

SENATE BILL No. 1587

November 30, 2010, Introduced by Senator SCOTT 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 19c and 20 of chapter XIIA (MCL 712A.19c and
712A.20), section 19c as amended by 2008 PA 203, and by adding
section 21a to chapter XIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 19c. (1) Except as provided in section 19(4) of this
chapter and subject to subsection (14), if a child remains in
placement following the termination of parental rights to the
child, the court shall conduct a review hearing not more than 91
days after the termination of parental rights and no later than
every 91 days after that hearing for the first year following

1 termination of parental rights to the child. If a child remains in
2 a placement for more than 1 year following termination of parental
3 rights to the child, a review hearing shall be held no later than
4 182 days from the immediately preceding review hearing before the
5 end of the first year and no later than every 182 days from each
6 preceding review hearing thereafter until the case is dismissed. A
7 review hearing under this subsection shall not be canceled or
8 delayed beyond the number of days required in this subsection,
9 regardless of whether any other matters are pending. Upon motion by
10 any party or in the court's discretion, a review hearing may be
11 accelerated to review any element of the case. The court shall
12 conduct the first permanency planning hearing within 12 months from
13 the date that the child was originally removed from the home.
14 Subsequent permanency planning hearings shall be held within 12
15 months of the preceding permanency planning hearing. If proper
16 notice for a permanency planning hearing is provided, a permanency
17 planning hearing may be combined with a review hearing held under
18 section 19(2) to (4) of this chapter. A permanency planning hearing
19 under this section shall not be canceled or delayed beyond the
20 number of months required in this subsection, regardless of whether
21 any other matters are pending. At a hearing under this section, the
22 court shall review all of the following:

23 (a) The appropriateness of the permanency planning goal for
24 the child. **THE COURT MAY ORDER THE AGENCY TO INVESTIGATE THE**
25 **APPROPRIATENESS OF REINSTATEMENT OF PARENTAL RIGHTS UNDER SECTION**
26 **21A OF THIS CHAPTER.**

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

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

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

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

10 (4) If a person believes that the decision to withhold the
11 consent required in subsection (3) is arbitrary or capricious, the
12 person may file a motion with the court. A motion under this
13 subsection shall contain information regarding both of the
14 following:

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

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

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

23 (6) Subject to subsection (8), if a hearing is held under
24 subsection (5) and the court finds by clear and convincing evidence
25 that the decision to withhold consent was arbitrary or capricious,
26 the court may approve the guardianship without the consent of the
27 MCI superintendent.

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

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

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

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

12 (c) Perform a home study and file a copy of the home study
13 with the court within 30 days unless a home study has been
14 performed within the immediately preceding 365 days, under section
15 13a(9) of this chapter. If a home study has been performed within
16 the immediately preceding 365 days, a copy of that home study shall
17 be submitted to the court.

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

24 (10) The court's jurisdiction over a guardianship created
25 under this section shall continue until released by court order.
26 The court shall review a guardianship created under this section
27 annually and may conduct additional reviews as the court considers

1 necessary. The court may order the department or a court employee
2 to conduct an investigation and file a written report of the
3 investigation.

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

8 (12) A guardian may petition the court for permission to
9 terminate the guardianship. A petition may include a request for
10 appointment of a successor guardian.

11 (13) After notice and hearing on a petition for revocation or
12 permission to terminate the guardianship, if the court finds by a
13 preponderance of evidence that continuation of the guardianship is
14 not in the child's best interests, the court shall revoke or
15 terminate the guardianship and appoint a successor guardian or
16 commit the child to the Michigan children's institute under section
17 3 of 1935 PA 220, MCL 400.203.

18 (14) This section applies only to a child's case in which
19 parental rights to the child were either terminated as the result
20 of a proceeding under section 2(b) of this chapter or a similar law
21 of another state or terminated voluntarily following the initiation
22 of a proceeding under section 2(b) of this chapter or a similar law
23 of another state. This section applies as long as the child is
24 subject to the jurisdiction, control, or supervision of the court
25 or of the Michigan children's institute or other agency.

26 Sec. 20. The court in all cases involving custody shall state
27 in the order for disposition or any supplemental order of

1 disposition whether the child is placed in the temporary or
2 permanent custody of the court. If the child is placed in the
3 temporary custody of the court, no supplemental order of
4 disposition providing permanent custody, or containing any other
5 order of disposition shall be made except at a hearing ~~pursuant~~
6 **ACCORDING** to issuance of summons or notice as provided in sections
7 12 and 13 of this chapter or at a rehearing provided by section 19
8 of this chapter. If the child is placed in the permanent custody of
9 the court, all parental rights are terminated, though ~~such~~ **THE**
10 rights may be reinstated by a supplemental order of disposition
11 after rehearing ~~pursuant to~~ **UNDER** section 21 **OF THIS CHAPTER OR BY**
12 **AN ORDER REINSTATING PARENTAL RIGHTS ACCORDING TO SECTION 21A OF**
13 **THIS CHAPTER.**

14 **SEC. 21A. (1) IF THE COURT HAS DETERMINED THAT ADOPTION IS NO**
15 **LONGER THE JUVENILE'S PERMANENCY GOAL, AND IF AT LEAST 3 YEARS HAVE**
16 **PASSED FROM THE DATE THE COURT TERMINATED PARENTAL RIGHTS, THE**
17 **AGENCY OR THE JUVENILE MAY FILE A PETITION REQUESTING REINSTATEMENT**
18 **OF PARENTAL RIGHTS. THE JUVENILE'S LAWYER-GUARDIAN AD LITEM OR AN**
19 **ATTORNEY FOR THE CHILD APPOINTED UNDER SECTION 17D(2) OF THIS**
20 **CHAPTER SHALL ASSIST THE JUVENILE TO FILE A PETITION UNDER THIS**
21 **SECTION. THE COURT MAY ORDER PARENTING TIME ACCORDING TO SECTION**
22 **13A OF THIS CHAPTER PENDING A HEARING ON THE PETITION.**

23 **(2) THE COURT SHALL NOT REINSTATE PARENTAL RIGHTS TO A FORMER**
24 **PARENT OF A JUVENILE WHO HAS BEEN COMMITTED TO THE MCI WITHOUT THE**
25 **MCI SUPERINTENDENT'S WRITTEN CONSENT.**

26 **(3) IF IT APPEARS FROM THE PETITION THAT THE JUVENILE'S FORMER**
27 **PARENT IS FIT TO HAVE PARENTAL RIGHTS REINSTATED AND THE BEST**

1 INTEREST OF THE JUVENILE MAY BE PROMOTED BY REINSTATEMENT OF
2 PARENTAL RIGHTS, THE COURT SHALL HOLD A HEARING. THE COURT SHALL
3 CAUSE WRITTEN NOTICE OF THE HEARING THAT DESCRIBES THE HEARING'S
4 PURPOSE AND CONTAINS THE INFORMATION DESCRIBED IN SUBSECTION (5) TO
5 BE SERVED UPON THE ALL OF THE FOLLOWING:

6 (A) THE AGENCY.

7 (B) THE MCI SUPERINTENDENT.

8 (C) THE JUVENILE.

9 (D) THE JUVENILE'S LAWYER-GUARDIAN AD LITEM.

10 (E) THE JUVENILE'S FOSTER PARENT OR RELATIVE CAREGIVER.

11 (F) THE JUVENILE'S FORMER PARENT WHOSE PARENTAL RIGHTS MAY BE
12 REINSTATED.

13 (G) IF TRIBAL AFFILIATION HAS BEEN DETERMINED, THE ELECTED
14 LEADER OF THE INDIAN TRIBE.

15 (H) OTHER PERSONS AS THE COURT MAY DIRECT.

16 (4) THE COURT SHALL TERMINATE THE RIGHTS OF THE MCI AND
17 REINSTATE A PARENT'S PARENTAL RIGHTS IF THE COURT FINDS BY CLEAR
18 AND CONVINCING EVIDENCE THAT REINSTATEMENT OF PARENTAL RIGHTS IS IN
19 THE JUVENILE'S BEST INTEREST. THE COURT SHALL CONSIDER, BUT IS NOT
20 LIMITED TO CONSIDERING, ALL OF THE FOLLOWING:

21 (A) WHETHER THE PARENT IS FIT AND HAS REMEDIED THE GROUNDS
22 THAT SUPPORTED TERMINATION OF HIS OR HER PARENTAL RIGHTS, AS
23 PROVIDED IN THE RECORD OF THE PRIOR TERMINATION PROCEEDINGS AND
24 PRIOR TERMINATION ORDER.

25 (B) THE AGE AND MATURITY OF THE JUVENILE AND THE ABILITY OF
26 THE JUVENILE TO EXPRESS HIS OR HER PREFERENCE.

27 (C) WHETHER REINSTATEMENT OF PARENTAL RIGHTS WILL PRESENT A

1 RISK TO THE JUVENILE'S HEALTH, WELFARE, OR SAFETY.

2 (D) OTHER MATERIAL CHANGES IN CIRCUMSTANCES, IF ANY, THAT MAY
3 HAVE OCCURRED SINCE THE DATE OF THE ORDER TERMINATING PARENTAL
4 RIGHTS.

5 (5) THE JUVENILE'S FOSTER PARENT OR RELATIVE CAREGIVER HAS A
6 RIGHT TO BE HEARD AT A HEARING HELD UNDER THIS SECTION.

7 (6) AN ORDER ENTERED UNDER THIS SECTION REINSTATING PARENTAL
8 RIGHTS DOES NOT MODIFY, VACATE, OR SET ASIDE THE ORDER TERMINATING
9 PARENTAL RIGHTS. AN ORDER REINSTATING PARENTAL RIGHTS UNDER THIS
10 SECTION RESTORES ALL RIGHTS, POWERS, PRIVILEGES, IMMUNITIES,
11 DUTIES, AND OBLIGATIONS OF THE PARENT REGARDING THE JUVENILE,
12 INCLUDING THOSE RELATED TO CUSTODY, CONTROL, AND SUPPORT OF THE
13 JUVENILE.

14 (7) THIS SECTION APPLIES TO ANY CHILD WHO IS UNDER THE
15 JURISDICTION OF THE COURT OR MCI AT THE TIME OF THE HEARING
16 REGARDLESS OF THE DATE PARENTAL RIGHTS WERE TERMINATED.