

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Gougeon, Emmons, McManus, Steil and Stille

ENROLLED SENATE BILL No. 1152

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties," by amending sections 18f, 19b, and 19c of chapter XIIA (MCL 712A.18f, 712A.19b, and 712A.19c), section 18f as amended by 1997 PA 163, section 19b as amended by 1997 PA 169, and section 19c as added by 1988 PA 224.

The People of the State of Michigan enact:

CHAPTER XIIA

Sec. 18f. (1) If, in a proceeding under section 2(b) of this chapter, an agency advises the court against placing a child in the custody of the child's parent, guardian, or custodian, the agency shall report in writing to the court what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home. The report shall include all of the following:

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

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

(c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.

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

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

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

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

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

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

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

(e) Except as otherwise provided in this subdivision, unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a of this chapter or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent which shall not be less than once every 7 days.

(4) Before the court enters an order of disposition, the court shall consider the case service plan and any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or guardian ad litem and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home. The court may order compliance with all or any part of the case service plan as the court considers necessary.

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

(6) To ensure that the case service plan addresses the child's medical needs in relation to abuse and neglect, the family independence agency shall review a child's case with the child's attending physician of record during a hospitalization or with the child's primary care physician, but only if a physician has diagnosed the child's abuse or neglect as involving 1 or more of the following:

- (a) Failure to thrive.
- (b) Munchausen syndrome by proxy.
- (c) Shaken baby syndrome.
- (d) A bone fracture that is diagnosed as being the result of abuse or neglect.
- (e) Drug exposure.

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

Sec. 19b. (1) Except as provided in subsection (4), 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 of the child, guardian, custodian, concerned person as defined in subsection (6), agency, or children's ombudsman as authorized in section 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927, the court shall hold a hearing to determine if the parental rights to a child should be terminated and, if all parental rights to the child are terminated, the child placed in permanent custody of the court. The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated. The court shall issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition. However, the court's failure to issue an opinion within 70 days does not dismiss the petition.

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

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) The child's foster parent or custodian.
- (c) The child's parents.
- (d) If the child has a guardian, the child's guardian.
- (e) If the child has a guardian ad litem, the child's guardian ad litem.
- (f) If tribal affiliation has been determined, the Indian tribe's elected leader.
- (g) The child's attorney and each party's attorney.
- (h) If the child is 11 years of age or older, the child.
- (i) The prosecutor.

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

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

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

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

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

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

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

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

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

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

(d) The child's parent has placed the child in a limited guardianship under section 424a of the revised probate code, 1978 PA 642, MCL 700.424a, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 424a of the revised probate code, 1978 PA 642, MCL 700.424a, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(e) The child has a guardian under the revised probate code, 1978 PA 642, MCL 700.1 to 700.993, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 424b or 424c of the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(f) The child has a guardian under the revised probate code, 1978 PA 642, MCL 700.1 to 700.993, and both of the following have occurred:

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

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

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

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

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

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

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

(i) Abandonment of a young child.

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

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

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

(v) Life threatening injury.

(vi) Murder or attempted murder.

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

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.

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

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

(ii) A violation of a criminal statute, an element of which is the use of force or the threat of force, and which subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

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

(4) If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended under this subsection establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

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

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

Sec. 19c. (1) Except as provided in section 19(4), if a child remains in foster care following the termination of parental rights to the child, the court shall conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress being made toward the child's adoption or other permanent placement.

(2) Except as otherwise provided in this subsection, this section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency. This section does not apply to a court that is providing to a child within the court's jurisdiction under section 2(b) of this chapter foster care home services subject to the court's supervision. However, this section does apply to that court beginning January 1, 1990 or when the court is no longer providing to a child within the court's jurisdiction under section 2(b) of this chapter foster care home services subject to the court's supervision, whichever occurs first.

Enacting section 1. This amendatory act takes effect March 1, 1999.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Mary R. Ballew

Clerk of the House of Representatives.

Approved _____

Governor.