

HOUSE BILL No. 4078

January 13, 2011, Introduced by Rep. Slavens and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 19 and 19a of chapter XIIA (MCL 712A.19 and 712A.19a), section 19 as amended by 2008 PA 202 and section 19a as amended by 2008 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XIIA

Sec. 19. (1) Subject to section 20 of this chapter, if a child remains under the court's jurisdiction, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a "supplemental order of disposition". If the agency becomes aware of additional abuse or

1 neglect of a child who is under the court's jurisdiction and if
2 that abuse or neglect is substantiated as provided in the child
3 protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency
4 shall file a supplemental petition with the court.

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

22 (3) Except as otherwise provided in subsection (4), if, in a
23 proceeding under section 2(b) of this chapter, a child is subject
24 to the court's jurisdiction and removed from his or her home, a
25 review hearing shall be held not more than 182 days after the
26 child's removal from his or her home and no later than every 91
27 days after that for the first year that the child is subject to the

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

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

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

1 (3), or (4) shall be served upon 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 for each party,
15 and the prosecuting attorney if the prosecuting attorney has
16 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.

1 (b) Compliance with the case service plan with respect to
2 parenting time with the child. If parenting time did not occur or
3 was infrequent, the court shall determine why parenting time did
4 not occur or was infrequent.

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

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

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

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

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

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

25 (8) At a review hearing under subsection (2), (3), or (4), the
26 court shall determine the continuing necessity and appropriateness
27 of the child's placement and shall order the return of the child to

1 the custody of the parent, continue the dispositional order, modify
2 the dispositional order, or enter a new dispositional order.

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 the next review hearing
13 required by subsection (2), (3), or (4).

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

19 **(11) FOR A HEARING UNDER THIS SECTION, THE SUPERVISING AGENCY**
20 **SHALL PROVIDE DOCUMENTATION OF PROGRESS RELATING TO ALL ASPECTS OF**
21 **THE LAST COURT-ORDERED TREATMENT PLAN, INCLUDING COPIES OF**
22 **EVALUATIONS AND THERAPY REPORTS AND VERIFICATION OF PARENTING TIME,**
23 **TO ALL PARTIES AND THEIR ATTORNEYS NOT LATER THAN 5 BUSINESS DAYS**
24 **BEFORE THE SCHEDULED HEARING.** An agency report filed with the court
25 shall be accessible to all parties to the action and shall be
26 offered into evidence. The court shall consider any written or oral
27 information concerning the child from the child's parent, guardian,

1 custodian, foster parent, child caring institution, relative with
2 whom a child is placed, attorney, lawyer-guardian ad litem, or
3 guardian ad litem, in addition to any other evidence, including the
4 appropriateness of parenting time, offered at the hearing.

5 (12) Reasonable efforts to finalize an alternate permanency
6 plan may be made concurrently with reasonable efforts to reunify
7 the child with the family.

8 (13) Reasonable efforts to place a child for adoption or with
9 a legal guardian, including identifying appropriate in-state or
10 out-of-state options, may be made concurrently with reasonable
11 efforts to reunify the child and family.

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

1 pending.

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

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

11 (b) The parent has been convicted of 1 or more of the
12 following:

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

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

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

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

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

24 (3) A permanency planning hearing shall be conducted to review
25 the status of the child and the progress being made toward the
26 child's return home or to show why the child should not be placed
27 in the permanent custody of the court. The court shall obtain the

1 child's views regarding the permanency plan in a manner that is
2 appropriate to the child's age. In the case of a child who will not
3 be returned home, the court shall consider in-state and out-of-
4 state placement options. In the case of a child placed out-of-
5 state, the court shall determine whether the out-of-state placement
6 continues to be appropriate and in the child's best interests. The
7 court shall ensure that the agency is providing appropriate
8 services to assist a child who will transition from foster care to
9 independent living.

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

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

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

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

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

21 (e) If the child has a guardian ad litem, the guardian ad
22 litem for the child.

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

25 (g) The attorney for the child, the attorneys for each party,
26 and the prosecuting attorney if the prosecuting attorney has
27 appeared in the case.

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

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

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

20 (6) If the court determines at a permanency planning hearing
21 that a child should not be returned to his or her parent, the court
22 may order the agency to initiate proceedings to terminate parental
23 rights. Except as otherwise provided in this subsection, if the
24 child has been in foster care under the responsibility of the state
25 for 15 of the most recent 22 months, the court shall order the
26 agency to initiate proceedings to terminate parental rights. The
27 court is not required to order the agency to initiate proceedings

1 to terminate parental rights if 1 or more of the following apply:

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

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

8 (i) Adoption is not the appropriate permanency goal for the
9 child.

10 (ii) No grounds to file a petition to terminate parental rights
11 exist.

12 (iii) The child is an unaccompanied refugee minor as defined in
13 45 CFR 400.11.

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

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

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

26 (a) If the court determines that other permanent placement is
27 not possible, the child's placement in foster care shall continue

1 for a limited period to be stated by the court.

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

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

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

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

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

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

19 (c) Perform a home study and file a copy of the home study
20 with the court within 30 days unless a home study has been
21 performed within the immediately preceding 365 days, under section
22 13a(9) of this chapter. If a home study has been performed within
23 the immediately preceding 365 days, a copy of that home study shall
24 be submitted to the court.

25 (10) The court's jurisdiction over a juvenile under section
26 2(b) of this chapter shall be terminated after the court appoints a
27 guardian under this section and conducts a review hearing under

1 section 19 of this chapter, unless the juvenile is released sooner
2 by the court.

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

10 (12) **FOR A HEARING UNDER THIS SECTION, THE SUPERVISING AGENCY**
11 **SHALL PROVIDE DOCUMENTATION OF PROGRESS RELATING TO ALL ASPECTS OF**
12 **THE LAST COURT-ORDERED TREATMENT PLAN, INCLUDING COPIES OF**
13 **EVALUATIONS AND THERAPY REPORTS AND VERIFICATION OF PARENTING TIME,**
14 **TO ALL PARTIES AND THEIR ATTORNEYS NOT LATER THAN 5 BUSINESS DAYS**
15 **BEFORE THE SCHEDULED HEARING.** In making the determinations under
16 this section, the court shall consider any written or oral
17 information concerning the child from the child's parent, guardian,
18 custodian, foster parent, child caring institution, relative with
19 whom the child is placed, or guardian ad litem in addition to any
20 other evidence, including the appropriateness of parenting time,
21 offered at the hearing.

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

26 (14) A guardian may petition the court for permission to
27 terminate the guardianship. A petition may include a request for

1 appointment of a successor guardian.

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