

SENATE BILL No. 1005

March 6, 2012, Introduced by Senators EMMONS, KOWALL, BRANDENBURG, HANSEN, JONES, JANSEN and MARLEAU and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 17d and 19b of chapter XIIA (MCL 712A.17d and 712A.19b), section 17d as amended by 2004 PA 475 and section 19b as amended by 2010 PA 7.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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

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

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

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

27 (a) The agency. The agency shall advise the child of the

1 hearing if the child is 11 years of age or older.

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

3 (c) The child's parents.

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

5 (e) If the child has a guardian ad litem, the child's guardian
6 ad litem.

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

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

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

11 (i) The prosecutor.

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

15 (a) The child has been deserted under any of the following
16 circumstances:

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

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

25 (iii) The child's parent voluntarily surrendered the child to an
26 emergency service provider under chapter XII and did not petition
27 the court to regain custody within 28 days after surrendering the

1 child.

2 (b) The child or a sibling of the child has suffered physical
3 injury or physical or sexual abuse under 1 or more of the following
4 circumstances:

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

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

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

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

23 (i) The conditions that led to the adjudication continue to
24 exist and there is no reasonable likelihood that the conditions
25 will be rectified within a reasonable time considering the child's
26 age.

27 (ii) Other conditions exist that cause the child to come within

1 the court's jurisdiction, the parent has received recommendations
2 to rectify those conditions, the conditions have not been rectified
3 by the parent after the parent has received notice and a hearing
4 and has been given a reasonable opportunity to rectify the
5 conditions, and there is no reasonable likelihood that the
6 conditions will be rectified within a reasonable time considering
7 the child's age.

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

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

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

27 (i) The parent, having the ability to support or assist in

1 supporting the minor, has failed or neglected, without good cause,
2 to provide regular and substantial support for the minor for a
3 period of 2 years or more before the filing of the petition or, if
4 a support order has been entered, has failed to substantially
5 comply with the order for a period of 2 years or more before the
6 filing of the petition.

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

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

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

21 (i) Parental rights to 1 or more siblings of the child have
22 been terminated due to serious and chronic neglect or physical or
23 sexual abuse, and prior attempts to rehabilitate the parents have
24 been unsuccessful.

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

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

3 (i) Abandonment of a young child.

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

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

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

8 (v) Life-threatening injury.

9 (vi) Murder or attempted murder.

10 (vii) Voluntary manslaughter.

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

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

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

18 (m) The parent's rights to another child were voluntarily
19 terminated following the initiation of proceedings under section
20 2(b) of this chapter or a similar law of another state and the
21 proceeding involved abuse that 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 (ix) **SEXUAL ABUSE AS THAT TERM IS DEFINED IN SECTION 2 OF THE**
6 **CHILD PROTECTION LAW, 1975 PA 238, MCL 722.622.**

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

11 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or
12 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317,
13 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

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

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

22 (O) **THE PARENT IS REQUIRED TO REGISTER UNDER THE SEX OFFENDERS**
23 **REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.736.**

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

1 court may suspend parenting time for a parent who is a subject of
2 the petition.

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

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