

SENATE BILL No. 1052

March 1, 2000, Introduced by Senators JOHNSON, EMMONS and HAMMERSTROM and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 14 and 19b (MCL 712A.14 and 712A.19b), section 14 as amended by 1998 PA 474 and section 19b as amended by 1998 PA 530, and by adding section 19d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14. (1) Any local police officer, sheriff or deputy
2 sheriff, state police officer, county agent, FAMILY INDEPENDENCE
3 AGENCY OFFICER, or probation officer of any court of record may,
4 without the order of the court, immediately take into custody any
5 child who is found violating any law or ordinance, or whose sur-
6 roundings are such as to endanger his or her health, morals, or
7 welfare, or who is violating or has violated a personal
8 protection order issued pursuant to section 2(h) by the court
9 under section 2950 or 2950a of the revised judicature act of

1 1961, 1961 PA 236, MCL 600.2950 and 600.2950a. If such an
2 officer or county agent takes a child coming within the provi-
3 sions of this chapter into custody, he or she shall immediately
4 attempt to notify the parent or parents, guardian, or custodian.
5 While awaiting the arrival of the parent or parents, guardian, or
6 custodian, a child under the age of 17 years taken into custody
7 under the provisions of this chapter shall not be held in any
8 detention facility unless the child is completely isolated so as
9 to prevent any verbal, visual, or physical contact with any adult
10 prisoner. Unless the child requires immediate detention as pro-
11 vided for in this act, the officer shall accept the written prom-
12 ise of the parent or parents, guardian, or custodian, to bring
13 the child to the court at a time fixed therein. The child shall
14 then be released to the custody of the parent or parents, guardi-
15 an, or custodian.

16 (2) If a child is not released under subsection (1), the
17 child and his or her parents, guardian, or custodian, if they can
18 be located, shall immediately be brought before the court for a
19 preliminary hearing on the status of the child, and an order
20 signed by a judge of probate or a referee authorizing the filing
21 of a complaint shall be entered or the child shall be released to
22 his or her parent or parents, guardian, or custodian.

23 (3) If a complaint is authorized under subsection (2), the
24 order shall state where the child is to be placed, pending inves-
25 tigation and hearing, which placement may be in any of the
26 following:

1 (a) In the home of the child's parent, guardian, or
2 custodian.

3 (b) If a child is within the court's jurisdiction under sec-
4 tion 2(a) of this chapter, in a suitable foster care home subject
5 to the court's supervision. Except as otherwise provided in sub-
6 sections (4) and (5), if a child is within the court's jurisdic-
7 tion under section 2(b) of this chapter, the court shall not
8 place a child in a foster care home subject to the court's
9 supervision.

10 (c) In a child care institution or child placing agency
11 licensed by the state department of social services to receive
12 for care children within the jurisdiction of the court.

13 (d) In a suitable place of detention.

14 (4) Except as otherwise provided in subsection (5), if a
15 court is providing at the time of the enactment of this subsec-
16 tion foster care home services subject to the court's supervision
17 to children within section 2(b) of this chapter, the court may
18 continue to provide those services through December 31, 1989.
19 Beginning January 1, 1990, the court shall discontinue providing
20 those services.

21 (5) If a court located in a county with a population in
22 excess of 650,000 is providing at the time of the enactment of
23 this subsection foster care home services subject to the court's
24 supervision to children within section 2(b) of this chapter, the
25 court may continue to provide those services through
26 December 31, 1991. Beginning January 1, 1992, the court shall
27 discontinue those services.

1 Sec. 19b. (1) Except as provided in subsection (4), if a
2 child remains in foster care in the temporary custody of the
3 court following a review hearing under section 19(3) of this
4 chapter or a permanency planning hearing under section 19a of
5 this chapter or if a child remains in the custody of a guardian
6 or limited guardian, upon petition of the prosecuting attorney,
7 whether or not the prosecuting attorney is representing or acting
8 as legal consultant to the agency or any other party, or petition
9 of the child, guardian, custodian, concerned person as defined in
10 subsection (6), agency, or children's ombudsman as authorized in
11 section 7 of the children's ombudsman act, 1994 PA 204, MCL
12 722.927, the court shall hold a hearing to determine if the
13 parental rights to a child should be terminated and, if all
14 parental rights to the child are terminated, the child placed in
15 permanent custody of the court. The court shall state on the
16 record or in writing its findings of fact and conclusions of law
17 with respect to whether or not parental rights should be
18 terminated. The court shall issue an opinion or order regarding
19 a petition for termination of parental rights within 70 days
20 after the commencement of the initial hearing on the petition.
21 However, the court's failure to issue an opinion within 70 days
22 does not dismiss the petition.

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

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

- 1 (b) The child's foster parent or custodian.
- 2 (c) The child's parents.
- 3 (d) If the child has a guardian, the child's guardian.
- 4 (e) If the child has a guardian ad litem, the child's guard-
5 ian ad litem.
- 6 (f) If tribal affiliation has been determined, the Indian
7 tribe's elected leader.
- 8 (g) The child's attorney and each party's attorney.
- 9 (h) If the child is 11 years of age or older, the child.
- 10 (i) The prosecutor.
- 11 (3) The court may terminate a parent's parental rights to a
12 child if the court finds, by clear and convincing evidence, 1 or
13 more of the following:
- 14 (a) The child has been deserted under ~~either~~ ANY of the
15 following circumstances:
- 16 (i) The child's parent is unidentifiable, has deserted the
17 child for 28 or more days, and has not sought custody of the
18 child during that period. For the purposes of this section, a
19 parent is unidentifiable if the parent's identity cannot be
20 ascertained after reasonable efforts have been made to locate and
21 identify the parent.
- 22 (ii) The child's parent has deserted the child for 91 or
23 more days and has not sought custody of the child during that
24 period.
- 25 (iii) THE CHILD'S PARENT HAS VOLUNTARILY DELIVERED THE CHILD
26 TO AN EMERGENCY SERVICE PROVIDER UNDER SECTION 19D WITHOUT
27 EXPRESSING AN INTENT TO RETURN FOR THE CHILD.

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

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

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

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

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

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

26 (ii) Other conditions exist that cause the child to come
27 within the court's jurisdiction, the parent has received

1 recommendations to rectify those conditions, the conditions have
2 not been rectified by the parent after the parent has received
3 notice and a hearing and has been given a reasonable opportunity
4 to rectify the conditions, and there is no reasonable likelihood
5 that the conditions will be rectified within a reasonable time
6 considering the child's age.

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

15 (e) The child has a guardian under ~~the revised probate~~
16 ~~code,~~ FORMER 1978 PA 642 ~~, MCL 700.1 to 700.993,~~ and the
17 parent has substantially failed, without good cause, to comply
18 with a court-structured plan described in section 424b or 424c of
19 ~~the revised probate code,~~ FORMER 1978 PA 642 ~~, MCL 700.424b~~
20 ~~and 700.424c,~~ regarding the child to the extent that the noncom-
21 pliance has resulted in a disruption of the parent-child
22 relationship.

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

26 (i) The parent, having the ability to support or assist in
27 supporting the minor, has failed or neglected, without good

1 cause, to provide regular and substantial support for the minor
2 for a period of 2 years or more before the filing of the petition
3 or, if a support order has been entered, has failed to substan-
4 tially comply with the order for a period of 2 years or more
5 before the filing of the petition.

6 (ii) The parent, having the ability to visit, contact, or
7 communicate with the minor, has regularly and substantially
8 failed or neglected, without good cause, to do so for a period of
9 2 years or more before the filing of the petition.

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

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

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

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

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

3 (i) Abandonment of a young child.

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

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

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

8 (v) Life threatening injury.

9 (vi) Murder or attempted murder.

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

13 (m) The parent's rights to another child were voluntarily
14 terminated following the initiation of proceedings under section
15 2(b) of this chapter or a similar law of another state.

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

20 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,
21 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,
22 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

23 (ii) A violation of a criminal statute, an element of which
24 is the use of force or the threat of force, and which subjects
25 the parent to sentencing under section 10, 11, or 12 of chapter
26 IX of the code of criminal procedure, 1927 PA 175, MCL 769.10,
27 769.11, 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) If the court finds that there are grounds for termina-
17 tion of parental rights, the court shall order termination of
18 parental rights and order that additional efforts for reunifica-
19 tion of the child with the parent not be made, unless the court
20 finds that termination of parental rights to the child is clearly
21 not in the child's best interests.

22 (6) As used in this section, "concerned person" means a
23 foster parent with whom the child is living or has lived who has
24 specific knowledge of behavior by the parent constituting grounds
25 for termination under subsection (3)(b) or (g) and who has con-
26 tacted the family independence agency, the prosecuting attorney,
27 the child's attorney, and the child's guardian ad litem, if any,

1 and is satisfied that none of these persons intend to file a
2 petition under this section.

3 SEC. 19D. (1) AS USED IN SECTION 19B AND IN THIS SECTION:

4 (A) "EMERGENCY SERVICE PROVIDER" MEANS A FIRE DEPARTMENT,
5 HOSPITAL, OR POLICE STATION.

6 (B) "FIRE DEPARTMENT" MEANS AN ORGANIZED FIRE DEPARTMENT AS
7 THAT TERM IS DEFINED IN SECTION 1 OF THE FIRE PREVENTION CODE,
8 1941 PA 207, MCL 29.1.

9 (C) "HOSPITAL" MEANS A HOSPITAL THAT IS LICENSED UNDER PART
10 215 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.21501 TO
11 333.21568.

12 (D) "POLICE STATION" MEANS THAT TERM AS DEFINED IN SECTION
13 43 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.43.

14 (2) AN EMERGENCY SERVICE PROVIDER SHALL, WITHOUT COURT
15 ORDER, TAKE POSSESSION OF A CHILD WHO IS VOLUNTARILY DELIVERED TO
16 THE EMERGENCY SERVICE PROVIDER BY THE CHILD'S PARENT AND THE
17 PARENT DOES NOT EXPRESS AN INTENT TO RETURN FOR THE CHILD.

18 (3) AN EMERGENCY SERVICE PROVIDER THAT TAKES POSSESSION OF A
19 CHILD UNDER THIS SECTION SHALL PERFORM ANY ACT NECESSARY TO PRO-
20 TECT THE PHYSICAL HEALTH AND SAFETY OF THE CHILD.

21 (4) NOT LATER THAN THE CLOSE OF THE FIRST BUSINESS DAY AFTER
22 THE DATE ON WHICH AN EMERGENCY SERVICE PROVIDER TAKES POSSESSION
23 OF A CHILD UNDER THIS SECTION, THE EMERGENCY SERVICE PROVIDER
24 SHALL NOTIFY THE FAMILY INDEPENDENCE AGENCY THAT THE EMERGENCY
25 SERVICE PROVIDER HAS TAKEN POSSESSION OF THE CHILD.

1 (5) THE FAMILY INDEPENDENCE AGENCY SHALL ASSUME THE CARE,
2 CONTROL, AND CUSTODY OF THE CHILD IMMEDIATELY ON RECEIPT OF
3 NOTICE UNDER SUBSECTION (4).

4 (6) A CHILD FOR WHOM THE FAMILY INDEPENDENCE AGENCY ASSUMES
5 CARE, CONTROL, AND CUSTODY UNDER SUBSECTION (5) SHALL BE TREATED
6 AS A CHILD TAKEN INTO POSSESSION WITHOUT A COURT ORDER UNDER SEC-
7 TION 14, AND THE FAMILY INDEPENDENCE AGENCY SHALL TAKE ACTION AS
8 REQUIRED BY SECTION 14 WITH REGARD TO THE CHILD.

9 Enacting section 1. Section 19b of 1939 PA 288, MCL
10 712A.19b, as amended by this amendatory act, does not apply to
11 causes of action arising before the effective date of this amen-
12 datory act.