

# SENATE BILL No. 551

October 17, 1991, Introduced by Senator WELBORN and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend section 22 of chapter X and sections 13a, 18f, and 19b of chapter XIIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

section 22 of chapter X as amended by Act No. 175 of the Public Acts of 1990, sections 13a and 18f of chapter XIIIA as added by

Act No. 224 of the Public Acts of 1988, and section 19b of chapter XIIA as amended by Act No. 314 of the Public Acts of 1990, being sections 710.22, 712A.13a, 712A.18f, and 712A.19b of the Michigan Compiled Laws.

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

1       Section 1. Section 22 of chapter X and sections 13a, 18f,  
2 and 19b of chapter XIIA of Act No. 288 of the Public Acts of  
3 1939, section 22 of chapter X as amended by Act No. 175 of the  
4 Public Acts of 1990, sections 13a and 18f of chapter XIIA as  
5 added by Act No. 224 of the Public Acts of 1988, and section 19b  
6 of chapter XIIA as amended by Act No. 314 of the Public Acts of  
7 1990, being sections 710.22, 712A.13a, 712A.18f, and 712A.19b of  
8 the Michigan Compiled Laws, are amended to read as follows:

9                               CHAPTER X

10       Sec. 22. As used in this chapter:

11       (a) "Adoptee" means the person who is to be adopted, regard-  
12 less of whether the person is a child or an adult.

13       (b) "Best interests of the adoptee" or "best interests of  
14 the child" means the sum total of the following factors to be  
15 considered, evaluated, and determined by the court to be applied  
16 to give the adoptee permanence at the earliest possible date:

17       (i) The love, affection, and other emotional ties existing  
18 between the adopting person or persons or the putative father,  
19 and the adoptee.

20       (ii) The capacity and disposition of the adopting person or  
21 persons or the putative father to give the adoptee love,  
22 affection, and guidance, and to educate and create a milieu that

1 fosters the religion, racial identity, and culture of the  
2 adoptee.

3 (iii) The capacity and disposition of the adopting person or  
4 persons or the putative father to provide the adoptee with food,  
5 clothing, education, permanence, medical care or other remedial  
6 care recognized and permitted under the laws of this state in  
7 place of medical care, and other material needs.

8 (iv) The length of time the adoptee has lived in a stable,  
9 satisfactory environment, and the desirability of maintaining  
10 continuity.

11 (v) The permanence as a family unit of the proposed adoptive  
12 home, or the home of the putative father.

13 (vi) The moral fitness of the adopting person or persons or  
14 of the putative father.

15 (vii) The mental and physical health of the adopting person  
16 or persons or of the putative father, and of the adoptee.

17 (viii) The home, school, and community record of the  
18 adoptee.

19 (ix) The reasonable preference of the adoptee, if the  
20 adoptee is 14 years of age or less and if the court deems the  
21 adoptee to be of sufficient age to express a preference.

22 (x) The ability and willingness of the adopting person or  
23 persons to adopt the adoptee's siblings.

24 (xi) THE CRIMINAL AND SUBSTANCE ABUSE RECORDS OF THE ADOPT-  
25 ING PERSON OR PERSONS, OR OF THE PUTATIVE FATHER.

1       (xii) ~~—(xi)—~~ Any other factor considered by the court to be  
2 relevant to a particular adoption proceeding, or to a putative  
3 father's request for child custody.

4       (c) "Biological parent" means a person whose rights were  
5 terminated pursuant to this chapter or chapter XIIIA.

6       (d) "Born out of wedlock" means a child begotten and born to  
7 a woman who was not married from the conception to the date of  
8 birth of the child, or a child ~~—which—~~ WHOM the court has deter-  
9 mined to be a child born during a marriage but not the issue of  
10 that marriage.

11       (e) "Child" means a person less than 18 years of age.

12       (f) "Child placing agency" means a private organization  
13 licensed to place children for adoption.

14       (g) "Consent" means a duly executed document in which all  
15 parental rights over a specific child are voluntarily relin-  
16 quished to the court for adoptive placement with the petitioner.

17       (h) "Court" means the probate court of this state, and when  
18 the context requires, the court having jurisdiction over adoption  
19 in another state or country.

20       (i) "Department" means the state department of social  
21 services.

22       (j) "Petitioner" means the person or persons who file an  
23 adoption petition with the court.

24       (k) "Release" means a duly executed document in which all  
25 parental rights over a specific child are voluntarily relin-  
26 quished to the department or to a child placing agency.

1 (1) "Stepparent" means a person who adopts a child 1 of  
2 whose parents is the adopting person's spouse.

3 (m) "Within the fifth degree by marriage, blood, or  
4 adoption" means any of the following relationships: parent,  
5 step-parent, grandparent, step-grandparent, brother,  
6 step-brother, sister, step-sister, uncle, step-uncle, aunt,  
7 step-aunt, first cousin, step-first cousin, great aunt,  
8 step-great aunt, great uncle, step-great uncle, great grandpar-  
9 ent, step-great grandparent, first cousin once removed,  
10 step-first cousin once removed, great great grandparent,  
11 step-great great grandparent, great great uncle, step-great great  
12 uncle, great great aunt, step-great great aunt, great great great  
13 grandparent, or step-great great great grandparent.

#### 14 CHAPTER XIIIA

15 Sec. 13a. (1) As used in this section and sections 18f, 19,  
16 19a, 19b, and 19c of this chapter:

17 (a) "Agency" means a public or private organization, insti-  
18 tution, or facility responsible pursuant to court order or con-  
19 tractual arrangement for the care and supervision of a child.

20 (b) "Foster care" means care provided to a child in a foster  
21 family home, foster family group home, or child caring institu-  
22 tion licensed or approved under Act No. 116 of the Public Acts of  
23 1973, being sections 722.111 to 722.128 of the Michigan Compiled  
24 Laws, or care provided to a child in a relative's home pursuant  
25 to an order by the juvenile division of the probate court.

26 (2) If a child is alleged to come within the provisions of  
27 section 2(b) of this chapter, the court may authorize a petition

1 to be filed at the conclusion of the preliminary hearing or  
2 inquiry. The petition may be authorized upon a showing of proba-  
3 ble cause that 1 or more of the allegations in the petition are  
4 true and fall within the provisions of section 2(b) of this  
5 chapter.

6 (3) If a petition under subsection (2) is authorized, the  
7 court may release the child in the custody of either of the  
8 child's parents, OR OF A guardian ~~—~~ or custodian, under such  
9 reasonable terms and conditions as are necessary for either the  
10 physical health or mental well-being of the child.

11 (4) If a petition under subsection (2) is authorized, the  
12 court may order placement of the child with someone other than a  
13 parent if the court after hearing determines that both of the  
14 following conditions exist:

15 (a) Custody of the child with a parent, guardian, or custo-  
16 dian presents a substantial risk of harm to the child's life,  
17 physical health, or mental well-being and no provision of service  
18 or other arrangement except removal of the child is reasonably  
19 available to adequately safeguard the child from such risk.

20 (b) Conditions of custody of the child away from a parent,  
21 guardian, or custodian are adequate to safeguard the child's  
22 health and welfare.

23 (5) If the court orders placement of the child outside the  
24 child's home, the court shall inform the parties of the  
25 following:

26 (a) That the agency has the responsibility to prepare an  
27 initial services plan within 30 days of the child's placement.

1 (b) The general elements of an initial services plan as  
2 required by the rules promulgated pursuant to Act No. 116 of the  
3 Public Acts of 1973.

4 (c) That without a court order participation in an initial  
5 services plan is voluntary.

6 (6) In determining placement of a child pending trial, the  
7 court shall order the child placed in the most family-like set-  
8 ting available consistent with the needs of the child.

9 (7) Unless visitation, even if supervised, would be harmful  
10 to the child, the child's parent shall be permitted to visit fre-  
11 quently with the child.

12 (8) Upon the motion of any party, the court shall review  
13 custody and placement orders and initial services plans pending  
14 trial and may modify those orders and plans as the court consid-  
15 ers pursuant to this section are in the best interests of the  
16 child.

17 (9) IN DETERMINING CUSTODY OF A CHILD UNDER THIS SECTION,  
18 THE COURT SHALL CONSIDER CRIMINAL AND SUBSTANCE ABUSE RECORDS OF  
19 EACH PARTY INVOLVED.

20 Sec. 18f. (1) If, in a proceeding under section 2(b) of  
21 this chapter, an agency advises the court against placing a child  
22 in the custody of the child's parent, guardian, or custodian, the  
23 agency shall report in writing to the court what efforts were  
24 made to prevent the child's removal from his or her home or the  
25 efforts made to rectify the conditions that caused the child's  
26 removal from his or her home. The report shall include all of  
27 the following:

1 (a) If services were provided to the child and his or her  
2 parent, guardian, or custodian, the services, including in-home  
3 services, that were provided.

4 (b) If services were not provided to the child and his or  
5 her parent, guardian, or custodian, the reasons why services were  
6 not provided.

7 (c) Likely harm to the child if the child were to be sepa-  
8 rated from his or her parent, guardian, or custodian.

9 (d) Likely harm to the child if the child were to be  
10 returned to his or her parent, guardian, or custodian.

11 (2) Before the court enters an order of disposition in a  
12 proceeding under section 2(b) of this chapter, the agency shall  
13 prepare a case service plan which shall be available to the court  
14 and all the parties to the proceeding.

15 (3) The case service plan shall provide for placing the  
16 child in the most family-like setting available and in as close  
17 proximity to the child's parents' home as is consistent with the  
18 best interests and special needs of the child. The case service  
19 plan shall include, but not be limited to, the following:

20 (a) The type of home or institution in which the child is to  
21 be placed and the reasons for the selected placement.

22 (b) Efforts to be made by the child's parent to enable the  
23 child to return to his or her home.

24 (c) Efforts to be made by the agency to return the child to  
25 his or her home.

26 (d) Schedule of services to be provided to the parent,  
27 child, and if the child is to be placed in foster care, the



1 foster parent, to facilitate the child's return to his or her  
2 home or to facilitate the permanent placement of the child.

3 (e) Unless visitation, even if supervised, would be harmful  
4 to the child, a schedule for regular and frequent visitation  
5 between the child and his or her parent which shall not be less  
6 than once every 7 days.

7 (4) The court shall consider the case service plan and the  
8 evidence offered, INCLUDING THE CRIMINAL AND SUBSTANCE ABUSE  
9 RECORDS OF EACH PARTY INVOLVED, bearing on disposition before the  
10 court enters an order of disposition. The order of disposition  
11 shall state whether reasonable efforts have been made to prevent  
12 the child's removal from his or her home or to rectify the condi-  
13 tions that caused the child's removal from his or her home. The  
14 court may order compliance with all or any part of the case serv-  
15 ice plan as the court considers necessary.

16 (5) If a child continues in placement outside of the child's  
17 home, the case service plan shall be updated and revised at  
18 90-day intervals as required by the rules promulgated pursuant to  
19 Act No. 116 of the Public Acts of 1973, being sections 722.111 to  
20 722.128 of the Michigan Compiled Laws. Updated and revised case  
21 service plans shall be available to the court and all the parties  
22 to the proceeding.

23 Sec. 19b. (1) Except as provided in subsection (4), if a  
24 child remains in foster care in the temporary custody of the  
25 court following a review hearing under section 19(3) of this  
26 chapter or a permanency planning hearing under section 19a of  
27 this chapter or if a child remains in the custody of a guardian

1 or limited guardian, upon petition of the prosecuting attorney,  
2 child, guardian, custodian, or agency, the court shall hold a  
3 hearing to determine if the parental rights to a child should be  
4 terminated and, if all parental rights to the child are termi-  
5 nated, the child placed in permanent custody of the court.

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

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

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

12 (c) The child's parents.

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

15 (e) If the child has a guardian ad litem, the guardian ad  
16 litem for the child.

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

19 (g) The attorney for the child.

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

21 (i) The prosecutor.

22 (3) The court may terminate the parental rights of a parent  
23 to a child if the court finds, by clear and convincing evidence,  
24 1 or more of the following:

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

1       (i) If the parent of a child is unidentifiable and has  
2 deserted the child for 28 or more days and has not sought custody  
3 of the child during that period. For the purposes of this sec-  
4 tion, a parent is unidentifiable if the parent's identity cannot  
5 be ascertained after reasonable efforts have been made to locate  
6 and identify the parent.

7       (ii) The parent of a child has deserted the child for 91 or  
8 more days and has not sought custody of the child during that  
9 period.

10       (b) The child or a sibling of the child has suffered physi-  
11 cal injury or physical or sexual abuse under either of the fol-  
12 lowing circumstances:

13       (i) ~~—A—~~ THE parent's act caused the physical injury or phys-  
14 ical or sexual abuse and the court finds that there is a reason-  
15 able likelihood that the child will suffer from injury or abuse  
16 in the foreseeable future if placed in the parent's home.

17       (ii) ~~—A—~~ THE parent ~~who~~ had the opportunity to prevent the  
18 physical injury or physical or sexual abuse AND failed to do so  
19 and the court finds that there is a reasonable likelihood that  
20 the child will suffer injury or abuse in the foreseeable future  
21 if placed in the parent's home.

22       (c) The parent was a respondent in a proceeding brought  
23 under this chapter, 182 or more days have elapsed since the issu-  
24 ance of an initial dispositional order, and the court, by clear  
25 and convincing evidence, finds either of the following:

26       (i) The conditions that led to the adjudication continue to  
27 exist and there is no reasonable likelihood that the conditions

1 will be rectified within a reasonable time considering the age of  
2 the child.

3       (ii) Other conditions exist that cause the child to come  
4 within the jurisdiction of the court, the parent has received  
5 recommendations to rectify those conditions, the conditions have  
6 not been rectified by the parent after the parent has received  
7 notice, RECEIVED a hearing, and been given a reasonable opportu-  
8 nity to rectify the conditions, and there is no reasonable like-  
9 lihood that the conditions will be rectified within a reasonable  
10 time considering the age of the child.

11       (d) The parent of a child has placed the child in a limited  
12 guardianship under section 424a of the revised probate code, Act  
13 No. 642 of the public acts of 1978, being section 700.424a of the  
14 Michigan Compiled Laws, and has substantially failed, without  
15 good cause, to comply with a limited guardianship placement plan  
16 described in section 424a of Act No. 642 of the Public Acts of  
17 1978 regarding the child to the extent that such noncompliance  
18 has resulted in a disruption of the parent-child relationship.

19       (e) The parent of a child who has a guardian under the  
20 revised probate code, Act No. 642 of the Public Acts of 1978,  
21 being sections 700.1 to 700.993 of the Michigan Compiled Laws,  
22 has substantially failed, without good cause, to comply with a  
23 court-structured plan described in section 424b or 424c of Act  
24 No. 642 of the Public Acts of 1978, being sections 700.424b and  
25 700.424c of the Michigan Compiled Laws, regarding the child to  
26 the extent that ~~such~~ THE noncompliance has resulted in a  
27 disruption of the parent-child relationship.

1 (f) The child has a guardian under the revised probate code,  
2 Act No. 642 of the Public Acts of 1978 ~~, being sections 700.1 to~~  
3 ~~700.993 of the Michigan Compiled Laws,~~ and both of the following  
4 have occurred:

5 (i) The parent, having the ability to support or assist in  
6 supporting the minor, has failed or neglected, without good  
7 cause, to provide regular and substantial support for the minor  
8 for a period of 2 years or more before the filing of the petition  
9 or, if a support order has been entered, has failed to substan-  
10 tially comply with the order for a period of 2 years or more  
11 before the filing of the petition.

12 (ii) The parent, having the ability to visit, contact, or  
13 communicate with the minor, has regularly and substantially  
14 failed or neglected, without good cause, to do so for a period of  
15 2 years or more before the filing of the petition.

16 (g) The parent, without regard to intent, fails to provide  
17 proper care or custody for the child and there is no reasonable  
18 expectation that the parent will be able to provide proper care  
19 and custody within a reasonable time considering the age of the  
20 child.

21 (h) The parent is imprisoned for such a period that the  
22 child will be deprived of a normal home for a period exceeding 2  
23 years, and the parent has not provided for the child's proper  
24 care and custody, and there is no reasonable expectation that the  
25 parent will be able to provide proper care and custody within a  
26 reasonable time considering the age of the child. IN MAKING ITS

1 FINDING, THE COURT SHALL CONSIDER THE CRIMINAL AND SUBSTANCE  
2 ABUSE RECORDS OF THE PARENT.

3 (i) Parental rights to 1 or more siblings of the child have  
4 been terminated due to serious and chronic neglect or physical or  
5 sexual abuse, and prior attempts to rehabilitate the parents have  
6 been unsuccessful.

7 (4) If a petition to terminate the parental rights to a  
8 child is filed, the court may enter an order terminating parental  
9 rights under subsection (3) at the initial dispositional  
10 hearing.