

HOUSE BILL No. 6376

August 19, 2010, Introduced by Rep. Slavens and referred to the Committee on Families and Children's Services.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 19 and 19a of chapter XIIA (MCL 712A.19 and 712A.19a), section 19 as amended by 2008 PA 202 and section 19a as amended by 2008 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

1
2 Sec. 19. (1) Subject to section 20 of this chapter, if a child
3 remains under the court's jurisdiction, a cause may be terminated
4 or an order may be amended or supplemented, within the authority
5 granted to the court in section 18 of this chapter, at any time as
6 the court considers necessary and proper. An amended or
7 supplemented order shall be referred to as a "supplemental order of

1 disposition". If the agency becomes aware of additional abuse or
2 neglect of a child who is under the court's jurisdiction and if
3 that abuse or neglect is substantiated as provided in the child
4 protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency
5 shall file a supplemental petition with the court.

6 (2) Except as provided in subsections (3) and (4), if a child
7 subject to the court's jurisdiction remains in his or her home, a
8 review hearing shall be held not more than 182 days from the date a
9 petition is filed to give the court jurisdiction over the child and
10 no later than every 91 days after that for the first year that the
11 child is subject to the court's jurisdiction. After the first year
12 that the child is subject to the court's jurisdiction, a review
13 hearing shall be held no later than 182 days from the immediately
14 preceding review hearing before the end of that first year and no
15 later than every 182 days from each preceding review hearing
16 thereafter until the case is dismissed. A review hearing under this
17 subsection shall not be canceled or delayed beyond the number of
18 days required in this subsection, regardless of whether a petition
19 to terminate parental rights or another matter is pending. Upon
20 motion by any party or in the court's discretion, a review hearing
21 may be accelerated to review any element of the case service plan
22 prepared according to section 18f of this chapter.

23 (3) Except as otherwise provided in subsection (4), if, in a
24 proceeding under section 2(b) of this chapter, a child is subject
25 to the court's jurisdiction and removed from his or her home, a
26 review hearing shall be held not more than 182 days after the
27 child's removal from his or her home and no later than every 91

1 days after that for the first year that the child is subject to the
2 court's jurisdiction. After the first year that the child has been
3 removed from his or her home and is subject to the court's
4 jurisdiction, a review hearing shall be held not more than 182 days
5 from the immediately preceding review hearing before the end of
6 that first year and no later than every 182 days from each
7 preceding review hearing thereafter until the case is dismissed. A
8 review hearing under this subsection shall not be canceled or
9 delayed beyond the number of days required in this subsection,
10 regardless of whether a petition to terminate parental rights or
11 another matter is pending. Upon motion by any party or in the
12 court's discretion, a review hearing may be accelerated to review
13 any element of the case service plan prepared according to section
14 18f of this chapter.

15 (4) If a child is under the care and supervision of the agency
16 and is either placed with a relative and the placement is intended
17 to be permanent or is in a permanent foster family agreement, the
18 court shall hold a review hearing not more than 182 days after the
19 child has been removed from his or her home and no later than every
20 182 days after that so long as the child is subject to the
21 jurisdiction of the court, the Michigan children's institute, or
22 other agency. A review hearing under this subsection shall not be
23 canceled or delayed beyond the number of days required in this
24 subsection, regardless of whether a petition to terminate parental
25 rights or another matter is pending. Upon the motion of any party
26 or at the court's discretion, a review hearing may be accelerated
27 to review any element of the case service plan.

1 (5) Written notice of a review hearing under subsection (2),
2 (3), or (4) shall be served upon all of the following:

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

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

6 (c) If the parental rights to the child have not been
7 terminated, the child's parents.

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

9 (e) If the child has a guardian ad litem, the guardian ad
10 litem for the child.

11 (f) A nonparent adult if the nonparent adult is required to
12 comply with the case service plan.

13 (g) If tribal affiliation has been determined, the elected
14 leader of the Indian tribe.

15 (h) The attorney for the child, the attorneys for each party,
16 and the prosecuting attorney if the prosecuting attorney has
17 appeared in the case.

18 (i) If the child is 11 years of age or older, the child.

19 (j) Other persons as the court may direct.

20 (6) At a review hearing under subsection (2), (3), or (4), the
21 court shall review on the record all of the following:

22 (a) Compliance with the case service plan with respect to
23 services provided or offered to the child and the child's parent,
24 guardian, custodian, or nonparent adult if the nonparent adult is
25 required to comply with the case service plan and whether the
26 parent, guardian, custodian, or nonparent adult if the nonparent
27 adult is required to comply with the case service plan has complied

1 with and benefited from those services.

2 (b) Compliance with the case service plan with respect to
3 parenting time with the child. If parenting time did not occur or
4 was infrequent, the court shall determine why parenting time did
5 not occur or was infrequent.

6 (c) The extent to which the parent complied with each
7 provision of the case service plan, prior court orders, and an
8 agreement between the parent and the agency.

9 (d) Likely harm to the child if the child continues to be
10 separated from the child's parent, guardian, or custodian.

11 (e) Likely harm to the child if the child is returned to the
12 child's parent, guardian, or custodian.

13 (7) After review of the case service plan, the court shall
14 determine the extent of progress made toward alleviating or
15 mitigating the conditions that caused the child to be placed in
16 foster care or that caused the child to remain in foster care. The
17 court may modify any part of the case service plan including, but
18 not limited to, the following:

19 (a) Prescribing additional services that are necessary to
20 rectify the conditions that caused the child to be placed in foster
21 care or to remain in foster care.

22 (b) Prescribing additional actions to be taken by the parent,
23 guardian, nonparent adult, or custodian, to rectify the conditions
24 that caused the child to be placed in foster care or to remain in
25 foster care.

26 (8) At a review hearing under subsection (2), (3), or (4), the
27 court shall determine the continuing necessity and appropriateness

1 of the child's placement and shall order the return of the child to
2 the custody of the parent, continue the dispositional order, modify
3 the dispositional order, or enter a new dispositional order.

4 (9) If in a proceeding under section 2(b) of this chapter a
5 child is placed in foster care, the court shall determine at the
6 dispositional hearing and each review hearing whether the cause
7 should be reviewed before the next review hearing required by
8 subsection (2), (3), or (4). In making this determination, the
9 court shall consider at least all of the following:

10 (a) The parent's ability and motivation to make necessary
11 changes to provide a suitable environment for the child.

12 (b) Whether there is a reasonable likelihood that the child
13 may be returned to his or her home prior to the next review hearing
14 required by subsection (2), (3), or (4).

15 (10) Unless waived, if not less than 7 days' notice is given
16 to all parties prior to the return of a child to the child's home,
17 and no party requests a hearing within the 7 days, the court may
18 issue an order without a hearing permitting the agency to return
19 the child to the child's home.

20 (11) **FOR A HEARING UNDER THIS SECTION, THE SUPERVISING AGENCY**
21 **SHALL PROVIDE DOCUMENTATION OF PROGRESS RELATING TO ALL ASPECTS OF**
22 **THE LAST COURT-ORDERED TREATMENT PLAN, INCLUDING COPIES OF**
23 **EVALUATIONS AND THERAPY REPORTS AND VERIFICATION OF PARENTING TIME,**
24 **TO ALL PARTIES AND THEIR ATTORNEYS NOT LATER THAN 5 BUSINESS DAYS**
25 **BEFORE THE SCHEDULED HEARING.** An agency report filed with the court
26 shall be accessible to all parties to the action and shall be
27 offered into evidence. The court shall consider any written or oral

1 information concerning the child from the child's parent, guardian,
2 custodian, foster parent, child caring institution, relative with
3 whom a child is placed, attorney, lawyer-guardian ad litem, or
4 guardian ad litem, in addition to any other evidence, including the
5 appropriateness of parenting time, offered at the hearing.

6 (12) Reasonable efforts to finalize an alternate permanency
7 plan may be made concurrently with reasonable efforts to reunify
8 the child with the family.

9 (13) Reasonable efforts to place a child for adoption or with
10 a legal guardian, including identifying appropriate in-state or
11 out-of-state options, may be made concurrently with reasonable
12 efforts to reunify the child and family.

13 Sec. 19a. (1) Subject to subsection (2), if a child remains in
14 foster care and parental rights to the child have not been
15 terminated, the court shall conduct a permanency planning hearing
16 within 12 months after the child was removed from his or her home.
17 Subsequent permanency planning hearings shall be held no later than
18 every 12 months after each preceding permanency planning hearing
19 during the continuation of foster care. If proper notice for a
20 permanency planning hearing is provided, a permanency planning
21 hearing may be combined with a review hearing held under section
22 19(2) to (4) of this chapter, but no later than 12 months from the
23 removal of the child from his or her home, from the preceding
24 permanency planning hearing, or from the number of days required
25 under subsection (2). A permanency planning hearing shall not be
26 canceled or delayed beyond the number of months required by this
27 subsection or days as required under subsection (2), regardless of

1 whether there is a petition for termination of parental rights
2 pending.

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

8 (a) There is a judicial determination that the parent has
9 subjected the child to aggravated circumstances as provided in
10 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL
11 722.638.

12 (b) The parent has been convicted of 1 or more of the
13 following:

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

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

16 (iii) Aiding or abetting in the murder of another child of the
17 parent or voluntary manslaughter of another child of the parent,
18 the attempted murder of the child or another child of the parent,
19 or the conspiracy or solicitation to commit the murder of the child
20 or another child of the parent.

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

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

25 (3) A permanency planning hearing shall be conducted to review
26 the status of the child and the progress being made toward the
27 child's return home or to show why the child should not be placed

1 in the permanent custody of the court. The court shall obtain the
2 child's views regarding the permanency plan in a manner that is
3 appropriate to the child's age. In the case of a child who will not
4 be returned home, the court shall consider in-state and out-of-
5 state placement options. In the case of a child placed out-of-
6 state, the court shall determine whether the out-of-state placement
7 continues to be appropriate and in the child's best interests. The
8 court shall ensure that the agency is providing appropriate
9 services to assist a child who will transition from foster care to
10 independent living.

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

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

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

19 (c) If the parental rights to the child have not been
20 terminated, the child's parents.

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

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

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

26 (g) The attorney for the child, the attorneys for each party,
27 and the prosecuting attorney if the prosecuting attorney has

1 appeared in the case.

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

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

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

21 (6) If the court determines at a permanency planning hearing
22 that a child should not be returned to his or her parent, the court
23 may order the agency to initiate proceedings to terminate parental
24 rights. Except as otherwise provided in this subsection, if the
25 child has been in foster care under the responsibility of the state
26 for 15 of the most recent 22 months, the court shall order the
27 agency to initiate proceedings to terminate parental rights. The

1 court is not required to order the agency to initiate proceedings
2 to terminate parental rights if 1 or more of the following apply:

3 (a) The child is being cared for by relatives.

4 (b) The case service plan documents a compelling reason for
5 determining that filing a petition to terminate parental rights
6 would not be in the best interest of the child. Compelling reasons
7 for not filing a petition to terminate parental rights include, but
8 are not limited to, all of the following:

9 (i) Adoption is not the appropriate permanency goal for the
10 child.

11 (ii) No grounds to file a petition to terminate parental rights
12 exist.

13 (iii) The child is an unaccompanied refugee minor as defined in
14 45 CFR 400.11.

15 (iv) There are international legal obligations or compelling
16 foreign policy reasons that preclude terminating parental rights.

17 (c) The state has not provided the child's family, consistent
18 with the time period in the case service plan, with the services
19 the state considers necessary for the child's safe return to his or
20 her home, if reasonable efforts are required.

21 (7) If the agency demonstrates under subsection (6) that
22 initiating the termination of parental rights to the child is
23 clearly not in the child's best interests, or the court does not
24 order the agency to initiate termination of parental rights to the
25 child under subsection (6), then the court shall order 1 or more of
26 the following alternative placement plans:

27 (a) If the court determines that other permanent placement is

1 not possible, the child's placement in foster care shall continue
2 for a limited period to be stated by the court.

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

6 (c) Subject to subsection (9), if the court determines that it
7 is in the child's best interests, appoint a guardian for the child,
8 which guardianship may continue until the child is emancipated.

9 (8) A guardian appointed under subsection (7)(c) has all of
10 the powers and duties set forth under section 15 of the estates and
11 protected individuals code, 1998 PA 386, MCL 700.5215.

12 (9) If a child is placed in a guardian's or a proposed
13 guardian's home under subsection (7)(c), the court shall order the
14 department of human services to perform an investigation and file a
15 written report of the investigation for a review under subsection
16 (10) and the court shall order the department of human services to
17 do all of the following:

18 (a) Perform a criminal record check within 7 days.

19 (b) Perform a central registry clearance within 7 days.

20 (c) Perform a home study and file a copy of the home study
21 with the court within 30 days unless a home study has been
22 performed within the immediately preceding 365 days, under section
23 13a(9) of this chapter. If a home study has been performed within
24 the immediately preceding 365 days, a copy of that home study shall
25 be submitted to the court.

26 (10) The court's jurisdiction over a juvenile under section
27 2(b) of this chapter shall be terminated after the court appoints a

1 guardian under this section and conducts a review hearing under
2 section 19 of this chapter, unless the juvenile is released sooner
3 by the court.

4 (11) The court's jurisdiction over a guardianship created
5 under this section shall continue until released by court order.
6 The court shall review a guardianship created under this section
7 annually and may conduct additional reviews as the court considers
8 necessary. The court may order the department or a court employee
9 to conduct an investigation and file a written report of the
10 investigation.

11 (12) **FOR A HEARING UNDER THIS SECTION, THE SUPERVISING AGENCY**
12 **SHALL PROVIDE DOCUMENTATION OF PROGRESS RELATING TO ALL ASPECTS OF**
13 **THE LAST COURT-ORDERED TREATMENT PLAN, INCLUDING COPIES OF**
14 **EVALUATIONS AND THERAPY REPORTS AND VERIFICATION OF PARENTING TIME,**
15 **TO ALL PARTIES AND THEIR ATTORNEYS NOT LATER THAN 5 BUSINESS DAYS**
16 **BEFORE THE SCHEDULED HEARING.** In making the determinations under
17 this section, the court shall consider any written or oral
18 information concerning the child from the child's parent, guardian,
19 custodian, foster parent, child caring institution, relative with
20 whom the child is placed, or guardian ad litem in addition to any
21 other evidence, including the appropriateness of parenting time,
22 offered at the hearing.

23 (13) The court may, on its own motion or upon petition from
24 the department of human services or the child's lawyer guardian ad
25 litem, hold a hearing to determine whether a guardianship appointed
26 under this section shall be revoked.

27 (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.