigation.

20 (11) The court may, on its own motion or upon petition from  
21 the department of human services or the child's lawyer guardian ad  
22 litem, hold a hearing to determine whether a guardianship appointed  
23 under this section shall be revoked.

24 (12) A guardian may petition the court for permission to  
25 terminate the guardianship. A petition may include a request for  
26 appointment of a successor guardian.

27 (13) After notice and hearing on a petition for revocation or

1 permission to terminate the guardianship, if the court finds by a  
2 preponderance of evidence that continuation of the guardianship is  
3 not in the child's best interests, the court shall revoke or  
4 terminate the guardianship and appoint a successor guardian or  
5 commit the child to the Michigan children's institute under section  
6 3 of 1935 PA 220, MCL 400.203.

7 (14) This section applies only to a child's case in which  
8 parental rights to the child were either terminated as the result  
9 of a proceeding under section 2(b) of this chapter or a similar law  
10 of another state or terminated voluntarily following the initiation  
11 of a proceeding under section 2(b) of this chapter or a similar law  
12 of another state. This section applies as long as the child is  
13 subject to the jurisdiction, control, or supervision of the court  
14 or of the Michigan children's institute or other agency.