

HOUSE BILL No. 4583

April 18, 2013, Introduced by Rep. Johnson and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 19b of chapter XIIA (MCL 712A.19b), as amended
by 2012 PA 386.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 19b. (1) Except as provided in subsection (4) **OR (6)**, if
a child remains in foster care in the temporary custody of the
court following a review hearing under section 19(3) of this
chapter or a permanency planning hearing under section 19a of this
chapter or if a child remains in the custody of a guardian or
limited guardian, upon petition of the prosecuting attorney,
whether or not the prosecuting attorney is representing or acting
as legal consultant to the agency or any other party, or petition

1 of the child, guardian, custodian, concerned person, agency, or
2 children's ombudsman as authorized in section 7 of the children's
3 ombudsman act, 1994 PA 204, MCL 722.927, the court shall hold a
4 hearing to determine if the parental rights to a child should be
5 terminated and, if all parental rights to the child are terminated,
6 the child placed in permanent custody of the court. The court shall
7 state on the record or in writing its findings of fact and
8 conclusions of law with respect to whether or not parental rights
9 should be terminated. The court shall issue an opinion or order
10 regarding a petition for termination of parental rights within 70
11 days after the commencement of the initial hearing on the petition.
12 The court's failure to issue an opinion within 70 days does not
13 dismiss the petition.

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

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

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

20 (c) The child's parents.

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

22 (e) If the child has a guardian ad litem, the child's guardian
23 ad litem.

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

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

27 (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, 1 or
4 more of the following:

5 (a) The child has been deserted under either of the following
6 circumstances:

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

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

15 (b) The child or a sibling of the child has suffered physical
16 injury or physical or sexual abuse under 1 or more of the following
17 circumstances:

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

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

27 (iii) A nonparent adult's act caused the physical injury or

1 physical or sexual abuse and the court finds that there is a
2 reasonable likelihood that the child will suffer from injury or
3 abuse by the nonparent adult in the foreseeable future if placed in
4 the parent's home.

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

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

13 (ii) Other conditions exist that cause the child to come within
14 the court's jurisdiction, the parent has received recommendations
15 to rectify those conditions, the conditions have not been rectified
16 by the parent after the parent has received notice and a hearing
17 and has been given a reasonable opportunity to rectify the
18 conditions, and there is no reasonable likelihood that the
19 conditions will be rectified within a reasonable time considering
20 the child's age.

21 (d) The child's parent has placed the child in a limited
22 guardianship under section 5205 of the estates and protected
23 individuals code, 1998 PA 386, MCL 700.5205, and has substantially
24 failed, without good cause, to comply with a limited guardianship
25 placement plan described in section 5205 of the estates and
26 protected individuals code, 1998 PA 386, MCL 700.5205, regarding
27 the child to the extent that the noncompliance has resulted in a

1 disruption of the parent-child relationship.

2 (e) The child has a guardian under the estates and protected
3 individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and the
4 parent has substantially failed, without good cause, to comply with
5 a court-structured plan described in section 5207 or 5209 of the
6 estates and protected individuals code, 1998 PA 386, MCL 700.5207
7 and 700.5209, regarding the child to the extent that the
8 noncompliance has resulted in a disruption of the parent-child
9 relationship.

10 (f) The child has a guardian under the estates and protected
11 individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both
12 of the following have occurred:

13 (i) The parent, having the ability to support or assist in
14 supporting the minor, has failed or neglected, without good cause,
15 to provide regular and substantial support for the minor for a
16 period of 2 years or more before the filing of the petition or, if
17 a support order has been entered, has failed to substantially
18 comply with the order for a period of 2 years or more before the
19 filing of the petition.

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

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

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

7 (i) Parental rights to 1 or more siblings of the child have
8 been terminated due to serious and chronic neglect or physical or
9 sexual abuse, and prior attempts to rehabilitate the parents have
10 been unsuccessful.

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

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

16 (i) Abandonment of a young child.

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

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

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

21 (v) Life-threatening injury.

22 (vi) Murder or attempted murder.

23 (vii) Voluntary manslaughter.

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

26 (ix) Sexual abuse as that term is defined in section 2 of the
27 child protection law, 1975 PA 238, MCL 722.622.

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

4 (m) The parent's rights to another child were voluntarily
5 terminated following the initiation of proceedings under section
6 2(b) of this chapter or a similar law of another state and the
7 proceeding involved abuse that included 1 or more of the following:

8 (i) Abandonment of a young child.

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

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

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

13 (v) Life-threatening injury.

14 (vi) Murder or attempted murder.

15 (vii) Voluntary manslaughter.

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

18 (ix) Sexual abuse as that term is defined in section 2 of the
19 child protection law, 1975 PA 238, MCL 722.622.

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

24 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or
25 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317,
26 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

27 (ii) A violation of a criminal statute that includes as an

1 element the use of force or the threat of force and that subjects
2 the parent to sentencing under section 10, 11, or 12 of chapter IX
3 of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
4 and 769.12.

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

8 (4) If a petition to terminate the parental rights to a child
9 is filed, the court may enter an order terminating parental rights
10 under subsection (3) at the initial dispositional hearing. If a
11 petition to terminate parental rights to a child is filed, the
12 court may suspend parenting time for a parent who is a subject of
13 the petition.

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

19 (6) UPON SENTENCING FOR CRIMINAL SEXUAL CONDUCT DESCRIBED IN
20 SUBSECTION (3) (K) (ii), IF THE SENTENCING COURT FINDS THAT THERE ARE
21 GROUNDS FOR TERMINATION OF PARENTAL RIGHTS AND THAT TERMINATION OF
22 PARENTAL RIGHTS IS IN THE CHILD'S BEST INTERESTS, THE SENTENCING
23 COURT, WITHOUT REQUIRING A SEPARATE HEARING ON TERMINATION OF
24 PARENTAL RIGHTS, SHALL ORDER TERMINATION OF PARENTAL RIGHTS AND
25 ORDER THAT ADDITIONAL EFFORTS FOR REUNIFICATION OF THE CHILD WITH
26 THE PARENT NOT BE MADE.

27 (7) ~~(6)~~—As used in this section, "concerned person" means a

1 foster parent with whom the child is living or has lived who has
2 specific knowledge of behavior by the parent constituting grounds
3 for termination under subsection (3)(b) or (g) and who has
4 contacted the department, the prosecuting attorney, the child's
5 attorney, and the child's guardian ad litem, if any, and is
6 satisfied that none of these persons intend to file a petition
7 under this section.