

# HOUSE BILL No. 5097

October 18, 2011, Introduced by Reps. Price, Heise, Kowall, Denby, LaFontaine, Shaughnessy, Agema, Hooker, Daley, Horn, Hughes, Genetski, Haveman, Kurtz, Poleski, Shirkey and Liss and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled  
"Probate code of 1939,"  
by amending section 19b of chapter XIIIA (MCL 712A.19b), as amended  
by 2010 PA 7.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER XIIIA

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

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

13 (2) Not less than 14 days before a hearing to determine if the  
14 parental rights to a child should be terminated, written notice of  
15 the hearing shall 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 child's foster parent or custodian.

19 (c) The child's parents.

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

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

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

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

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

27 (i) The prosecutor.

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

4           (a) The child has been deserted under ~~any~~**EITHER** of the  
5 following circumstances:

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

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

14 ~~(iii) The child's parent voluntarily surrendered the child to an~~  
15 ~~emergency service provider under chapter XII and did not petition~~  
16 ~~the court to regain custody within 28 days after surrendering the~~  
17 ~~child.~~

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

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

25           (ii) The parent who had the opportunity to prevent the physical  
26 injury or physical or sexual abuse failed to do so and the court  
27 finds that there is a reasonable likelihood that the child will

1 suffer injury or abuse in the foreseeable future if placed in the  
2 parent's home.

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

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

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

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

24 (d) The child's parent has placed the child in a limited  
25 guardianship under section 5205 of the estates and protected  
26 individuals code, 1998 PA 386, MCL 700.5205, and has substantially  
27 failed, without good cause, to comply with a limited guardianship

1 placement plan described in section 5205 of the estates and  
2 protected individuals code, 1998 PA 386, MCL 700.5205, regarding  
3 the child to the extent that the noncompliance has resulted in a  
4 disruption of the parent-child relationship.

5 (e) The child has a guardian under the estates and protected  
6 individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the  
7 parent has substantially failed, without good cause, to comply with  
8 a court-structured plan described in section 5207 or 5209 of the  
9 estates and protected individuals code, 1998 PA 386, MCL 700.5207  
10 and 700.5209, regarding the child to the extent that the  
11 noncompliance has resulted in a disruption of the parent-child  
12 relationship.

13 (f) The child has a guardian under the estates and protected  
14 individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both  
15 of the following have occurred:

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

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

27 (g) The parent, without regard to intent, fails to provide

1 proper care or custody for the child and there is no reasonable  
2 expectation that the parent will be able to provide proper care and  
3 custody within a reasonable time considering the child's age.

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

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

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

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

19 (i) Abandonment of a young child.

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

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

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

24 (v) Life-threatening injury.

25 (vi) Murder or attempted murder.

26 (vii) Voluntary manslaughter.

27 (viii) Aiding and abetting, attempting to commit, conspiring to

1 commit, or soliciting murder or voluntary manslaughter.

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

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

9 (i) Abandonment of a young child.

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

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

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

14 (v) Life-threatening injury.

15 (vi) Murder or attempted murder.

16 (vii) Voluntary manslaughter.

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

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

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

26 (ii) A violation of a criminal statute that includes as an  
27 element the use of force or the threat of force and that subjects

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

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

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

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

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