

# HOUSE BILL No. 6316

September 5, 2018, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

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 2018 PA 58.

**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

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

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

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

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

22 (c) The child's parents.

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

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

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

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

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

3 (i) The prosecutor.

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

7 (a) The child has been deserted under either of the following  
8 circumstances:

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

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

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

20 (i) The parent's act caused the physical injury or physical or  
21 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  
25 physical injury or physical or sexual abuse failed to do so and the  
26 court finds that there is a reasonable likelihood that the child  
27 will suffer injury or abuse in the foreseeable future if placed in

1 the parent's home.

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

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

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

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

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

1 protected individuals code, 1998 PA 386, MCL 700.5205, regarding  
2 the child to the extent that the noncompliance has resulted in a  
3 disruption of the parent-child relationship.

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

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

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

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

26 (g) The parent, although, in the court's discretion,  
27 financially able to do so, fails to provide proper care or custody

1 for the child and there is no reasonable expectation that the  
2 parent will be able to provide proper care and custody within a  
3 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 the parent has failed to rectify the conditions  
13 that led to the prior termination of parental rights.

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, the  
18 abuse included 1 or more of the following, and there is a  
19 reasonable likelihood that the child will be harmed if returned to  
20 the care of the parent:

21 (i) Abandonment of a young child.

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

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

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

26 (v) Life-threatening injury.

27 (vi) Murder or attempted murder.

1           (vii) Voluntary manslaughter.

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

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

6           (l) The parent's rights to another child were voluntarily  
7 terminated following the initiation of proceedings under section  
8 2(b) of this chapter or a similar law of another state and the  
9 proceeding involved abuse that included 1 or more of the following,  
10 and the parent has failed to rectify the conditions that led to the  
11 prior termination of parental rights:

12           (i) Abandonment of a young child.

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

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

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

17           (v) Life-threatening injury.

18           (vi) Murder or attempted murder.

19           (vii) Voluntary manslaughter.

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

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

24           (m) The parent is convicted of 1 or more of the following, and  
25 the court determines that termination is in the child's best  
26 interests because continuing the parent-child relationship with the  
27 parent would be harmful to the child:

1           (i) A violation of section 136, 136a, 316, 317, 520b, 520c,  
2 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL  
3 750.136, 750.136a, 750.316, 750.317, 750.520b, 750.520c, 750.520d,  
4 750.520e, and 750.520g.

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

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

13           **(N) THE NATURAL PARENT OR PUTATIVE FATHER HAS BEEN CONVICTED**  
14 **OF MORE THAN 2 FELONIES, WHETHER VIOLENT OR NONVIOLENT, AND HAS**  
15 **BEEN CONVICTED AS A HABITUAL OFFENDER UNDER THE CODE OF CRIMINAL**  
16 **PROCEDURE, 1927 PA 175, MCL 760.1 TO 777.69, EXCEPT UPON A SHOWING**  
17 **BY CLEAR AND CONVINCING EVIDENCE OF ANY OF THE FOLLOWING:**

18           **(i) THE PUTATIVE FATHER HAS ESTABLISHED PATERNITY AND CAN**  
19 **DEMONSTRATE THE ABILITY TO FINANCIALLY SUPPORT THE CHILD.**

20           **(ii) THE NATURAL PARENT HAS ACCEPTED, UTILIZED, AND BENEFITED**  
21 **FROM ALL REHABILITATIVE SERVICES OFFERED BY THE STATE, COUNTY,**  
22 **FEDERAL, OR OTHER GOVERNMENTAL AGENCY WITH NO VIOLATION.**

23           **(iii) THE NATURAL PARENT IS CURRENT WITH CHILD SUPPORT OR ANY**  
24 **OTHER FRIEND OF THE COURT RECOMMENDATION, FOR A PERIOD OF NOT LESS**  
25 **THAN 12 MONTHS AND CAN SHOW, BIANNUALLY, PROOF OF INCOME AND PROOF**  
26 **OF HOUSING THAT IS SUFFICIENT TO SUPPORT THE CHILD.**

27           **(iv) THE NATURAL PARENT CAN DEMONSTRATE BOTH THE USE OF, AND**



1 CONTINUITY OF, THE ESTABLISHED CUSTODIAL ENVIRONMENT WITH REGARD TO  
2 EDUCATION, LOVE, SUPPORT, FINANCIAL STABILITY, AND NURTURING FOR  
3 THE CHILD, AS WELL AS PROPER DISCIPLINARY MEASURES AND THAT THE  
4 NATURAL PARENT CAN MAINTAIN THAT CUSTODIAL ENVIRONMENT WITH LITTLE  
5 OR NO STATE ASSISTANCE.

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

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

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

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