

SENATE BILL NO. 469

August 29, 2019, Introduced by Senators BULLOCK and BIZON and referred to the Committee on Families, Seniors and Veterans.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 19 and 19a of chapter XIIIA (MCL 712A.19 and
712A.19a), as amended by 2018 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA
2 Sec. 19. (1) Subject to section 20 of this chapter, if a child
3 remains under the court's jurisdiction, a cause may be terminated
4 or an order may be amended or supplemented, within the authority
5 granted to the court in section 18 of this chapter, at any time as

1 the court considers necessary and proper. An amended or
2 supplemented order ~~shall~~**must** be referred to as a "supplemental
3 order of disposition". If the agency becomes aware of additional
4 abuse or neglect of a child who is under the court's jurisdiction
5 and if that abuse or neglect is substantiated as provided in the
6 child protection law, 1975 PA 238, MCL 722.621 to 722.638, the
7 agency shall file a supplemental petition with the court.

8 (2) Except as provided in subsections (3) and (4), if a child
9 subject to the court's jurisdiction remains in his or her home, a
10 review hearing ~~shall~~**must** be held not more than 182 days from the
11 date a petition is filed to give the court jurisdiction over the
12 child and no later than every 91 days after that for the first year
13 that the child is subject to the court's jurisdiction. After the
14 first year that the child is subject to the court's jurisdiction, a
15 review hearing shall be held no later than 182 days from the
16 immediately preceding review hearing before the end of that first
17 year and no later than every 182 days from each preceding review
18 hearing after that until the case is dismissed. A review hearing
19 under this subsection ~~shall~~**must** not be canceled or delayed beyond
20 the number of days required in this subsection, regardless of
21 whether a petition to terminate parental rights or another matter
22 is pending. Upon motion by any party or in the court's discretion,
23 a review hearing may be accelerated to review any element of the
24 case service plan prepared according to section 18f of this
25 chapter.

26 (3) Except as otherwise provided in subsection (4), if, in a
27 proceeding under section 2(b) of this chapter, a child is subject
28 to the court's jurisdiction and removed from his or her home, a
29 review hearing ~~shall~~**must** be held not more than 182 days after the

1 child's removal from his or her home and no later than every 91
2 days after that for the first year that the child is subject to the
3 court's jurisdiction. After the first year that the child has been
4 removed from his or her home and is subject to the court's
5 jurisdiction, a review hearing ~~shall~~**must** be held not more than 182
6 days from the immediately preceding review hearing before the end
7 of that first year and no later than every 182 days from each
8 preceding review hearing after that until the case is dismissed. A
9 review hearing under this subsection ~~shall~~**must** not be canceled or
10 delayed beyond the number of days required in this subsection,
11 regardless of whether a petition to terminate parental rights or
12 another matter is pending. Upon motion by any party or in the
13 court's discretion, a review hearing may be accelerated to review
14 any element of the case service plan prepared according to section
15 18f of this chapter.

16 (4) If a child is under the care and supervision of the agency
17 and is either placed with a relative and the placement is intended
18 to be permanent or is in a permanent foster family agreement, the
19 court shall hold a review hearing not more than 182 days after the
20 child has been removed from his or her home and no later than every
21 182 days after that so long as the child is subject to the
22 jurisdiction of the court, the Michigan children's institute, or
23 other agency. A review hearing under this subsection ~~shall~~**must** not
24 be canceled or delayed beyond the number of days required in this
25 subsection, regardless of whether a petition to terminate parental
26 rights or another matter is pending. Upon the motion of any party
27 or at the court's discretion, a review hearing may be accelerated
28 to review any element of the case service plan.

29 (5) Written notice of a review hearing under subsection (2),

1 (3), or (4) ~~shall~~**must** be served ~~upon~~**on** all of the following:

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

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

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

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

8 (e) If the child has a guardian ad litem, the guardian ad
9 litem for the child.

10 (f) A nonparent adult if the nonparent adult is required to
11 comply with the case service plan.

12 (g) If tribal affiliation has been determined, the elected
13 leader of the Indian tribe.

14 (h) The attorney for the child, the ~~attorneys~~**attorney** for
15 each party, and the prosecuting attorney if the prosecuting
16 attorney has appeared in the case.

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

18 (j) Other persons as the court may direct.

19 (6) At a review hearing under subsection (2), (3), or (4), the
20 court shall review on the record all of the following:

21 (a) Compliance with the case service plan with respect to
22 services provided or offered to the child and the child's parent,
23 guardian, custodian, or nonparent adult if the nonparent adult is
24 required to comply with the case service plan and whether the
25 parent, guardian, custodian, or nonparent adult if the nonparent
26 adult is required to comply with the case service plan has complied
27 with and benefited from those services.

28 (b) Compliance with the case service plan with respect to
29 parenting time with the child. If parenting time did not occur or

1 was infrequent, the court shall determine why parenting time did
2 not occur or was infrequent.

3 (c) The extent to which the parent complied with each
4 provision of the case service plan, prior court orders, and an
5 agreement between the parent and the agency.

6 (d) Likely harm to the child if the child continues to be
7 separated from the child's parent, guardian, or custodian.

8 (e) Likely harm to the child if the child is returned to the
9 child's parent, guardian, or custodian.

10 (7) After review of the case service plan, the court shall
11 determine the extent of progress made toward alleviating or
12 mitigating the conditions that caused the child to be placed in
13 foster care or that caused the child to remain in foster care. The
14 court may modify any part of the case service plan including, but
15 not limited to, the following:

16 (a) Prescribing additional services that are necessary to
17 rectify the conditions that caused the child to be placed in foster
18 care or to remain in foster care.

19 (b) Prescribing additional actions to be taken by the parent,
20 guardian, nonparent adult, or custodian, to rectify the conditions
21 that caused the child to be placed in foster care or to remain in
22 foster care.

23 (8) At a review hearing under subsection (2), (3), or (4), the
24 court shall determine the continuing necessity and appropriateness
25 of the child's placement and shall order the return of the child to
26 the custody of the parent as provided in this subsection, continue
27 the dispositional order, modify the dispositional order, or enter a
28 new dispositional order. The court shall order the child returned
29 to the custody of his or her parent if ~~the return of~~ **returning** the

1 child to his or her parent would not cause a substantial risk of
2 harm to the child.

3 (9) If in a proceeding under section 2(b) of this chapter a
4 child is placed in foster care, the court shall determine at the
5 dispositional hearing and each review hearing whether the cause
6 should be reviewed before the next review hearing required by
7 subsection (2), (3), or (4). In making this determination, the
8 court shall consider at least all of the following:

9 (a) The parent's ability and motivation to make necessary
10 changes to provide a suitable environment for the child.

11 (b) Whether there is a reasonable likelihood that the child
12 may be returned to his or her home ~~prior to~~**before** the next review
13 hearing required by subsection (2), (3), or (4).

14 **(10) At a review hearing under this section, the court shall**
15 **approve or disapprove a qualified residential treatment program**
16 **placement as provided in section 13a of 1973 PA 116, MCL 722.123a.**

17 **(11) ~~(10)~~** Unless waived, if not less than 7 days' notice is
18 given to all parties ~~prior to the return of~~**before returning** a
19 child to the child's home, and no party requests a hearing within
20 the 7 days, the court may issue an order without a hearing
21 permitting the agency to return the child to the child's home.

22 **(12) ~~(11)~~** An agency report filed with the court ~~shall~~**must** be
23 accessible to all parties to the action and ~~shall~~**must** be offered
24 into evidence. The court shall consider any written or oral
25 information concerning the child from the child's parent, guardian,
26 custodian, foster parent, child caring institution, relative with
27 whom a child is placed, attorney, lawyer-guardian ad litem, or
28 guardian ad litem, in addition to any other evidence, including the
29 appropriateness of parenting time, offered at the hearing.

1 (13) ~~(12)~~ Reasonable efforts to finalize an alternate
2 permanency plan may be made concurrently with reasonable efforts to
3 reunify the child with the family.

4 (14) ~~(13)~~ Reasonable efforts to place a child for adoption or
5 with a legal guardian, including identifying appropriate in-state
6 or out-of-state options, may be made concurrently with reasonable
7 efforts to reunify the child and family.

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

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

1 (a) There is a judicial determination that the parent has
2 subjected the child to aggravated circumstances as provided in
3 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL
4 722.638.

5 (b) The parent has been convicted of 1 or more of the
6 following:

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

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

9 (iii) Aiding or abetting in the murder of another child of the
10 parent or voluntary manslaughter of another child of the parent,
11 the attempted murder of the child or another child of the parent,
12 or the conspiracy or solicitation to commit the murder of the child
13 or another child of the parent.

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

16 (c) The parent has had rights to the child's siblings
17 involuntarily terminated and the parent has failed to rectify the
18 conditions that led to that termination of parental rights.

19 (d) The parent is required by court order to register under
20 the sex offenders registration act.

21 (3) A permanency planning hearing ~~shall~~**must** be conducted to
22 review the **child's** status ~~of the child~~ and the progress being made
23 toward the child's return home or to show why the child should not
24 be placed in the permanent custody of the court. The court shall
25 obtain the child's views regarding the permanency plan in a manner
26 that is appropriate to the child's age. In the case of a child who
27 will not be returned home, the court shall consider in-state and
28 out-of-state placement options. In the case of a child placed out-
29 of-state, the court shall determine whether the out-of-state

1 placement continues to be appropriate and in the child's best
2 interests. The court shall ensure that the agency is providing
3 appropriate services to assist a child who will transition from
4 foster care to independent living.

5 (4) At or before each permanency planning hearing, the court
6 shall determine whether the agency has made reasonable efforts to
7 finalize the permanency plan. At the hearing, the court shall
8 determine whether and, if applicable, when the following must
9 occur:

10 (a) The child may be returned to the parent, guardian, or
11 legal custodian.

12 (b) A petition to terminate parental rights should be filed.

13 (c) The child may be placed in a legal guardianship.

14 (d) The child may be permanently placed with a fit and willing
15 relative.

16 (e) The child may be placed in another planned permanent
17 living arrangement, but only in those cases where the agency has
18 documented to the court a compelling reason for determining that it
19 would not be in the best interest of the child to follow 1 of the
20 options listed in subdivisions (a) to (d).

21 (5) The court shall determine whether or not the agency,
22 foster home, or institutional placement has followed the reasonable
23 and prudent parenting standard that the child has had regular
24 opportunities to engage in age or developmentally appropriate
25 activities.

26 (6) Not less than 14 days before a permanency planning
27 hearing, written notice of the hearing and a statement of the
28 purposes of the hearing, including a notice that the hearing may
29 result in further proceedings to terminate parental rights, ~~shall~~

1 **must** be served ~~upon~~**on** all of the following:

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

4 (b) The **child's** foster parent or custodian. ~~of the child.~~

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

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

8 (e) If the child has a guardian ad litem, the guardian ad
9 litem for the child.

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

12 (g) The attorney for the child, the attorneys for each party,
13 and the prosecuting attorney if the prosecuting attorney has
14 appeared in the case.

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

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

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

1 of substantial risk of harm, the court shall consider any condition
2 or circumstance of the child that may be evidence that ~~a return~~
3 **returning the child** to the parent would cause a substantial risk of
4 harm to the child's life, physical health, or mental well-being.

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

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

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

20 (i) Adoption is not the appropriate permanency goal for the
21 child.

22 (ii) No grounds to file a petition to terminate parental rights
23 exist.

24 (iii) The child is an unaccompanied refugee minor as defined in
25 45 CFR ~~400.11~~.**400.111**.

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

28 (c) The state has not provided the child's family, consistent
29 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 (9) If the agency demonstrates under subsection (8) 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 (8), ~~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~~**must**
11 continue 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~~**on** compelling reasons, the child's placement
14 in foster care may continue on a long-term basis.

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

19 (10) A guardian appointed under subsection (9)(c) has all of
20 the powers and duties set forth under section ~~15-5215~~ of the
21 estates and protected individuals code, 1998 PA 386, MCL 700.5215.

22 (11) If a child is placed in a guardian's or a proposed
23 guardian's home under subsection (9)(c), the court shall order the
24 department to perform an investigation and file a written report of
25 the investigation for a review under subsection (12) and the court
26 shall order the department to do all of the following:

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

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

29 (c) Perform a home study and file a copy of the home study

1 with the court within 30 days unless a home study has been
2 performed within the immediately preceding 365 days, under section
3 13a(11) of this chapter. If a home study has been performed within
4 the immediately preceding 365 days, a copy of that home study ~~shall~~
5 **must** be submitted to the court.

6 (12) The court's jurisdiction over a juvenile under section
7 2(b) of this chapter ~~shall~~**must** be terminated after the court
8 appoints a guardian under this section and conducts a review
9 hearing under section 19 of this chapter, unless the juvenile is
10 released sooner by the court.

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

18 (14) In making the determinations under this section, the
19 court shall consider any written or oral information concerning the
20 child from the child's parent, guardian, custodian, foster parent,
21 child caring institution, relative with whom the child is placed,
22 or guardian ad litem in addition to any other evidence, including
23 the appropriateness of parenting time, offered at the hearing. **If a**
24 **qualified residential treatment program placement as provided in**
25 **section 13a of 1973 PA 116, MCL 722.123a, is presented, the court**
26 **shall approve or disapprove that qualified residential treatment**
27 **program placement.**

28 (15) The court may, on its own motion or upon petition from
29 the department or the child's lawyer guardian ad litem, hold a

1 hearing to determine whether a guardianship appointed under this
2 section ~~shall~~**must** be revoked.

3 (16) 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 (17) After notice and hearing on a petition ~~for revocation to~~
7 **revoke** or permission to terminate the guardianship, if the court
8 finds by a preponderance of evidence that ~~continuation of~~
9 **continuing** the guardianship is not in the child's best interests,
10 the court shall revoke or terminate the guardianship and appoint a
11 successor guardian or restore temporary legal custody to the
12 department.

13 Enacting section 1. This amendatory act does not take effect
14 unless all of the following bills of the 100th Legislature are
15 enacted into law:

16 (a) Senate Bill No. 466.

17 (b) Senate Bill No. 467.

18 (c) Senate Bill No. 468.