

# HOUSE BILL No. 4716

June 7, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

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 2012 PA 386.

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

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CHAPTER XIIIA

Sec. 19b. (1) Except as provided in subsection (4), if a child  
remains in foster care in the temporary custody of the court  
following a review hearing under section 19(3) of this chapter or a  
permanency planning hearing under section 19a of this chapter or if  
a child remains in the custody of a guardian or limited guardian,  
upon petition of the prosecuting attorney, whether or not the  
prosecuting attorney is representing or acting as legal consultant

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

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

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

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

21 (c) The child's parents.

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

23 (e) If the child has a guardian ad litem, the child's guardian  
24 ad litem.

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

27 (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 following  
7 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 child  
10 during that period. For the purposes of this section, a parent is  
11 unidentifiable if the parent's identity cannot be ascertained after  
12 reasonable efforts have been made to locate and identify the  
13 parent.

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

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

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

23 (ii) The parent who had the opportunity to prevent the  
24 physical injury or physical or sexual abuse failed to do so and the  
25 court finds that there is a reasonable likelihood that the child  
26 will suffer injury or abuse in the foreseeable future if placed in  
27 the parent's home.

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

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

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

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

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

1 the child to the extent that the noncompliance has resulted in a  
2 disruption of the parent-child relationship.

3 (e) The child has a guardian under the estates and protected  
4 individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and the  
5 parent has substantially failed, without good cause, to comply with  
6 a court-structured plan described in section 5207 or 5209 of the  
7 estates and protected individuals code, 1998 PA 386, MCL 700.5207  
8 and 700.5209, regarding the child to the extent that the  
9 noncompliance has resulted in a disruption of the parent-child  
10 relationship.

11 (f) The child has a guardian under the estates and protected  
12 individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both  
13 of the following have occurred:

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

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

25 (g) The parent, without regard to intent, fails to provide  
26 proper care or custody for the child and there is no reasonable  
27 expectation that the parent will be able to provide proper care and

1 custody within a reasonable time considering the child's age.

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

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

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

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

17 (i) Abandonment of a young child.

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

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

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

22 (v) Life-threatening injury.

23 (vi) Murder or attempted murder.

24 (vii) Voluntary manslaughter.

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

27 (ix) Sexual abuse as that term is defined in section 2 of the

1 child protection law, 1975 PA 238, MCL 722.622.

2           **(x) KNOWINGLY ALLOWING A PERSON TO PERFORM A SURGICAL**  
3 **OPERATION TO CIRCUMCISE, INCISE, EXCISE, OR INFIBULATE ALL OR PART**  
4 **OF THE LABIA MAJORA, LABIA MINORA, CLITORIS, OR CONTIGUOUSLY**  
5 **SURROUNDING TISSUE ON A CHILD, REGARDLESS OF WHETHER THE SURGICAL**  
6 **OPERATION CAUSES PHYSICAL DEFORMITY, RESIDUAL PAIN, OR LOSS OF**  
7 **SENSATION.**

8           (l) The parent's rights to another child were terminated as a  
9 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 and the  
14 proceeding involved abuse that included 1 or more of the following:

15           (i) Abandonment of a young child.

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

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

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

20           (v) Life-threatening injury.

21           (vi) Murder or attempted murder.

22           (vii) Voluntary manslaughter.

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

25           (ix) Sexual abuse as that term is defined in section 2 of the  
26 child protection law, 1975 PA 238, MCL 722.622.

27           (n) The parent is convicted of 1 or more of the following, and

1 the court determines that termination is in the child's best  
2 interests because continuing the parent-child relationship with the  
3 parent would be harmful to the child:

4 (i) A violation of section 316, 317, 520b, 520c, 520d, 520e,  
5 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316,  
6 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

7 (ii) A violation of a criminal statute that includes as an  
8 element the use of force or the threat of force and that subjects  
9 the parent to sentencing under section 10, 11, or 12 of chapter IX  
10 of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,  
11 and 769.12.

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

15 (4) If a petition to terminate the parental rights to a child  
16 is filed, the court may enter an order terminating parental rights  
17 under subsection (3) at the initial dispositional hearing. If a  
18 petition to terminate parental rights to a child is filed, the  
19 court may suspend parenting time for a parent who is a subject of  
20 the petition.

21 (5) If the court finds that there are grounds for termination  
22 of parental rights and that termination of parental rights is in  
23 the child's best interests, the court shall order termination of  
24 parental rights and order that additional efforts for reunification  
25 of the child with the parent not be made.

26 (6) As used in this section, "concerned person" means a foster  
27 parent with whom the child is living or has lived who has specific



1 knowledge of behavior by the parent constituting grounds for  
2 termination under subsection (3) (b) or (g) and who has contacted  
3 the department, the prosecuting attorney, the child's attorney, and  
4 the child's guardian ad litem, if any, and is satisfied that none  
5 of these persons intend to file a petition under this section.

6 Enacting section 1. This amendatory act takes effect 90 days  
7 after the date it is enacted into law.