

SENATE BILL No. 893

October 13, 2009, Introduced by Senators BARCIA, JANSEN, HARDIMAN, GARCIA, VAN WOERKOM, BIRKHOLZ, ALLEN, PAPPAGEORGE, KAHN and GILBERT and referred to the Committee on Families and Human Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 19c (MCL 712A.19c), as amended by 2008 PA 203.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19c. (1) Except as provided in section 19(4) of this
2 chapter and subject to subsection (14), if a child remains in
3 placement following the termination of parental rights to the
4 child, the court shall conduct a review hearing not more than 91
5 days after the termination of parental rights and no later than
6 every 91 days after that hearing for the first year following
7 termination of parental rights to the child. If a child remains in
8 a placement for more than 1 year following termination of parental
9 rights to the child, a review hearing shall be held no later than
10 182 days from the immediately preceding review hearing before the

1 end of the first year and no later than every 182 days from each
2 preceding review hearing thereafter until the case is dismissed. A
3 review hearing under this subsection shall not be canceled or
4 delayed beyond the number of days required in this subsection,
5 regardless of whether any other matters are pending. Upon motion by
6 any party or in the court's discretion, a review hearing may be
7 accelerated to review any element of the case. The court shall
8 conduct the first permanency planning hearing within 12 months from
9 the date that the child was originally removed from the home.
10 Subsequent permanency planning hearings shall be held within 12
11 months of the preceding permanency planning hearing. If proper
12 notice for a permanency planning hearing is provided, a permanency
13 planning hearing may be combined with a review hearing held under
14 section 19(2) to (4) of this chapter. A permanency planning hearing
15 under this section shall not be canceled or delayed beyond the
16 number of months required in this subsection, regardless of whether
17 any other matters are pending. At a hearing under this section, the
18 court shall review all of the following:

19 (a) The appropriateness of the permanency planning goal for
20 the child.

21 (b) The appropriateness of the child's placement.

22 (c) The reasonable efforts being made to place the child for
23 adoption or in other permanent placement in a timely manner.

24 (2) Subject to subsection (3), if the court determines that it
25 is in the child's best interests, the court may appoint a guardian
26 for the child.

27 (3) The court shall not appoint a guardian for the child

1 without the written consent of the MCI superintendent **OR HIS OR HER**
2 **DESIGNEE**. The MCI superintendent **OR HIS OR HER DESIGNEE** shall
3 consult with the child's lawyer guardian ad litem when considering
4 whether to grant written consent.

5 (4) If a person believes that the decision to withhold the
6 consent required in subsection (3) is arbitrary or capricious, the
7 person may file a motion with the court. A motion under this
8 subsection shall contain information regarding both of the
9 following:

10 (a) The specific steps taken by the person to obtain the
11 consent required and the results, if any.

12 (b) The specific reasons why the person believes that the
13 decision to withhold consent was arbitrary or capricious.

14 (5) If a motion is filed under subsection (4), the court shall
15 set a hearing date and provide notice to the MCI superintendent,
16 the foster parents, the prospective guardian, the child, and the
17 child's lawyer guardian ad litem.

18 (6) Subject to subsection (8), if a hearing is held under
19 subsection (5) and the court finds by clear and convincing evidence
20 that the decision to withhold consent was arbitrary or capricious,
21 the court may approve the guardianship without the consent of the
22 MCI superintendent.

23 (7) A guardian appointed under this section has all of the
24 powers and duties set forth under section 15 of the estates and
25 protected individuals code, 1998 PA 386, MCL 700.5215.

26 (8) If a child is placed in a guardian's or a proposed
27 guardian's home under subsection (2) or (6), the court shall order

1 the department of human services to perform an investigation and
2 file a written report of the investigation for a review under
3 subsection (10) and the court shall order the department of human
4 services to do all of the following:

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

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

7 (c) Perform a home study and file a copy of the home study
8 with the court within 30 days unless a home study has been
9 performed within the immediately preceding 365 days, under section
10 13a(9) of this chapter. If a home study has been performed within
11 the immediately preceding 365 days, a copy of that home study shall
12 be submitted to the court.

13 (9) The court's jurisdiction over a juvenile under section
14 2(b) of this chapter and the jurisdiction of the Michigan
15 children's institute under section 3 of 1935 PA 220, MCL 400.203,
16 shall be terminated after the court appoints a guardian under this
17 section and conducts a review hearing under section 19 of this
18 chapter, unless the juvenile is released sooner by the court.

19 (10) The court's jurisdiction over a guardianship created
20 under this section shall continue until released by court order.
21 The court shall review a guardianship created under this section
22 annually and may conduct additional reviews as the court considers
23 necessary. The court may order the department or a court employee
24 to conduct an investigation and file a written report of the
25 investigation.

26 (11) The court may, on its own motion or upon petition from
27 the department of human services or the child's lawyer guardian ad

1 litem, hold a hearing to determine whether a guardianship appointed
2 under this section shall be revoked.

3 (12) A guardian may petition the court for permission to
4 terminate the guardianship. A petition may include a request for
5 appointment of a successor guardian.

6 (13) After notice and hearing on a petition for revocation or
7 permission to terminate the guardianship, if the court finds by a
8 preponderance of evidence that continuation of the guardianship is
9 not in the child's best interests, the court shall revoke or
10 terminate the guardianship and appoint a successor guardian or
11 commit the child to the Michigan children's institute under section
12 3 of 1935 PA 220, MCL 400.203.

13 (14) This section applies only to a child's case in which
14 parental rights to the child were either terminated as the result
15 of a proceeding under section 2(b) of this chapter or a similar law
16 of another state or terminated voluntarily following the initiation
17 of a proceeding under section 2(b) of this chapter or a similar law
18 of another state. This section applies as long as the child is
19 subject to the jurisdiction, control, or supervision of the court
20 or of the Michigan children's institute or other agency.