

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 669

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 19a of chapter XIIA (MCL 712A.19a), as amended
by 2004 PA 473.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XIIA

2

Sec. 19a. (1) Subject to subsection (2), if a child remains in
3 foster care and parental rights to the child have not been
4 terminated, the court shall conduct a permanency planning hearing
5 within 12 months after the child was removed from his or her home.
6 Subsequent permanency planning hearings shall be held no later than
7 every 12 months after each preceding permanency planning hearing
8 during the continuation of foster care. If proper notice for a

1 permanency planning hearing is provided, a permanency planning
2 hearing may be combined with a review hearing held under section
3 19(2) to (4) of this chapter, but no later than 12 months from the
4 removal of the child from his or her home, from the preceding
5 permanency planning hearing, or from the number of days required
6 under subsection (2). A permanency planning hearing shall not be
7 canceled or delayed beyond the number of months required by this
8 subsection or days as required under subsection (2), regardless of
9 whether there is a petition for termination of parental rights
10 pending.

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

16 (a) There is a judicial determination that the parent has
17 subjected the child to aggravated circumstances as provided in
18 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL
19 722.638.

20 (b) The parent has been convicted of 1 or more of the
21 following:

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

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

24 (iii) Aiding or abetting in the murder of another child of the
25 parent or voluntary manslaughter of another child of the parent,
26 the attempted murder of the child or another child of the parent,
27 or the conspiracy or solicitation to commit the murder of the child

1 or another child of the parent.

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

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

6 (3) A permanency planning hearing shall be conducted to review
7 the status of the child and the progress being made toward the
8 child's return home or to show why the child should not be placed
9 in the permanent custody of the court. **THE COURT SHALL OBTAIN THE**
10 **CHILD'S VIEWS REGARDING THE PERMANENCY PLAN IN A MANNER THAT IS**
11 **APPROPRIATE TO THE CHILD'S AGE. IN THE CASE OF A CHILD WHO WILL NOT**
12 **BE RETURNED HOME, THE COURT SHALL CONSIDER IN-STATE AND OUT-OF-**
13 **STATE PLACEMENT OPTIONS. IN THE CASE OF A CHILD PLACED OUT-OF-**
14 **STATE, THE COURT SHALL DETERMINE WHETHER THE OUT-OF-STATE PLACEMENT**
15 **CONTINUES TO BE APPROPRIATE AND IN THE CHILD'S BEST INTERESTS. THE**
16 **COURT SHALL ENSURE THAT THE AGENCY IS PROVIDING APPROPRIATE**
17 **SERVICES TO ASSIST A CHILD WHO WILL TRANSITION FROM FOSTER CARE TO**
18 **INDEPENDENT LIVING.**

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

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

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

27 (c) If the parental rights to the child have not been

1 terminated, the child's parents.

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

3 (e) If the child has a guardian ad litem, the guardian ad
4 litem for the child.

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

7 (g) The attorney for the child, the attorneys for each party,
8 and the prosecuting attorney if the prosecuting attorney has
9 appeared in the case.

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

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

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

1 mental well-being.

2 (6) If the court determines at a permanency planning hearing
3 that ~~the~~**A** child should not be returned to his or her parent, the
4 court ~~shall~~**MAY** order the agency to initiate proceedings to
5 terminate parental rights. ~~to the child not later than 42 days~~
6 ~~after the permanency planning hearing, unless the court finds that~~
7 ~~initiating the termination of parental rights to the child is~~
8 ~~clearly not in the child's best interests.~~**EXCEPT AS OTHERWISE**
9 **PROVIDED IN THIS SUBSECTION, IF THE CHILD HAS BEEN IN FOSTER CARE**
10 **UNDER THE RESPONSIBILITY OF THE STATE FOR 15 OF THE MOST RECENT 22**
11 **MONTHS, THE COURT SHALL ORDER THE AGENCY TO INITIATE PROCEEDINGS TO**
12 **TERMINATE PARENTAL RIGHTS. THE COURT IS NOT REQUIRED TO ORDER THE**
13 **AGENCY TO INITIATE PROCEEDINGS TO TERMINATE PARENTAL RIGHTS IF 1 OR**
14 **MORE OF THE FOLLOWING APPLY:**

15 (A) THE CHILD IS BEING CARED FOR BY RELATIVES.

16 (B) THE CASE SERVICE PLAN DOCUMENTS A COMPELLING REASON FOR
17 DETERMINING THAT FILING A PETITION TO TERMINATE PARENTAL RIGHTS
18 WOULD NOT BE IN THE BEST INTEREST OF THE CHILD. COMPELLING REASONS
19 FOR NOT FILING A PETITION TO TERMINATE PARENTAL RIGHTS INCLUDE, BUT
20 ARE NOT LIMITED TO, ALL OF THE FOLLOWING:

21 (i) ADOPTION IS NOT THE APPROPRIATE PERMANENCY GOAL FOR THE
22 CHILD.

23 (ii) NO GROUNDS TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS
24 EXIST.

25 (iii) THE CHILD IS AN UNACCOMPANIED REFUGEE MINOR AS DEFINED IN
26 45 CFR 400.11.

27 (iv) THERE ARE INTERNATIONAL LEGAL OBLIGATIONS OR COMPELLING

1 FOREIGN POLICY REASONS THAT PRECLUDE TERMINATING PARENTAL RIGHTS.

2 (C) THE STATE HAS NOT PROVIDED THE CHILD'S FAMILY, CONSISTENT
3 WITH THE TIME PERIOD IN THE CASE SERVICE PLAN, WITH THE SERVICES
4 THE STATE CONSIDERS NECESSARY FOR THE CHILD'S SAFE RETURN TO HIS OR
5 HER HOME, IF REASONABLE EFFORTS ARE REQUIRED.

6 (7) If the agency demonstrates under subsection (6) that
7 initiating the termination of parental rights to the child is
8 clearly not in the child's best interests, OR THE COURT DOES NOT
9 ORDER THE AGENCY TO INITIATE TERMINATION OF PARENTAL RIGHTS TO THE
10 CHILD UNDER SUBSECTION (6), then the court shall order ~~either~~ 1 OR
11 MORE of the following alternative placement plans:

12 (a) If the court determines that other permanent placement is
13 not possible, the child's placement in foster care shall continue
14 for a limited period to be stated by the court.

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

18 (C) SUBJECT TO SUBSECTION (9), IF THE COURT DETERMINES THAT IT
19 IS IN THE CHILD'S BEST INTERESTS, APPOINT A GUARDIAN FOR THE CHILD,
20 WHICH GUARDIANSHIP MAY CONTINUE UNTIL THE CHILD IS EMANCIPATED.

21 (8) A GUARDIAN APPOINTED UNDER SUBSECTION (7)(C) HAS ALL OF
22 THE POWERS AND DUTIES SET FORTH UNDER SECTION 15 OF THE ESTATES AND
23 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.5215.

24 (9) IF A CHILD IS PLACED IN A GUARDIAN'S OR A PROPOSED
25 GUARDIAN'S HOME UNDER SUBSECTION (7)(C), THE COURT SHALL ORDER THE
26 DEPARTMENT OF HUMAN SERVICES TO PERFORM AN INVESTIGATION AND FILE A
27 WRITTEN REPORT OF THE INVESTIGATION FOR A REVIEW UNDER SUBSECTION

Senate Bill No. 669 (H-1) as amended June 26, 2008

(10) AND THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN SERVICES TO
DO ALL OF THE FOLLOWING:

(A) PERFORM A CRIMINAL RECORD CHECK WITHIN 7 DAYS.

(B) PERFORM A CENTRAL REGISTRY CLEARANCE WITHIN 7 DAYS.

(C) PERFORM A HOME STUDY AND FILE A COPY OF THE HOME STUDY
WITH THE COURT WITHIN 30 DAYS UNLESS A HOME STUDY HAS BEEN
PERFORMED WITHIN THE IMMEDIATELY PRECEDING 365 DAYS, UNDER SECTION
13A(9) OF THIS CHAPTER. IF A HOME STUDY HAS BEEN PERFORMED WITHIN
THE IMMEDIATELY PRECEDING 365 DAYS, A COPY OF THAT HOME STUDY SHALL
BE SUBMITTED TO THE COURT.

[(10) THE COURT'S JURISDICTION OVER A JUVENILE UNDER SECTION 2(B)
OF THIS CHAPTER SHALL BE TERMINATED AFTER THE COURT APPOINTS A GUARDIAN
UNDER THIS SECTION AND CONDUCTS A REVIEW HEARING UNDER SECTION 19 OF THIS
CHAPTER, UNLESS THE JUVENILE IS RELEASED SOONER BY THE COURT.]

(11) THE COURT'S JURISDICTION OVER A GUARDIANSHIP CREATED UNDER
THIS SECTION SHALL CONTINUE UNTIL RELEASED BY COURT ORDER. THE COURT
SHALL REVIEW A GUARDIANSHIP CREATED UNDER THIS SECTION ANNUALLY AND MAY
CONDUCT ADDITIONAL REVIEWS AS THE COURT CONSIDERS NECESSARY. THE COURT
MAY ORDER THE DEPARTMENT OR A COURT EMPLOYEE TO CONDUCT AN INVESTIGATION
AND FILE A WRITTEN REPORT OF THE INVESTIGATION.]

(12) ~~(8)~~—In making the determinations under this section, the
court shall consider any written or oral information 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 in addition to any other evidence, including
the appropriateness of parenting time, offered at the hearing.

(13) THE COURT MAY, ON ITS OWN MOTION OR UPON PETITION FROM
THE DEPARTMENT OF HUMAN SERVICES OR THE CHILD'S LAWYER GUARDIAN AD
LITEM, HOLD A HEARING TO DETERMINE WHETHER A GUARDIANSHIP APPOINTED
UNDER THIS SECTION SHALL BE REVOKED.

(14) A GUARDIAN MAY PETITION THE COURT FOR PERMISSION TO

1 TERMINATE THE GUARDIANSHIP. A PETITION MAY INCLUDE A REQUEST FOR
2 APPOINTMENT OF A SUCCESSOR GUARDIAN.

3 (15) AFTER NOTICE AND HEARING ON A PETITION FOR REVOCATION OR
4 PERMISSION TO TERMINATE THE GUARDIANSHIP, IF THE COURT FINDS BY A
5 PREPONDERANCE OF EVIDENCE THAT CONTINUATION OF THE GUARDIANSHIP IS
6 NOT IN THE CHILD'S BEST INTERESTS, THE COURT SHALL REVOKE OR
7 TERMINATE THE GUARDIANSHIP AND APPOINT A SUCCESSOR GUARDIAN OR
8 RESTORE TEMPORARY LEGAL CUSTODY TO THE DEPARTMENT OF HUMAN
9 SERVICES.