

# HOUSE BILL No. 4457

April 13, 1999, Introduced by Reps. Sanborn, Richner, Julian, Kowall, DeHart, Wojno, Gielegem, Callahan, Rocca, Faunce, Howell, Hale, Mortimer, LaForge, O'Neil, Kukuk and DeVuyst and referred to the Committee on Family and Civil Law.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 19b of chapter XIIA (MCL 712A.19b), as amended by 1998 PA 530.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

### CHAPTER XIIA

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

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

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

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

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

20 (c) The child's parents.

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

22 (e) If the child has a guardian ad litem, the child's guard-  
23 ian ad litem.

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

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

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

2 (i) The prosecutor.

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

6 (a) The child has been deserted under either of the follow-  
7 ing circumstances:

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

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

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

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

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

1 will suffer injury or abuse in the foreseeable future if placed  
2 in the 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 rea-  
5 sonable likelihood that the child will suffer from injury or  
6 abuse by the nonparent adult in the foreseeable future if placed  
7 in the parent's home.

8 (c) The parent was a respondent in a proceeding brought  
9 under this chapter, 182 or more days have elapsed since the issu-  
10 ance of an initial dispositional order, and the court, by clear  
11 and 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  
15 child's age.

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

24 (d) The child's parent has placed the child in a limited  
25 guardianship under section 424a of the revised probate code, 1978  
26 PA 642, MCL 700.424a, OR SECTION 5205 OF THE ESTATES AND  
27 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.5205, and has

1 substantially failed, without good cause, to comply with a  
2 limited guardianship placement plan described in section 424a of  
3 the revised probate code, 1978 PA 642, MCL 700.424a, OR SECTION  
4 5205 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386,  
5 MCL 700.5205, regarding the child to the extent that the noncom-  
6 pliance has resulted in a disruption of the parent-child  
7 relationship.

8 (e) The child has a guardian under the revised probate code,  
9 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED  
10 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and the  
11 parent has substantially failed, without good cause, to comply  
12 with a court-structured plan described in section 424b or 424c of  
13 the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c,  
14 OR SECTION 5207 OR 5209 OF THE ESTATES AND PROTECTED INDIVIDUALS  
15 CODE, 1998 PA 386, MCL 700.5207 AND 700.5209, regarding the child  
16 to the extent that the noncompliance has resulted in a disruption  
17 of the parent-child relationship.

18 (f) The child has a guardian under the revised probate code,  
19 1978 PA 642, MCL 700.1 to 700.993, OR THE ESTATES AND PROTECTED  
20 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8102, and both  
21 of the following have occurred:

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

1 substantially comply with the order for a period of 2 years or  
2 more before the filing of the petition.

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

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

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

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

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

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

- 1           (i) Abandonment of a young child.
- 2           (ii) Criminal sexual conduct involving penetration,  
3 attempted penetration, or assault with intent to penetrate.
- 4           (iii) Battering, torture, or other severe physical abuse.
- 5           (iv) Loss or serious impairment of an organ or limb.
- 6           (v) Life threatening injury.
- 7           (vi) Murder or attempted murder.
- 8           (l) The parent's rights to another child were terminated as  
9 a result of proceedings under section 2(b) of this chapter or a  
10 similar law of another state.
- 11          (m) The parent's rights to another child were voluntarily  
12 terminated following the initiation of proceedings under section  
13 2(b) of this chapter or a similar law of another state.
- 14          (n) The parent is convicted of 1 or more of the following,  
15 and the court determines that termination is in the child's best  
16 interests because continuing the parent-child relationship with  
17 the parent would be harmful to the child:
- 18           (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,  
19 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,  
20 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.
- 21           (ii) A violation of a criminal statute, an element of which  
22 is the use of force or the threat of force, and which subjects  
23 the parent to sentencing under section 10, 11, or 12 of chapter  
24 IX of the code of criminal procedure, 1927 PA 175, MCL 769.10,  
25 769.11, 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           (0) THE PARENT HAS COMMITTED A SERIOUS ASSAULT ON A  
5 CHILDREN'S PROTECTIVE SERVICES CASEWORKER. AS USED IN THIS SUB-  
6 DIVISION, "SERIOUS ASSAULT" MEANS AN ACT THAT CONSTITUTES A  
7 FELONY VIOLATION OF CHAPTER XI OF THE MICHIGAN PENAL CODE, 1931  
8 PA 328, MCL 750.81 TO 750.90F, OR THAT CONSTITUTES AN ASSAULT AND  
9 INFLECTION OF SERIOUS OR AGGRAVATED INJURY UNDER SECTION 81A OF  
10 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81A.

11           (4) If a petition to terminate the parental rights to a  
12 child is filed, the court may enter an order terminating parental  
13 rights under subsection (3) at the initial dispositional  
14 hearing. If a petition to terminate parental rights to a child  
15 is filed, parenting time for a parent who is a subject of the  
16 petition is automatically suspended and, except as otherwise pro-  
17 vided in this subsection, remains suspended at least until a  
18 decision is issued on the termination petition. If a parent  
19 whose parenting time is suspended under this subsection estab-  
20 lishes, and the court determines, that parenting time will not  
21 harm the child, the court may order parenting time in the amount  
22 and under the conditions the court determines appropriate.

23           (5) If the court finds that there are grounds for termina-  
24 tion of parental rights, the court shall order termination of  
25 parental rights and order that additional efforts for reunifica-  
26 tion of the child with the parent not be made, unless the court



1 finds that termination of parental rights to the child is clearly  
2 not in the child's best interests.

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