

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1005

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 13a, 17d, 18f, 19a, 19b, and 19c of chapter
XIIA (MCL 712A.13a, 712A.17d, 712A.18f, 712A.19a, 712A.19b, and
712A.19c), sections 13a and 17d as amended by 2004 PA 475, section
18f as amended by 1999 PA 25, section 19a as amended by 2008 PA
200, section 19b as amended by 2010 PA 7, and section 19c as
amended by 2011 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIA

Sec. 13a. (1) As used in this section and sections 2, 6b, 13b,
17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization,
institution, or facility that is performing the functions under

1 part D of title IV of the social security act, 42 USC 651 to ~~655,~~
2 ~~656 to 657, 658a to 660, and 663 to 669b,~~ or that is responsible
3 under court order or contractual arrangement for a juvenile's care
4 and supervision.

5 (b) "Agency case file" means the current file from the agency
6 providing direct services to the child, that can include the child
7 protective services file if the child has not been removed from the
8 home or the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES**
9 or contract agency foster care file as defined under 1973 PA 116,
10 MCL 722.111 to 722.128.

11 (c) "Attorney" means, if appointed to represent a child in a
12 proceeding under section 2(b) or (c) of this chapter, an attorney
13 serving as the child's legal advocate in a traditional attorney-
14 client relationship with the child, as governed by the Michigan
15 rules of professional conduct. An attorney defined under this
16 subdivision owes the same duties of undivided loyalty,
17 confidentiality, and zealous representation of the child's
18 expressed wishes as the attorney would to an adult client. For the
19 purpose of a notice required under these sections, attorney
20 includes a child's lawyer-guardian ad litem.

21 (d) "Case service plan" means the plan developed by an agency
22 and prepared under section 18f of this chapter that includes
23 services to be provided by and responsibilities and obligations of
24 the agency and activities, responsibilities, and obligations of the
25 parent. The case service plan may be referred to using different
26 names than case service plan including, but not limited to, a
27 parent/agency agreement or a parent/agency treatment plan and

1 service agreement.

2 (e) "Foster care" means care provided to a juvenile in a
3 foster family home, foster family group home, or child caring
4 institution licensed or approved under 1973 PA 116, MCL 722.111 to
5 722.128, or care provided to a juvenile in a relative's home under
6 a court order.

7 (f) "Guardian ad litem" means an individual whom the court
8 appoints to assist the court in determining the child's best
9 interests. A guardian ad litem does not need to be an attorney.

10 (g) "Lawyer-guardian ad litem" means an attorney appointed
11 under section 17c of this chapter. A lawyer-guardian ad litem
12 represents the child, and has the powers and duties, as set forth
13 in section 17d of this chapter. The provisions of section 17d of
14 this chapter also apply to a lawyer-guardian ad litem appointed
15 under each of the following:

16 (i) Section 5213 or 5219 of the estates and protected
17 individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

18 (ii) Section 4 of the child custody act of 1970, 1970 PA 91,
19 MCL 722.24.

20 (iii) Section 10 of the child protection law, 1975 PA 238, MCL
21 722.630.

22 (h) "Nonparent adult" means a person who is 18 years of age or
23 older and who, regardless of the person's domicile, meets all of
24 the following criteria in relation to a child over whom the court
25 takes jurisdiction under this chapter:

26 (i) Has substantial and regular contact with the child.

27 (ii) Has a close personal relationship with the child's parent

1 or with a person responsible for the child's health or welfare.

2 (iii) Is not the child's parent or a person otherwise related to
3 the child by blood or affinity to the third degree.

4 (i) "Permanent foster family agreement" means an agreement for
5 a child 14 years old or older to remain with a particular foster
6 family until the child is 18 years old under standards and
7 requirements established by the ~~family independence agency,~~

8 **DEPARTMENT OF HUMAN SERVICES**, which agreement is among all of the
9 following:

10 (i) The child.

11 (ii) If the child is a temporary ward, the child's family.

12 (iii) The foster family.

13 (iv) The child placing agency responsible for the child's care
14 in foster care.

15 (j) "Relative" means an individual who is at least 18 years of
16 age and related to the child by blood, marriage, or adoption, as
17 grandparent, great-grandparent, great-great-grandparent, aunt or
18 uncle, great-aunt or great-uncle, great-great-aunt or great-great-
19 uncle, sibling, stepsibling, nephew or niece, first cousin or first
20 cousin once removed, and the spouse of any of the above, even after
21 the marriage has ended by death or divorce. A child may be placed
22 with the parent of a man whom the court has found probable cause to
23 believe is the putative father if there is no man with legally
24 established rights to the child. A placement with the parent of a
25 putative father under this subdivision is not to be construed as a
26 finding of paternity or to confer legal standing on the putative
27 father.

1 (K) "SEX OFFENDERS REGISTRATION ACT" MEANS THE SEX OFFENDERS
2 REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.736.

3 (2) If a juvenile is alleged to be within the provisions of
4 section 2(b) of this chapter, the court may authorize a petition to
5 be filed at the conclusion of the preliminary hearing or inquiry.
6 The court may authorize the petition upon a showing of probable
7 cause that 1 or more of the allegations in the petition are true
8 and fall within the provisions of section 2(b) of this chapter. If
9 a petition is before the court because the ~~family independence~~
10 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES** is required to submit the
11 petition under section 17 of the child protection law, 1975 PA 238,
12 MCL 722.637, the court shall hold a hearing on the petition within
13 24 hours or on the next business day after the petition is
14 submitted, at which hearing the court shall consider at least the
15 matters governed by subsections (4) and (5).

16 (3) Except as provided in ~~subsection (5)~~, **SUBSECTIONS (5) AND**
17 **(6)**, if a petition under subsection (2) is authorized, the court
18 may release the juvenile in the custody of either of the juvenile's
19 parents or the juvenile's guardian or custodian under reasonable
20 terms and conditions necessary for either the juvenile's physical
21 health or mental well-being.

22 (4) The court may order a parent, guardian, custodian,
23 nonparent adult, or other person residing in a child's home to
24 leave the home and, except as the court orders, not to subsequently
25 return to the home if all of the following take place:

26 (a) A petition alleging abuse of the child by the parent,
27 guardian, custodian, nonparent adult, or other person is authorized

1 under subsection (2).

2 (b) The court after a hearing finds probable cause to believe
3 the parent, guardian, custodian, nonparent adult, or other person
4 committed the abuse.

5 (c) The court finds on the record that the presence in the
6 home of the person alleged to have committed the abuse presents a
7 substantial risk of harm to the child's life, physical health, or
8 mental well-being.

9 (5) If a petition alleges abuse by a person described in
10 subsection (4), regardless of whether the court orders the alleged
11 abuser to leave the child's home under subsection (4), the court
12 shall not leave the child in or return the child to the child's
13 home or place the child with a person not licensed under 1973 PA
14 116, MCL 722.111 to 722.128, unless the court finds that the
15 conditions of custody at the placement and with the individual with
16 whom the child is placed are adequate to safeguard the child from
17 the risk of harm to the child's life, physical health, or mental
18 well-being.

19 **(6) IF A COURT FINDS A PARENT IS REQUIRED BY COURT ORDER TO**
20 **REGISTER UNDER THE SEX OFFENDERS REGISTRATION ACT, THE DEPARTMENT**
21 **OF HUMAN SERVICES MAY, BUT IS NOT REQUIRED TO, MAKE REASONABLE**
22 **EFFORTS TO REUNIFY THE CHILD WITH THE PARENT. THE COURT MAY ORDER**
23 **REASONABLE EFFORTS TO BE MADE BY THE DEPARTMENT OF HUMAN SERVICES.**

24 (7) ~~(6)~~—In determining whether to enter an order under
25 subsection (4), the court may consider whether the parent who is to
26 remain in the juvenile's home is married to the person to be
27 removed or has a legal right to retain possession of the home.

1 (8) ~~(7)~~—An order entered under subsection (4) may also contain
2 1 or more of the following terms or conditions:

3 (a) The court may require the alleged abusive parent to pay
4 appropriate support to maintain a suitable home environment for the
5 juvenile during the duration of the order.

6 (b) The court may order the alleged abusive person, according
7 to terms the court may set, to surrender to a local law enforcement
8 agency any firearms or other potentially dangerous weapons the
9 alleged abusive person owns, possesses, or uses.

10 (c) The court may include any reasonable term or condition
11 necessary for the juvenile's physical or mental well-being or
12 necessary to protect the juvenile.

13 (9) ~~(8)~~—If the court orders placement of the juvenile outside
14 the juvenile's home, the court shall inform the parties of the
15 following:

16 (a) That the agency has the responsibility to prepare an
17 initial services plan within 30 days of the juvenile's placement.

18 (b) The general elements of an initial services plan as
19 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
20 722.128.

21 (c) That participation in the initial services plan is
22 voluntary without a court order.

23 (10) ~~(9)~~—Before or within 7 days after a child is placed in a
24 relative's home, the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
25 **SERVICES** shall perform a criminal record check and central registry
26 clearance. If the child is placed in the home of a relative, the
27 court shall order a home study to be performed and a copy of the

1 home study to be submitted to the court not more than 30 days after
2 the placement.

3 (11) ~~(10)~~—In determining placement of a juvenile pending
4 trial, the court shall order the juvenile placed in the most
5 family-like setting available consistent with the juvenile's needs.

6 (12) ~~(11)~~—If a juvenile is removed from his or her home, the
7 court shall permit the juvenile's parent to have frequent parenting
8 time with the juvenile. If parenting time, even if supervised, may
9 be harmful to the juvenile, the court shall order the child to have
10 a psychological evaluation or counseling, or both, to determine the
11 appropriateness and the conditions of parenting time. The court may
12 suspend parenting time while the psychological evaluation or
13 counseling is conducted.

14 (13) ~~(12)~~—Upon the motion of any party, the court shall review
15 custody and placement orders and initial services plans pending
16 trial and may modify those orders and plans as the court considers
17 under this section are in the juvenile's best interests.

18 (14) ~~(13)~~—The court shall include in an order placing a child
19 in foster care an order directing the release of information
20 concerning the child in accordance with this subsection. If a child
21 is placed in foster care, within 10 days after receipt of a written
22 request, the agency shall provide the person who is providing the
23 foster care with copies of all initial, updated, and revised case
24 service plans and court orders relating to the child and all of the
25 child's medical, mental health, and education reports, including
26 reports compiled before the child was placed with that person.

27 (15) ~~(14)~~—In an order placing a child in foster care, the

1 court shall include both of the following:

2 (a) An order that the child's parent, guardian, or custodian
3 provide the supervising agency with the name and address of each of
4 the child's medical providers.

5 (b) An order that each of the child's medical providers
6 release the child's medical records. The order may specify
7 providers by profession or type of institution.

8 **(16)** ~~(15)~~—As used in this section, "abuse" means 1 or more of
9 the following:

10 (a) Harm or threatened harm by a person to a juvenile's health
11 or welfare that occurs through nonaccidental physical or mental
12 injury.

13 (b) Engaging in sexual contact or sexual penetration as
14 defined in section 520a of the Michigan penal code, 1931 PA 328,
15 MCL 750.520a, with a juvenile.

16 (c) Sexual exploitation of a juvenile, which includes, but is
17 not limited to, allowing, permitting, or encouraging a juvenile to
18 engage in prostitution or allowing, permitting, encouraging, or
19 engaging in photographing, filming, or depicting a juvenile engaged
20 in a listed sexual act as defined in section 145c of the Michigan
21 penal code, 1931 PA 328, MCL 750.145c.

22 (d) Maltreatment of a juvenile.

23 Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the
24 child, and not the court. The lawyer-guardian ad litem's powers and
25 duties include at least all of the following:

26 (a) The obligations of the attorney-client privilege.

27 (b) To serve as the independent representative for the child's

1 best interests, and be entitled to full and active participation in
2 all aspects of the litigation and access to all relevant
3 information regarding the child.

4 (c) To determine the facts of the case by conducting an
5 independent investigation including, but not limited to,
6 interviewing the child, social workers, family members, and others
7 as necessary, and reviewing relevant reports and other information.
8 The agency case file shall be reviewed before disposition and
9 before the hearing for termination of parental rights. Updated
10 materials shall be reviewed as provided to the court and parties.
11 The supervising agency shall provide documentation of progress
12 relating to all aspects of the last court ordered treatment plan,
13 including copies of evaluations and therapy reports and
14 verification of parenting time not later than 5 business days
15 before the scheduled hearing.

16 (d) To meet with or observe the child and assess the child's
17 needs and wishes with regard to the representation and the issues
18 in the case in the following instances:

19 (i) Before the pretrial hearing.

20 (ii) Before the initial disposition, if held more than 91 days
21 after the petition has been authorized.

22 (iii) Before a dispositional review hearing.

23 (iv) Before a permanency planning hearing.

24 (v) Before a post-termination review hearing.

25 (vi) At least once during the pendency of a supplemental
26 petition.

27 (vii) At other times as ordered by the court. Adjourned or

1 continued hearings do not require additional visits unless directed
2 by the court.

3 (e) The court may allow alternative means of contact with the
4 child if good cause is shown on the record.

5 (f) To explain to the child, taking into account the child's
6 ability to understand the proceedings, the lawyer-guardian ad
7 litem's role.

8 (g) To file all necessary pleadings and papers and
9 independently call witnesses on the child's behalf.

10 (h) To attend all hearings and substitute representation for
11 the child only with court approval.

12 (i) To make a determination regarding the child's best
13 interests and advocate for those best interests according to the
14 lawyer-guardian ad litem's understanding of those best interests,
15 regardless of whether the lawyer-guardian ad litem's determination
16 reflects the child's wishes. The child's wishes are relevant to the
17 lawyer-guardian ad litem's determination of the child's best
18 interests, and the lawyer-guardian ad litem shall weigh the child's
19 wishes according to the child's competence and maturity. Consistent
20 with the law governing attorney-client privilege, the lawyer-
21 guardian ad litem shall inform the court as to the child's wishes
22 and preferences.

23 (j) To monitor the implementation of case plans and court
24 orders, and determine whether services the court ordered for the
25 child or the child's family are being provided in a timely manner
26 and are accomplishing their purpose. The lawyer-guardian ad litem
27 shall inform the court if the services are not being provided in a

1 timely manner, if the family fails to take advantage of the
2 services, or if the services are not accomplishing their intended
3 purpose.

4 (k) Consistent with the rules of professional responsibility,
5 to identify common interests among the parties and, to the extent
6 possible, promote a cooperative resolution of the matter through
7 consultation with the child's parent, foster care provider,
8 guardian, and caseworker.

9 (l) To request authorization by the court to pursue issues on
10 the child's behalf that do not arise specifically from the court
11 appointment.

12 **(M) TO PARTICIPATE IN TRAINING IN EARLY CHILDHOOD, CHILD, AND**
13 **ADOLESCENT DEVELOPMENT.**

14 (2) If, after discussion between the child and his or her
15 lawyer-guardian ad litem, the lawyer-guardian ad litem determines
16 that the child's interests as identified by the child are
17 inconsistent with the lawyer-guardian ad litem's determination of
18 the child's best interests, the lawyer-guardian ad litem shall
19 communicate the child's position to the court. If the court
20 considers the appointment appropriate considering the child's age
21 and maturity and the nature of the inconsistency between the
22 child's and the lawyer-guardian ad litem's identification of the
23 child's interests, the court may appoint an attorney for the child.
24 An attorney appointed under this subsection serves in addition to
25 the child's lawyer-guardian ad litem.

26 (3) The court or another party to the case shall not call a
27 lawyer-guardian ad litem as a witness to testify regarding matters

1 related to the case. The lawyer-guardian ad litem's file of the
2 case is not discoverable.

3 Sec. 18f. (1) If, in a proceeding under section 2(b) of this
4 chapter, an agency advises the court against placing a child in the
5 custody of the child's parent, guardian, or custodian, the agency
6 shall report in writing to the court what efforts were made to
7 prevent the child's removal from his or her home or the efforts
8 made to rectify the conditions that caused the child's removal from
9 his or her home. The report shall include all of the following:

10 (a) If services were provided to the child and his or her
11 parent, guardian, or custodian, the services, including in-home
12 services, that were provided.

13 (b) If services were not provided to the child and his or her
14 parent, guardian, or custodian, the reasons why services were not
15 provided.

16 (c) Likely harm to the child if the child were to be separated
17 from his or her parent, guardian, or custodian.

18 (d) Likely harm to the child if the child were to be returned
19 to his or her parent, guardian, or custodian.

20 (2) Before the court enters an order of disposition in a
21 proceeding under section 2(b) of this chapter, the agency shall
22 prepare a case service plan that shall be available to the court
23 and all the parties to the proceeding.

24 (3) The case service plan shall provide for placing the child
25 in the most family-like setting available and in as close proximity
26 to the child's parents' home as is consistent with the child's best
27 interests and special needs. The case service plan shall include,

1 but is not limited to, the following:

2 (a) The type of home or institution in which the child is to
3 be placed and the reasons for the selected placement.

4 (b) Efforts to be made by the child's parent to enable the
5 child to return to his or her home.

6 (c) Efforts to be made by the agency to return the child to
7 his or her home.

8 (d) Schedule of services to be provided to the parent, child,
9 and if the child is to be placed in foster care, the foster parent,
10 to facilitate the child's return to his or her home or to
11 facilitate the child's permanent placement.

12 (e) Except as otherwise provided in this subdivision, unless
13 parenting time, even if supervised, would be harmful to the child
14 as determined by the court under section 13a of this chapter or
15 otherwise, a schedule for regular and frequent parenting time
16 between the child and his or her parent, which shall not be less
17 than once every 7 days.

18 **(F) CONDITIONS THAT WOULD LIMIT OR PRECLUDE PLACEMENT OR**
19 **PARENTING TIME WITH A PARENT WHO IS REQUIRED BY COURT ORDER TO**
20 **REGISTER UNDER THE SEX OFFENDERS REGISTRATION ACT.**

21 (4) Before the court enters an order of disposition, the court
22 shall consider the case service plan; any written or oral
23 information offered concerning the child from the child's parent,
24 guardian, custodian, foster parent, child caring institution,
25 relative with whom the child is placed, lawyer-guardian ad litem,
26 attorney, or guardian ad litem; and any other evidence offered,
27 including the appropriateness of parenting time, which information

1 or evidence bears on the disposition. The order of disposition
2 shall state whether reasonable efforts have been made to prevent
3 the child's removal from his or her home or to rectify the
4 conditions that caused the child's removal from his or her home.
5 The court may order compliance with all or any part of the case
6 service plan as the court considers necessary.

7 (5) If a child continues in placement outside of the child's
8 home, the case service plan shall be updated and revised at 90-day
9 intervals as required by the rules promulgated under 1973 PA 116,
10 MCL 722.111 to 722.128. The agency shall consult with the foster
11 parents when it updates and revises the case service plan, and
12 shall attach a statement summarizing the information received from
13 the foster parents to the updated and revised case service plan.
14 Updated and revised case service plans shall be available to the
15 court and all the parties to the proceeding. Within 10 days after
16 receipt of a written request, the agency shall provide the person
17 who is providing the foster care with the information itemized in
18 section ~~13a(13)~~**13A(14)** of this chapter.

19 (6) To ensure that the case service plan addresses the child's
20 medical needs in relation to abuse and neglect, the ~~family~~
21 ~~independence agency~~**DEPARTMENT OF HUMAN SERVICES** shall review a
22 child's case with the child's attending physician of record during
23 a hospitalization or with the child's primary care physician, but
24 only if a physician has diagnosed the child's abuse or neglect as
25 involving 1 or more of the following:

26 (a) Failure to thrive.

27 (b) Munchausen syndrome by proxy.

1 (c) Shaken baby syndrome.

2 (d) A bone fracture that is diagnosed as being the result of
3 abuse or neglect.

4 (e) Drug exposure.

5 (7) If a child is placed outside of his or her home and the
6 ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** is required
7 to review the child's case with a physician under subsection (6),
8 then in a judicial proceeding to determine if the child is to be
9 returned to his or her home, the court must allow the child's
10 attending physician of record during a hospitalization or the
11 child's primary care physician to testify regarding the case
12 service plan. The court shall notify each physician of the
13 hearing's time and place.

14 Sec. 19a. (1) Subject to subsection (2), if a child remains in
15 foster care and parental rights to the child have not been
16 terminated, the court shall conduct a permanency planning hearing
17 within 12 months after the child was removed from his or her home.
18 Subsequent permanency planning hearings shall be held no later than
19 every 12 months after each preceding permanency planning hearing
20 during the continuation of foster care. If proper notice for a
21 permanency planning hearing is provided, a permanency planning
22 hearing may be combined with a review hearing held under section
23 19(2) to (4) of this chapter, but no later than 12 months from the
24 removal of the child from his or her home, from the preceding
25 permanency planning hearing, or from the number of days required
26 under subsection (2). A permanency planning hearing shall not be
27 canceled or delayed beyond the number of months required by this

1 subsection or days as required under subsection (2), regardless of
2 whether there is a petition for termination of parental rights
3 pending.

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

9 (a) There is a judicial determination that the parent has
10 subjected the child to aggravated circumstances as provided in
11 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL
12 722.638.

13 (b) The parent has been convicted of 1 or more of the
14 following:

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

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

17 (iii) Aiding or abetting in the murder of another child of the
18 parent or voluntary manslaughter of another child of the parent,
19 the attempted murder of the child or another child of the parent,
20 or the conspiracy or solicitation to commit the murder of the child
21 or another child of the parent.

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

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

26 **(D) THE PARENT IS REQUIRED BY COURT ORDER TO REGISTER UNDER**
27 **THE SEX OFFENDERS REGISTRATION ACT.**

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

14 (4) Not less than 14 days before a permanency planning
15 hearing, written notice of the hearing and a statement of the
16 purposes of the hearing, including a notice that the hearing may
17 result in further proceedings to terminate parental rights, shall
18 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 foster parent or custodian of the child.

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

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

25 (e) If the child has a guardian ad litem, the guardian ad
26 litem for the child.

27 (f) If tribal affiliation has been determined, the elected

1 leader of the Indian tribe.

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

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

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

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

24 (6) If the court determines at a permanency planning hearing
25 that a child should not be returned to his or her parent, the court
26 may order the agency to initiate proceedings to terminate parental
27 rights. Except as otherwise provided in this subsection, if the

1 child has been in foster care under the responsibility of the state
2 for 15 of the most recent 22 months, the court shall order the
3 agency to initiate proceedings to terminate parental rights. The
4 court is not required to order the agency to initiate proceedings
5 to terminate parental rights if 1 or more of the following apply:

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

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

12 (i) Adoption is not the appropriate permanency goal for the
13 child.

14 (ii) No grounds to file a petition to terminate parental rights
15 exist.

16 (iii) The child is an unaccompanied refugee minor as defined in
17 45 CFR 400.11.

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

20 (c) The state has not provided the child's family, consistent
21 with the time period in the case service plan, with the services
22 the state considers necessary for the child's safe return to his or
23 her home, if reasonable efforts are required.

24 (7) If the agency demonstrates under subsection (6) that
25 initiating the termination of parental rights to the child is
26 clearly not in the child's best interests, or the court does not
27 order the agency to initiate termination of parental rights to the

1 child under subsection (6), then the court shall order 1 or more of
2 the following alternative placement plans:

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

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

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

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

15 (9) If a child is placed in a guardian's or a proposed
16 guardian's home under subsection (7)(c), the court shall order the
17 department of human services to perform an investigation and file a
18 written report of the investigation for a review under subsection
19 (10) and the court shall order the department of human services to
20 do all of the following:

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

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

23 (c) Perform a home study and file a copy of the home study
24 with the court within 30 days unless a home study has been
25 performed within the immediately preceding 365 days, under section
26 ~~13a(9)~~**13A(10)** of this chapter. If a home study has been performed
27 within the immediately preceding 365 days, a copy of that home

1 study shall be submitted to the court.

2 (10) The court's jurisdiction over a juvenile under section
3 2(b) of this chapter shall be terminated after the court appoints a
4 guardian under this section and conducts a review hearing under
5 section 19 of this chapter, unless the juvenile is released sooner
6 by the court.

7 (11) The court's jurisdiction over a guardianship created
8 under this section shall continue until released by court order.
9 The court shall review a guardianship created under this section
10 annually and may conduct additional reviews as the court considers
11 necessary. The court may order the department **OF HUMAN SERVICES** or
12 a court employee to conduct an investigation and file a written
13 report of the investigation.

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

20 (13) 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 (14) 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 (15) 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 restore temporary legal custody to the department of human
6 services.

7 Sec. 19b. (1) Except as provided in subsection (4), if a child
8 remains in foster care in the temporary custody of the court
9 following a review hearing under section 19(3) of this chapter or a
10 permanency planning hearing under section 19a of this chapter or if
11 a child remains in the custody of a guardian or limited guardian,
12 upon petition of the prosecuting attorney, whether or not the
13 prosecuting attorney is representing or acting as legal consultant
14 to the agency or any other party, or petition of the child,
15 guardian, custodian, concerned person, ~~as defined in subsection~~
16 ~~(6)~~, agency, or children's ombudsman as authorized in section 7 of
17 the children's ombudsman act, 1994 PA 204, MCL 722.927, the court
18 shall hold a hearing to determine if the parental rights to a child
19 should be terminated and, if all parental rights to the child are
20 terminated, the child placed in permanent custody of the court. The
21 court shall state on the record or in writing its findings of fact
22 and conclusions of law with respect to whether or not parental
23 rights should be terminated. The court shall issue an opinion or
24 order regarding a petition for termination of parental rights
25 within 70 days after the commencement of the initial hearing on the
26 petition. The court's failure to issue an opinion within 70 days
27 does not dismiss the petition.

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

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

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

7 (c) The child's parents.

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

9 (e) If the child has a guardian ad litem, the child's guardian
10 ad litem.

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

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

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

15 (i) The prosecutor.

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

19 (a) The child has been deserted under any of the following
20 circumstances:

21 (i) The child's parent is unidentifiable, has deserted the
22 child for 28 or more days, and has not sought custody of the child
23 during that period. For the purposes of this section, a parent is
24 unidentifiable if the parent's identity cannot be ascertained after
25 reasonable efforts have been made to locate and identify the
26 parent.

27 (ii) The child's parent has deserted the child for 91 or more

1 days and has not sought custody of the child during that period.

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

6 (b) The child or a sibling of the child has suffered physical
7 injury or physical or sexual abuse under 1 or more of the following
8 circumstances:

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

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

18 (iii) A nonparent adult's act caused the physical injury or
19 physical or sexual abuse and the court finds that there is a
20 reasonable likelihood that the child will suffer from injury or
21 abuse by the nonparent adult in the foreseeable future if placed in
22 the parent's home.

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

27 (i) The conditions that led to the adjudication continue to

1 exist and there is no reasonable likelihood that the conditions
2 will be rectified within a reasonable time considering the child's
3 age.

4 (ii) Other conditions exist that cause the child to come within
5 the court's jurisdiction, the parent has received recommendations
6 to rectify those conditions, the conditions have not been rectified
7 by the parent after the parent has received notice and a hearing
8 and has been given a reasonable opportunity to rectify the
9 conditions, and there is no reasonable likelihood that the
10 conditions will be rectified within a reasonable time considering
11 the child's age.

12 (d) The child's parent has placed the child in a limited
13 guardianship under section 5205 of the estates and protected
14 individuals code, 1998 PA 386, MCL 700.5205, and has substantially
15 failed, without good cause, to comply with a limited guardianship
16 placement plan described in section 5205 of the estates and
17 protected individuals code, 1998 PA 386, MCL 700.5205, regarding
18 the child to the extent that the noncompliance has resulted in a
19 disruption of the parent-child relationship.

20 (e) The child has a guardian under the estates and protected
21 individuals code, 1998 PA 386, MCL 700.1101 to ~~700.8102~~, **700.8206**,
22 and the parent has substantially failed, without good cause, to
23 comply with a court-structured plan described in section 5207 or
24 5209 of the estates and protected individuals code, 1998 PA 386,
25 MCL 700.5207 and 700.5209, regarding the child to the extent that
26 the noncompliance has resulted in a disruption of the parent-child
27 relationship.

1 (f) The child has a guardian under the estates and protected
2 individuals code, 1998 PA 386, MCL 700.1101 to ~~700.8102~~, **700.8206**,
3 and both of the following have occurred:

4 (i) The parent, having the ability to support or assist in
5 supporting the minor, has failed or neglected, without good cause,
6 to provide regular and substantial support for the minor for a
7 period of 2 years or more before the filing of the petition or, if
8 a support order has been entered, has failed to substantially
9 comply with the order for a period of 2 years or more before the
10 filing of the petition.

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

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

19 (h) The parent is imprisoned for such a period that the child
20 will be deprived of a normal home for a period exceeding 2 years,
21 and the parent has not provided for the child's proper care and
22 custody, and there is no reasonable expectation that the parent
23 will be able to provide proper care and custody within a reasonable
24 time considering the child's age.

25 (i) Parental rights to 1 or more siblings of the child have
26 been terminated due to serious and chronic neglect or physical or
27 sexual abuse, and prior attempts to rehabilitate the parents have

1 been unsuccessful.

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

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

7 (i) Abandonment of a young child.

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

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

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

12 (v) Life-threatening injury.

13 (vi) Murder or attempted murder.

14 (vii) Voluntary manslaughter.

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

17 (ix) **SEXUAL ABUSE AS THAT TERM IS DEFINED IN SECTION 2 OF THE**
18 **CHILD PROTECTION LAW, 1975 PA 238, MCL 722.622.**

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

22 (m) The parent's rights to another child were voluntarily
23 terminated following the initiation of proceedings under section
24 2(b) of this chapter or a similar law of another state and the
25 proceeding involved abuse that included 1 or more of the following:

26 (i) Abandonment of a young child.

27 (ii) Criminal sexual conduct involving penetration, attempted

1 penetration, or assault with intent to penetrate.

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

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

4 (v) Life-threatening injury.

5 (vi) Murder or attempted murder.

6 (vii) Voluntary manslaughter.

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

9 (ix) **SEXUAL ABUSE AS THAT TERM IS DEFINED IN SECTION 2 OF THE**
10 **CHILD PROTECTION LAW, 1975 PA 238, MCL 722.622.**

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

15 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or
16 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317,
17 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

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

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

26 (4) If a petition to terminate the parental rights to a child
27 is filed, the court may enter an order terminating parental rights

1 under subsection (3) at the initial dispositional hearing. If a
2 petition to terminate parental rights to a child is filed, the
3 court may suspend parenting time for a parent who is a subject of
4 the petition.

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

10 (6) As used in this section, "concerned person" means a foster
11 parent with whom the child is living or has lived who has specific
12 knowledge of behavior by the parent constituting grounds for
13 termination under subsection (3)(b) or (g) and who has contacted
14 the department, the prosecuting attorney, the child's attorney, and
15 the child's guardian ad litem, if any, and is satisfied that none
16 of these persons intend to file a petition under this section.

17 Sec. 19c. (1) Except as provided in section 19(4) of this
18 chapter and subject to subsection (14), if a child remains in
19 placement following the termination of parental rights to the
20 child, the court shall conduct a review hearing not more than 91
21 days after the termination of parental rights and no later than
22 every 91 days after that hearing for the first year following
23 termination of parental rights to the child. If a child remains in
24 a placement for more than 1 year following termination of parental
25 rights to the child, a review hearing shall be held no later than
26 182 days from the immediately preceding review hearing before the
27 end of the first year and no later than every 182 days from each

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

18 (a) The appropriateness of the permanency planning goal for
19 the child.

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

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

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

26 (3) The court shall not appoint a guardian for the child
27 without the written consent of the MCI superintendent or his or her

1 designee. The MCI superintendent or his or her designee shall
2 consult with the child's lawyer guardian ad litem when considering
3 whether to grant written consent.

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

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

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

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

17 (6) Subject to subsection (8), if a hearing is held under
18 subsection (5) and the court finds by clear and convincing evidence
19 that the decision to withhold consent was arbitrary or capricious,
20 the court may approve the guardianship without the consent of the
21 MCI superintendent.

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

25 (8) If a child is placed in a guardian's or a proposed
26 guardian's home under subsection (2) or (6), the court shall order
27 the department of human services to perform an investigation and

1 file a written report of the investigation for a review under
2 subsection (10) and the court shall order the department of human
3 services to do all of the following:

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

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

6 (c) Perform a home study and file a copy of the home study
7 with the court within 30 days unless a home study has been
8 performed within the immediately preceding 365 days, under section
9 ~~13a(9)~~ **13A(10)** of this chapter. If a home study has been performed
10 within the immediately preceding 365 days, a copy of that home
11 study shall be submitted to the court.

12 (9) The court's jurisdiction over a juvenile under section
13 2(b) of this chapter and the jurisdiction of the Michigan
14 children's institute under section 3 of 1935 PA 220, MCL 400.203,
15 shall be terminated after the court appoints a guardian under this
16 section and conducts a review hearing under section 19 of this
17 chapter, unless the juvenile is released sooner by the court.

18 (10) The court's jurisdiction over a guardianship created
19 under this section shall continue until released by court order.
20 The court shall review a guardianship created under this section
21 annually and may conduct additional reviews as the court considers
22 necessary. The court may order the department **OF HUMAN SERVICES** or
23 a court employee to conduct an investigation and file a written
24 report of the investigation.

25 (11) The court may, on its own motion or upon petition from
26 the department of human services or the child's lawyer guardian ad
27 litem, hold a hearing to determine whether a guardianship appointed

1 under this section shall be revoked.

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

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

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