

**SENATE BILL NO. 793**

October 7, 1999, Introduced by Senators HAMMERSTROM, SHUGARS, JOHNSON, MC COTTER, GOSCHKA, STILLE, ROGERS and STEIL and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 22 of chapter X and sections 13a, 18f, and 19b of chapter XIIIA (MCL 710.22, 712A.13a, 712A.18f, and 712A.19b), section 22 of chapter X as amended by 1996 PA 409, sections 13a and 19b of chapter XIIIA as amended by 1998 PA 530, and section 18f of chapter XIIIA as amended by 1998 PA 480.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER X

Sec. 22. As used in this chapter:

(a) "Adoptee" means the individual who is to be adopted, regardless of whether the individual is a child or an adult.

(b) "Adoption attorney" means an attorney acting as counsel in a direct placement adoption who meets all of the following requirements:



1 (i) Has completed at least 12 hours of continuing education  
2 in this state during the past 5 years in courses integrating the  
3 legal and social aspects of adoption.

4 (ii) Maintains an up-to-date file of individuals licensed or  
5 registered under either the public health code, ~~Act No. 368 of~~  
6 ~~the Public Acts of 1978, being sections 333.1101 to 333.25211 of~~  
7 ~~the Michigan Compiled Laws~~ 1978 PA 368, MCL 333.1101 TO  
8 333.25211, or the occupational code, ~~Act No. 299 of the Public~~  
9 ~~Acts of 1980, being sections 339.101 to 339.2721 of the Michigan~~  
10 ~~Compiled Laws~~ 1980 PA 299, MCL 339.101 TO 339.2721, and agencies  
11 to whom referrals may be made for counseling services needed by  
12 an adoption client.

13 (iii) Has registered as an adoption attorney with the  
14 children's ombudsman as provided in section 5 of the foster care  
15 and adoption services act, ~~Act No. 203 of the Public Acts of~~  
16 ~~1994, being sections 722.951 to 722.960 of the Michigan Compiled~~  
17 ~~Laws~~ 1994 PA 203, MCL 722.955.

18 (c) "Adult former sibling" means an individual who is 18  
19 years of age or older and is related to an adult adoptee either  
20 biologically or through adoption by at least 1 common parent,  
21 regardless of whether the adult former sibling ever lived in the  
22 same household as the adult adoptee.

23 (d) "Agency placement" means a placement in which a child  
24 placing agency, the department, or a court selects the adoptive  
25 parent for the child and transfers physical custody of the child  
26 to the prospective adoptive parent.

1 (E) "ALCOHOL ABUSE" MEANS THE FREQUENT AND ROUTINE  
2 CONSUMPTION OF ALCOHOLIC BEVERAGES TO THE POINT OF INTOXICATION.

3 (F) ~~(e)~~ "Attending practitioner" means a licensed physi-  
4 cian or a registered professional nurse certified as a nurse mid-  
5 wife by the Michigan board of nursing.

6 (G) ~~(f)~~ "Best interests of the adoptee" or "best interests  
7 of the child" means the sum total of the following factors to be  
8 considered, evaluated, and determined by the court to be applied  
9 to give the adoptee permanence at the earliest possible date:

10 (i) The love, affection, and other emotional ties existing  
11 between the adopting individual or individuals and the adoptee  
12 or, in the case of a hearing under section 39 of this chapter,  
13 the putative father and the adoptee.

14 (ii) The capacity and disposition of the adopting individual  
15 or individuals or, in the case of a hearing under section 39 of  
16 this chapter, the putative father to give the adoptee love,  
17 affection, and guidance, and to educate and create a milieu that  
18 fosters the religion, racial identity, and culture of the  
19 adoptee.

20 (iii) The capacity and disposition of the adopting individ-  
21 ual or individuals or, in the case of a hearing under section 39  
22 of this chapter, the putative father ~~—~~ to provide the adoptee  
23 with food, clothing, education, permanence, medical care or other  
24 remedial care recognized and permitted under the laws of this  
25 state in place of medical care, and other material needs.

1 (iv) The length of time the adoptee has lived in a stable,  
2 satisfactory environment, and the desirability of maintaining  
3 continuity.

4 (v) The permanence as a family unit of the proposed adoptive  
5 home ~~—~~ or, in the case of a hearing under section 39 of this  
6 chapter, the home of the putative father.

7 (vi) The moral fitness of the adopting individual or indi-  
8 viduals or, in the case of a hearing under section 39 of this  
9 chapter, of the putative father INCLUDING, BUT NOT LIMITED TO,  
10 EVIDENCE OF A CRIMINAL CONVICTION, ALCOHOL ABUSE, OR CONTROLLED  
11 SUBSTANCE ABUSE.

12 (vii) The mental and physical health of the adopting indi-  
13 vidual or individuals or, in the case of a hearing under section  
14 39 of this chapter, of the putative father ~~—~~ and of the  
15 adoptee.

16 (viii) The home, school, and community record of the  
17 adoptee.

18 (ix) The reasonable preference of the adoptee, if the  
19 adoptee is 14 years of age or less and if the court considers the  
20 adoptee to be of sufficient age to express a preference.

21 (x) The ability and willingness of the adopting individual  
22 or individuals to adopt the adoptee's siblings.

23 (xi) Any other factor considered by the court to be relevant  
24 to a particular adoption proceeding ~~—~~ or to a putative father's  
25 request for child custody.

26 (H) ~~(g)~~ "Born out of wedlock" means a child conceived and  
27 born to a woman who was not married from the conception to the

1 date of birth of the child, or a child whom the court has  
2 determined to be a child born during a marriage but not the issue  
3 of that marriage.

4 (I) ~~(h)~~ "Central adoption registry" means the registry  
5 established by the department pursuant to section 27b of this  
6 chapter to control the release of identifying adoption  
7 information.

8 (J) ~~(i)~~ "Child" means an individual less than 18 years of  
9 age.

10 (K) ~~(j)~~ "Child placing agency" means a private organiza-  
11 tion licensed under ~~Act No. 116 of the Public Acts of 1973,~~  
12 ~~being sections 722.111 to 722.128 of the Michigan Compiled Laws~~  
13 1973 PA 116, MCL 722.111 TO 722.128, to place children for  
14 adoption.

15 (L) ~~(k)~~ "Consent" means a document in which all parental  
16 rights over a specific child are voluntarily relinquished to the  
17 court for placement with a specific adoptive parent.

18 (M) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN  
19 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
20 333.7104.

21 (N) "CONTROLLED SUBSTANCE ABUSE" MEANS EITHER THE FREQUENT  
22 AND ROUTINE CONSUMPTION OF A CONTROLLED SUBSTANCE IN AN AMOUNT  
23 EXCEEDING THE DOSAGE RECOMMENDED BY THE PRESCRIBER OR THE RECENT  
24 CONSUMPTION OF A CONTROLLED SUBSTANCE FOR WHICH THE USER HAD NO  
25 PRESCRIPTION OR FOR WHICH NO PRESCRIPTION IS AVAILABLE.

1       (O) ~~(i)~~ "Court" means the family division of circuit court  
2 of this state, or when the context requires, the court having  
3 jurisdiction over adoption in another state or country.

4       (P) ~~(m)~~ "Department" means the family independence  
5 agency.

6       (Q) ~~(n)~~ "Direct placement" means a placement in which a  
7 parent or guardian selects an adoptive parent for a child, other  
8 than a stepparent or an individual related to the child within  
9 the fifth degree by marriage, blood, or adoption, and transfers  
10 physical custody of the child to the prospective adoptive  
11 parent.

12       (R) ~~(o)~~ "Formal placement" means a placement that is  
13 approved by the court under section 51 of this chapter.

14       (S) ~~(p)~~ "Person" means an individual, partnership, corpo-  
15 ration, association, governmental entity, or other legal entity.

16       (T) ~~(q)~~ "Petitioner", except as used in section 68b of  
17 this chapter, means the individual or individuals who file an  
18 adoption petition with the court.

19       (U) ~~(r)~~ "Placement" or "to place" means selection of an  
20 adoptive parent for a child and transfer of physical custody of  
21 the child to a prospective adoptive parent pursuant to this  
22 chapter.

23       (V) ~~(s)~~ "Release" means a document in which all parental  
24 rights over a specific child are voluntarily relinquished to the  
25 department or to a child placing agency.

26       (W) ~~(t)~~ "Rescission petition" means a petition filed by an  
27 adult adoptee and his or her parent whose rights have been

1 terminated to rescind the adoption in which a stepparent acquired  
 2 parental rights and to restore parental rights of that parent  
 3 pursuant to section 66 of this chapter.

4 (X) ~~(u)~~ "Suitable to be a parent of an adoptee" means a  
 5 conclusion that there is no specific concern with respect to an  
 6 individual that would suggest that placement of any child, or a  
 7 particular child, in the home of the individual would pose a risk  
 8 of harm to the physical or psychological well-being of the  
 9 child.

10 (Y) ~~(v)~~ "Temporary placement" means a placement that  
 11 occurs before court approval under section 51 of this chapter and  
 12 that meets the requirements of section 23d of this chapter.

13 (Z) ~~(w)~~ "Within the fifth degree by marriage, blood, or  
 14 adoption" means any of the following relationships: parent,  
 15 step-parent, grandparent, step-grandparent, brother,  
 16 step-brother, sister, step-sister, uncle, step-uncle, aunt,  
 17 step-aunt, first cousin, step-first cousin, great aunt,  
 18 step-great aunt, great uncle, step-great uncle, great grandpar-  
 19 ent, step-great grandparent, first cousin once removed,  
 20 step-first cousin once removed, great great grandparent,  
 21 step-great great grandparent, great great uncle, step-great great  
 22 uncle, great great aunt, step-great great aunt, great great great  
 23 grandparent, or step-great great great grandparent.

24

#### CHAPTER XIIIA

25 Sec. 13a. (1) As used in this section and sections 2, 6b,  
 26 13b, 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

1 (a) "Agency" means a public or private organization,  
2 institution, or facility responsible under court order or  
3 contractual arrangement for a juvenile's care and supervision.

4 (B) "ALCOHOL ABUSE" MEANS THE FREQUENT AND ROUTINE CONSUMP-  
5 TION OF ALCOHOLIC BEVERAGES TO THE POINT OF INTOXICATION.

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

16 (D) ~~(c)~~ "Case service plan" means the plan developed by an  
17 agency and prepared pursuant to section 18f of this chapter that  
18 includes services to be provided by and responsibilities and  
19 obligations of the agency and activities, responsibilities, and  
20 obligations of the parent. The case service plan may be referred  
21 to using different names than case service plan including, but  
22 not limited to, a parent/agency agreement or a parent/agency  
23 treatment plan and service agreement.

24 (E) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN  
25 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
26 333.7104.

1 (F) "CONTROLLED SUBSTANCE ABUSE" MEANS EITHER THE FREQUENT  
2 AND ROUTINE CONSUMPTION OF A CONTROLLED SUBSTANCE IN AN AMOUNT  
3 EXCEEDING THE DOSAGE RECOMMENDED BY THE PRESCRIBER OR THE RECENT  
4 CONSUMPTION OF A CONTROLLED SUBSTANCE FOR WHICH THE USER HAD NO  
5 PRESCRIPTION OR FOR WHICH NO PRESCRIPTION IS AVAILABLE.

6 (G) ~~(d)~~ "Foster care" means care provided to a juvenile in  
7 a foster family home, foster family group home, or juvenile  
8 caring institution licensed or approved under 1973 PA 116,  
9 MCL 722.111 to 722.128, or care provided to a juvenile in a  
10 relative's home under a court order.

11 (H) ~~(e)~~ "Guardian ad litem" means an individual whom the  
12 court appoints to assist the court in determining the child's  
13 best interests. A guardian ad litem does not need to be an  
14 attorney.

15 (I) ~~(f)~~ "Lawyer-guardian ad litem" means an attorney  
16 appointed under section 17c of this chapter. A lawyer-guardian  
17 ad litem represents the child, and has the powers and duties, as  
18 set forth in section 17d of this chapter. The provisions of sec-  
19 tion 17d of this chapter also apply to a lawyer-guardian ad litem  
20 appointed under each of the following:

21 (i) Section 427 or 437 of the revised probate code, 1978 PA  
22 642, MCL 700.427 and 700.437.

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

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

1 (iv) SECTIONS 5213 AND 5219 OF THE ESTATES AND PROTECTED  
2 INDIVIDUALS CODE, 1998 PA 386, MCL 700.5213 AND 700.5219.

3 (J) ~~(g)~~ "Nonparent adult" means a person who is 18 years  
4 of age or older and who, regardless of the person's domicile,  
5 meets all of the following criteria in relation to a child over  
6 whom the court takes jurisdiction under this chapter:

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

8 (ii) Has a close personal relationship with the child's  
9 parent or with a person responsible for the child's health or  
10 welfare.

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

13 (K) ~~(h)~~ "Permanent foster family agreement" means an  
14 agreement for a child 14 years old or older to remain with a par-  
15 ticular foster family until the child is 18 years old under stan-  
16 dards and requirements established by the family independence  
17 agency. ~~—, which agreement is—~~ A PERMANENT FOSTER FAMILY AGREE-  
18 MENT IS AN AGREEMENT among all of the following:

19 (i) The child.

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

21 (iii) The foster family.

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

24 (2) If a juvenile is alleged to be within the provisions of  
25 section 2(b) of this chapter, the court may authorize a petition  
26 to be filed at the conclusion of the preliminary hearing or  
27 inquiry. The court may authorize the petition upon a showing of

1 probable cause that 1 or more of the allegations in the petition  
2 are true and fall within the provisions of section 2(b) of this  
3 chapter. If a petition is before the court because the family  
4 independence agency is required to submit the petition under sec-  
5 tion 17 of the child protection law, 1975 PA 238, MCL 722.637,  
6 the court shall hold a hearing on the petition within 24 hours or  
7 on the next business day after the petition is submitted, at  
8 which hearing the court shall consider at least the matters gov-  
9 erned by subsections (4) and (5).

10 (3) Except as provided in subsection (5), if a petition  
11 under subsection (2) is authorized, the court may release the  
12 juvenile in the custody of either of the juvenile's parents or  
13 the juvenile's guardian or custodian under reasonable terms and  
14 conditions necessary for either the juvenile's physical health or  
15 mental well-being.

16 (4) The court may order a parent, guardian, custodian, non-  
17 parent adult, or other person residing in a child's home to leave  
18 the home and, except as the court orders, not to subsequently  
19 return to the home if all of the following take place:

20 (a) A petition alleging abuse of the child by the parent,  
21 guardian, custodian, nonparent adult, or other person is autho-  
22 rized under subsection (2).

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

26 (c) The court finds on the record that the presence in the  
27 home of the person alleged to have committed the abuse presents a

1 substantial risk of harm to the child's life, physical health, or  
2 mental well-being.

3       (5) If a petition alleges abuse by a person described in  
4 subsection (4), regardless of whether the court orders the  
5 alleged abuser to leave the child's home under subsection (4),  
6 the court shall not leave the child in or return the child to the  
7 child's home or place the child with a person not licensed under  
8 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that  
9 the conditions of custody at the placement and with the individ-  
10 ual with whom the child is placed are adequate to safeguard the  
11 child from the risk of harm to the child's life, physical health,  
12 or mental well-being.

13       (6) In determining whether to enter an order under  
14 subsection (4), the court may consider whether the parent who is  
15 to remain in the juvenile's home is married to the person to be  
16 removed or has a legal right to retain possession of the home.

17       (7) An order entered under subsection (4) may also contain 1  
18 or more of the following terms or conditions:

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

22       (b) The court may order the alleged abusive person, accord-  
23 ing to terms the court may set, to surrender to a local law  
24 enforcement agency any firearms or other potentially dangerous  
25 weapons the alleged abusive person owns, possesses, or uses.

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

4 (8) If the court orders placement of the juvenile outside  
5 the juvenile's home, the court shall inform the parties of the  
6 following:

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

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

13 (c) That participation in the initial services plan is vol-  
14 untary without a court order.

15 (9) Before or within 7 days after a child is placed in a  
16 relative's home, the family independence agency shall perform a  
17 criminal record check and central registry clearance. If the  
18 child is placed in the home of a relative, the court shall order  
19 a home study to be performed and a copy of the home study to be  
20 submitted to the court not more than 30 days after the  
21 placement.

22 (10) In determining placement of a juvenile pending trial,  
23 the court shall order the juvenile placed in the most family-like  
24 setting available consistent with the juvenile's needs.

25 (11) If a juvenile is removed from his or her home, the  
26 court shall permit the juvenile's parent to have frequent  
27 parenting time with the juvenile. However, if parenting time,

1 even if supervised, may be harmful to the juvenile, the court  
2 shall order the child to have a psychological evaluation or coun-  
3 seling, or both, to determine the appropriateness and the condi-  
4 tions of parenting time. The court may suspend parenting time  
5 while the psychological evaluation or counseling is conducted.

6 (12) Upon the motion of any party, the court shall review  
7 custody and placement orders and initial services plans pending  
8 trial and may modify those orders and plans as the court consid-  
9 ers under this section are in the juvenile's best interests.

10 (13) IN DETERMINING CUSTODY OF A CHILD UNDER THIS SECTION,  
11 THE COURT SHALL CONSIDER, ALONG WITH OTHER EVIDENCE, EVIDENCE OF  
12 A CRIMINAL CONVICTION, ALCOHOL ABUSE, OR CONTROLLED SUBSTANCE  
13 ABUSE.

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

24 (15) ~~(14)~~ In an order placing a child in foster care, the  
25 court shall include both of the following:

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

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

7 (16) ~~(15)~~ As used in this section, "abuse" means 1 or more  
8 of the following:

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

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

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

22 (d) Maltreatment of a juvenile.

23 Sec. 18f. (1) If, in a proceeding under section 2(b) of  
24 this chapter, an agency advises the court against placing a child  
25 in the custody of the child's parent, guardian, or custodian, the  
26 agency shall report in writing to the court what efforts were  
27 made to prevent the child's removal from his or her home or the

1 efforts made to rectify the conditions that caused the child's  
2 removal from his or her home. The report shall include all of  
3 the following:

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

7 (b) If services were not provided to the child and his or  
8 her parent, guardian, or custodian, the reasons why services were  
9 not provided.

10 (c) Likely harm to the child if the child were to be sepa-  
11 rated from his or her parent, guardian, or custodian.

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

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

18 (3) The case service plan shall provide for placing the  
19 child in the most family-like setting available and in as close  
20 proximity to the child's parents' home as is consistent with the  
21 child's best interests and special needs. The case service plan  
22 shall include, but not be limited to, the following:

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

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

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

3 (d) Schedule of services to be provided to the parent,  
4 child, and if the child is to be placed in foster care, the  
5 foster parent, to facilitate the child's return to his or her  
6 home or to facilitate the child's permanent placement.

7 (e) Except as otherwise provided in this subdivision, unless  
8 parenting time, even if supervised, would be harmful to the child  
9 as determined by the court under section 13a of this chapter or  
10 otherwise, a schedule for regular and frequent parenting time  
11 between the child and his or her parent which shall not be less  
12 than once every 7 days. ~~At the time of the initial termination~~  
13 ~~hearing held to consider termination of parental rights, parent-~~  
14 ~~ing time is automatically suspended unless the parent establishes~~  
15 ~~and the court determines that the exercise of parenting time will~~  
16 ~~not harm the child. If the court adjourns or continues the ter-~~  
17 ~~mination hearing beyond the original scheduled date for any~~  
18 ~~reason, the court shall suspend parenting time in the interim,~~  
19 ~~unless the court determines that the exercise of parenting time~~  
20 ~~will not harm the child.~~

21 (4) Before the court enters an order of disposition, the  
22 court 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, BUT NOT LIMITED TO, EVIDENCE REGARDING the

1 appropriateness of parenting time ~~—~~ OR REGARDING A CRIMINAL  
2 CONVICTION, ALCOHOL ABUSE, OR CONTROLLED SUBSTANCE ABUSE, which  
3 information or evidence bears on the disposition. The order of  
4 disposition shall state whether reasonable efforts have been made  
5 to prevent the child's removal from his or her home or to rectify  
6 the conditions that caused the child's removal from his or her  
7 home. The court may order compliance with all or any part of the  
8 case service plan as the court considers necessary.

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

22       (6) To ensure that the case service plan addresses the  
23 child's medical needs in relation to abuse and neglect, the  
24 family independence agency shall review a child's case with the  
25 child's attending physician of record during a hospitalization or  
26 with the child's primary care physician, but only if a physician

1 has diagnosed the child's abuse or neglect as involving 1 or more  
2 of the following:

3 (a) Failure to thrive.

4 (b) Munchausen syndrome by proxy.

5 (c) Shaken baby syndrome.

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

8 (e) Drug exposure.

9 (7) If a child is placed outside of his or her home and the  
10 family independence agency is required to review the child's case  
11 with a physician under subsection (6), then in a judicial pro-  
12 ceeding to determine if the child is to be returned to his or her  
13 home the court must allow the child's attending physician of  
14 record during a hospitalization or the child's primary care phy-  
15 sician to testify regarding the case service plan. The court  
16 shall notify each physician of the hearing's time and place.

17 Sec. 19b. (1) Except as provided in subsection (4), if a  
18 child remains in foster care in the temporary custody of the  
19 court following a review hearing under section 19(3) of this  
20 chapter or a permanency planning hearing under section 19a of  
21 this chapter or if a child remains in the custody of a guardian  
22 or limited guardian, upon petition of the prosecuting attorney,  
23 whether or not the prosecuting attorney is representing or acting  
24 as legal consultant to the agency or any other party, or petition  
25 of the child, guardian, custodian, concerned person as defined in  
26 subsection (6), agency, or children's ombudsman as authorized in  
27 section 7 of the children's ombudsman act, 1994 PA 204, MCL

1 722.927, the court shall hold a hearing to determine if the  
2 parental rights to a child should be terminated and, if all  
3 parental rights to the child are terminated, the child placed in  
4 permanent custody of the court. The court shall state on the  
5 record or in writing its findings of fact and conclusions of law  
6 with respect to whether or not parental rights should be  
7 terminated. The court shall issue an opinion or order regarding  
8 a petition for termination of parental rights within 70 days  
9 after the commencement of the initial hearing on the petition.  
10 However, the court's failure to issue an opinion within 70 days  
11 does not dismiss the petition.

12 (2) Not less than 14 days before a hearing to determine if  
13 the parental rights to a child should be terminated, written  
14 notice of the hearing shall 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 child's foster parent or custodian.

18 (c) The child's parents.

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

20 (e) If the child has a guardian ad litem, the child's guard-  
21 ian ad litem.

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

24 (g) The child's LAWYER-GUARDIAN AD LITEM OR attorney and  
25 each party's attorney.

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

1 (i) The prosecutor.

2 (3) The court may terminate a parent's parental rights to a  
3 child if the court finds, by clear and convincing evidence, AND  
4 CONSIDERING THE EVIDENCE DESCRIBED IN SUBSECTION (5), 1 or more  
5 of the following:

6 (a) The child has been deserted under either of the follow-  
7 ing circumstances:

8 (i) The child's parent is unidentifiable, has deserted the  
9 child for 28 or more days, and has not sought custody of the  
10 child during that period. For the purposes of this section, a  
11 parent is unidentifiable if the parent's identity cannot be  
12 ascertained after reasonable efforts have been made to locate and  
13 identify the parent.

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

17 (b) The child or a sibling of the child has suffered physi-  
18 cal injury or physical or sexual abuse under 1 or more of the  
19 following circumstances:

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

24 (ii) The parent who had the opportunity to prevent the phys-  
25 ical injury or physical or sexual abuse failed to do so and the  
26 court finds that there is a reasonable likelihood that the child

1 will suffer injury or abuse in the foreseeable future if placed  
2 in the parent's home.

3       (iii) A nonparent adult's act caused the physical injury or  
4 physical or sexual abuse and the court finds that there is a rea-  
5 sonable likelihood that the child will suffer from injury or  
6 abuse by the nonparent adult in the foreseeable future if placed  
7 in the parent's home.

8       (c) The parent was a respondent in a proceeding brought  
9 under this chapter, 182 or more days have elapsed since the issu-  
10 ance of an initial dispositional order, and the court, by clear  
11 and convincing evidence, finds either of the following:

12       (i) The conditions that led to the adjudication continue to  
13 exist and there is no reasonable likelihood that the conditions  
14 will be rectified within a reasonable time considering the  
15 child's age.

16       (ii) Other conditions exist that cause the child to come  
17 within the court's jurisdiction, the parent has received recom-  
18 mendations to rectify those conditions, the conditions have not  
19 been rectified by the parent after the parent has received notice  
20 and a hearing and has been given a reasonable opportunity to rec-  
21 tify the conditions, and there is no reasonable likelihood that  
22 the conditions will be rectified within a reasonable time consid-  
23 ering the child's age.

24       (d) The child's parent has placed the child in a limited  
25 guardianship under section 424a of the revised probate code, 1978  
26 PA 642, MCL 700.424a, OR SECTION 5205 OF THE ESTATES AND  
27 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.5205, and has

1 substantially failed, without good cause, to comply with a  
2 limited guardianship placement plan described in section 424a of  
3 the revised probate code, 1978 PA 642, MCL 700.424a, OR SECTION  
4 5205 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386,  
5 MCL 700.5205, regarding the child to the extent that the noncom-  
6 pliance has resulted in a disruption of the parent-child  
7 relationship.

8       (e) The child has a guardian under the revised probate code,  
9 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED  
10 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and the  
11 parent has substantially failed, without good cause, to comply  
12 with a court-structured plan described in section 424b or 424c of  
13 the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,  
14 OR SECTION 5207 OR 5209 OF THE ESTATES AND PROTECTED INDIVIDUALS  
15 CODE, 1998 PA 386, MCL 700.5207 AND 700.5209, regarding the child  
16 to the extent that the noncompliance has resulted in a disruption  
17 of the parent-child relationship.

18       (f) The child has a guardian under the revised probate code,  
19 1978 PA 642, MCL 700.1 to 700.993, THE ESTATES AND PROTECTED  
20 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and both  
21 of the following have occurred:

22       (i) The parent, having the ability to support or assist in  
23 supporting the minor, has failed or neglected, without good  
24 cause, to provide regular and substantial support for the minor  
25 for a period of 2 years or more before the filing of the petition  
26 or, if a support order has been entered, has failed to

1 substantially comply with the order for a period of 2 years or  
2 more before the filing of the petition.

3 (ii) The parent, having the ability to visit, contact, or  
4 communicate with the minor, has regularly and substantially  
5 failed or neglected, without good cause, to do so for a period of  
6 2 years or more before the filing of the petition.

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

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

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

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

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

- 1           (i) Abandonment of a young child.
- 2           (ii) Criminal sexual conduct involving penetration,  
3 attempted penetration, or assault with intent to penetrate.
- 4           (iii) Battering, torture, or other severe physical abuse.
- 5           (iv) Loss or serious impairment of an organ or limb.
- 6           (v) Life threatening injury.
- 7           (vi) Murder or attempted murder.
- 8           (l) The parent's rights to another child were terminated as  
9 a result of proceedings under section 2(b) of this chapter or a  
10 similar law of another state.
- 11          (m) The parent's rights to another child were voluntarily  
12 terminated following the initiation of proceedings under section  
13 2(b) of this chapter or a similar law of another state.
- 14          (n) The parent is convicted of 1 or more of the following,  
15 and the court determines that termination is in the child's best  
16 interests because continuing the parent-child relationship with  
17 the parent would be harmful to the child:
- 18           (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,  
19 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,  
20 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.
- 21           (ii) A violation of a criminal statute, an element of which  
22 is the use of force or the threat of force, and which subjects  
23 the parent to sentencing under section 10, 11, or 12 of chapter  
24 IX of the code of criminal procedure, 1927 PA 175, MCL 769.10,  
25 769.11, and 769.12.

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

4       (4) If a petition to terminate the parental rights to a  
5 child is filed, the court may enter an order terminating parental  
6 rights under subsection (3) at the initial dispositional  
7 hearing. If a petition to terminate parental rights to a child  
8 is filed, parenting time for a parent who is a subject of the  
9 petition is automatically suspended and, except as otherwise pro-  
10 vided in this subsection, remains suspended at least until a  
11 decision is issued on the termination petition. If a parent  
12 whose parenting time is suspended under this subsection estab-  
13 lishes, and the court determines, that parenting time will not  
14 harm the child, the court may order parenting time in the amount  
15 and under the conditions the court determines appropriate.

16       (5) IN MAKING A FINDING UNDER SUBSECTION (3), THE COURT  
17 SHALL CONSIDER, ALONG WITH OTHER EVIDENCE, EVIDENCE OF A CRIMINAL  
18 CONVICTION, ALCOHOL ABUSE, OR CONTROLLED SUBSTANCE ABUSE.

19       (6) ~~-(5)-~~ If the court finds that there are grounds for ter-  
20 mination of parental rights, the court shall order termination of  
21 parental rights and order that additional efforts for reunifica-  
22 tion of the child with the parent not be made, unless the court  
23 finds that termination of parental rights to the child is clearly  
24 not in the child's best interests.

25       (7) ~~-(6)-~~ As used in this section, "concerned person" means  
26 a foster parent with whom the child is living or has lived who  
27 has specific knowledge of behavior by the parent constituting

1 grounds for termination under subsection (3)(b) or (g) and who  
2 has contacted the family independence agency, the prosecuting  
3 attorney, the child's attorney, and the child's guardian ad  
4 litem, if any, and is satisfied that none of these persons intend  
5 to file a petition under this section.

6       Enacting section 1. This amendatory act takes effect  
7 September 1, 1999.