

GUIDELINES FOR ACHIEVING PERMANENCY IN CHILD PROTECTION PROCEEDINGS

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William Newhouse
Children's Charter of the Courts of Michigan
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INTRODUCTION

GUIDELINES FOR ACHIEVING PERMANENCY IN CHILD PROTECTION PROCEEDINGS

This manual has been developed as a resource for persons involved in child protective proceedings in the Family Division of the Circuit Court. It is an extension of a manual originally produced in 1989 entitled *Steps for Preserving Families - Guidelines for Practice*. New laws at both the state and federal level have prompted occasional updates. Historically, in Michigan, there have been significant events prompting updates. State laws have been enacted to respond to the recommendations of Binsfeld Children's Commission. Court reorganization resulted in the creation of the family division of the circuit court. Federal law enacted the Adoption and Safe Families Act (ASFA) of 1997. Regulations implementing ASFA also have an impact on child protective cases. Federal review of state Title IV-E agencies providing foster care services was authorized in 1994 by amendments to the Social Security Act and is an ongoing process that assesses the compliance of states in providing services to families and children. These legislative initiatives are an effort to improve upon the way the courts and the service delivery system respond to child and family issues when neglect or abuse has occurred. The focus of statutes, procedural rules and agency regulations is to:

- Clarify and tighten timelines in court procedures;
- Emphasize child safety and child well-being as decisions are made regarding placement and parenting time;
- Establish procedures that minimize the number and length of out-of-home placements for a child;
- Specify the role and responsibilities of the Lawyer-Guardian Ad Litem who represents the child in protective proceedings;
- Ensure that assessments are done in a timely manner;
- Clarify when “*reasonable efforts*” toward reunification should be made, and conversely, when court intervention should presume that termination of parental rights is in the best interests of the child;
- Clarify when it is “*contrary to the welfare of the child*” to continue the child in the parental home;
- Promote the establishment of child death review teams throughout the state;
- Improve access to DHS data for purposes of study and evaluation;
- Reduce continuances and adjournments in child protection proceedings;
- Closely monitor progress toward a child's permanent placement after a termination of parental rights has occurred;
- Ensure a more timely permanency plan when return home is not viable.

These changes build upon, refine, and shift the emphasis of two earlier significant pieces of legislation. At the federal level, the Adoption Assistance and Child Welfare Act, also known as Public Law 96-272, was enacted in 1980. In Michigan, Public Act 224 of 1988 took effect in 1989. These laws set a framework for addressing the needs of children and families by placing an emphasis on the concept of *reasonable efforts*.

Reasonable efforts evolved out of the recognition that too many children lingered in the foster care system far too long, referred to as “foster care drift.” The overall goal of *reasonable efforts* is to push both the courts and those delivering the services to achieve a safe permanent home for children who have been neglected or abused. With the passage of 96-272 and Public Act 224, Michigan became a national leader in forging a system to make such *reasonable efforts*.

A value that guides achievement of *reasonable efforts* is that, if possible, the best place for children is with their families. When child abuse or neglect occurs, the first priority, if appropriate, is to provide services or interventions to keep children safely in their homes. If removal from the home is necessary, then the priority is to develop a service delivery plan that has as its first goal, again if appropriate, the reunification of children with their families. Only when it is determined that preserving or reunifying the family cannot be safely accomplished, within a reasonable period of time, does *reasonable efforts* call for termination of parental rights and the development of an alternative permanent plan for the child.

The passage of ASFA acknowledged that family preservation and family reunification was, in some cases, applied inappropriately. While nothing in law, policy, or procedure required *reasonable efforts* toward family preservation or reunification in every case, actual practice did not always reflect the kinds of flexibility and discretion available to those making these decisions. There were reports of cases in which efforts were made to keep families together when there was no possibility of rehabilitation, or where the offenses were so egregious that the reasonable course of action should have been the immediate termination of parental rights. ASFA and accompanying state law amendments sought to address ambiguities that existed by enumerating circumstances where court involvement begins with a petition for the termination of parental rights. Practitioners are provided a structure for considering termination in other circumstances as well.

As child protection practice continues to evolve, it remains important to remember the values that have guided *reasonable efforts* continue to apply in the vast majority of child protection cases. Family preservation and family reunification are laudable goals in most cases. Advocates for children and families should continue to ensure that preserving or reuniting families is appropriate in most child protection cases. *Reasonable efforts* require a combination of good court practice and procedure and a service delivery system that intervenes in an appropriate, timely and high-quality manner. The *reasonable efforts* finding must be made within 60 days of the removal of the child from the parental home.

With the addition of a required finding of *contrary to the welfare* a second standard has been set for determining whether a child should be removed from the parental home. *Contrary to the welfare* requires specific findings that the child should not continue to live in the parental home because of a dangerous or threatening environment. The *contrary to the welfare* finding must be made at the time of the removal of the child from the parental home in order to ensure eligibility for Title IV-E funding¹. It will be a continual challenge, especially in preservation and reunification efforts, to ensure such a consistent and comprehensive combination of services and procedures is in place. Statutes provide a basis to distinguish when *reasonable efforts* and *contrary to the welfare* findings should be made, and when, in the best interests of children, other permanent plans should be sought. The statutes also present an opportunity to incorporate use of creative approaches to achieve permanency for children and families.

These guidelines have been revised to reflect changes in the hope that children and families will be better served when in the child welfare system. The guidelines are an aid in providing aggressive advocacy by all parties involved in child protection proceedings. Further, the hope is that advocates will use their experience and expertise not only to provide aggressive case representation, but also to raise concerns about systemic issues when a child's right to a permanent home is compromised.

¹42 U.S.C. 672, section 472; 45 CFR 1356.21(c) ,(d)

FOREWORD

GENERAL EXPECTATIONS

These Guidelines have been developed as an easy-to-use resource to facilitate the considerable work involved in the preparation and involvement in a child protection proceeding. While the guidelines articulate the specific responsibilities at each stage of a child protective proceeding for each person involved, the following set of general expectations are offered as a framework to follow in order to establish a basis for effective advocacy.

Understand the various types of child abuse and neglect as defined by the Juvenile Code and the Child Protection Law.

Understand the basic theories about the causes of child abuse and neglect.

Understand child development concepts of attachment, separation, and loss as they relate to child protective actions.

Understand the potential harms to children caused by ongoing child abuse and/or neglect.

Understand the potential harms to children after removal from their parents, guardians, or custodians, as well as potential harms of remaining in temporary out-of-home placement over long periods of time, or being moved unnecessarily between out-of-home placements.

Become familiar with services and efforts which may:

- **Safeguard the child from substantial harm in the parental home, and**
- **Rectify the conditions that justify court jurisdiction.**

Become familiar with the preventive and reunification services available in the community.

Become familiar with laws and policies regarding prevention, child protective services, foster care, and adoption.

GUIDELINES FORMAT

The Guidelines are divided into the following three primary sections.

- Child Protection Proceedings and Activities
- Key Issues
- Appendices

CHILD PROTECTION PROCEEDINGS AND ACTIVITIES

This section begins with the Emergency Removal Checklist and covers all activities and proceedings through post-termination review of cases where permanency has not yet been achieved. The responsibilities of each of the following persons involved in child protection cases are described for each activity or proceeding.

The Child's Lawyer-Guardian Ad Litem
The Respondents' Attorney
The Attorney Representing the DHS
The Court Appointed Special Advocate

The Protective Services Worker
The Foster Care Worker
The Court
The Juvenile Guardian (CASA)

Each of these sections begins with a short narrative on the purpose of the proceeding, followed by Key Questions that should be reviewed by everyone involved in the case. Also, the relevant cites to the Michigan Court Rules, the Juvenile Code and the DHS Services Manual are included at the end of each section.

KEY ISSUES

The Key Issues section contains several short essays on special topics of interest to advocates in child protective proceedings. The topics are listed in the Table of Contents.

APPENDIX

The Appendix has four parts:

- Part A includes excerpts from the Michigan Juvenile Code relevant to child protective proceedings. Every effort has been made to provide the most recently updated version of the Code so that all of the recent legislative changes are incorporated.
- Part B is the relevant Michigan Court Rules for child protection proceedings.
- Part C is a set of State Court Administrative Office Forms regularly used in child protective proceedings.
- Part D is a summary of changes to other statutes that are relevant to users of the Yellow Book, but do not fit the context of its content.

NOTES

Throughout the Guidelines there are references to the former Family Independence Agency (FIA), now renamed the Department of Human Services (DHS). References to the Family Independence Agency and FIA remain as they occur in current statute and court rule. This document does not presume to make or anticipate changes to statute or court rule. Changes to other references have been made and now appear as either the Department of Human Services or DHS.

Changes to DHS policy are anticipated as a result of the settlement of the Children's Rights lawsuit filed against the State of Michigan. As DHS policy changes are implemented, references to the changes will also be incorporated into the content of the Yellow Book, as appropriate.

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PRELIMINARY HEARING

PURPOSE

A preliminary hearing is a court proceeding to determine if to the court should authorize the filing of a petition for further formal court action. A petition may be authorized for filing if probable cause exists to believe one or more of the allegations in the petition are true. This initial stage of the legal decision-making process facilitates the following purposes:

- Notify the parents of the allegations, their rights and procedures
- Assess the risk to the child
- Determine proper venue
- Determine jurisdictional facts
- Consider a request for immediate protective placement
- Initiate the consideration of appropriate relative placements
- Initiate the collection of medical information about the child
- Assess pre-trial parenting time issues
- Initiate the discovery process

The *reasonable efforts* initiative crucially impacts this stage of the proceeding by requiring close scrutiny of all placement requests. This scrutiny requires a consideration of substantial risk of harm to the child and an investigation into alternative services or other arrangements that could safeguard the child in the parents' home. In the event that out-of-home placement is needed, efforts should be made to ensure the most family-like setting that meets the child's needs. Finally, the court must focus attention on the formulation of an initial service plan. Michigan law requires the court, in all out-of-home placements, to inform all parties that an initial services plan will be developed within 30 days, to inform them of the elements of the plan, and that participation in the plan is voluntary unless the court orders otherwise. This court action provides the parents an opportunity to voluntarily engage in services and encourages a speedier reconciliation. The statute requires frequent parenting time pending trial unless it is demonstrated to be harmful to the child.

SPECIAL NOTE TO ATTORNEYS: It is important that attorneys recognize that practice varies from county to county. The probable cause determination may be handled as a separate hearing in some counties. Check local court practice. The preliminary hearing checklist covers both probable cause and placement issues. Some courts address these issues in separate hearings.

TEMPORARY PROTECTIVE CUSTODY KEY QUESTIONS FOR PROTECTIVE SERVICES

(IN DETERMINING *REASONABLE EFFORTS* TO PREVENT PRE-ADJUDICATION REMOVALS)

Prior to the preliminary hearing, it is important for protective services staff to carefully consider whether children should be taken into temporary protective custody. If Children's Protective Services is considering requesting removal, a Permanency Planning Conference (PPC) must be conducted. The following is offered as guidance to determine if temporary protective custody is necessary or whether there are alternatives to removal.

1. Is the case one which the statute mandates that a petition be filed?
2. Are there prevention services available which could make the filing of a petition unnecessary?
3. Are there reasonable grounds to conclude that the child's health, safety, or welfare is endangered? State reasons that there is imminent risk of harm that makes the child's immediate protection necessary and that support a conclusion that it is contrary to the welfare of the child to remain in the parental home.
4. Are there services available or can arrangements be made to prevent removal and adequately safeguard the child within the child's own home?
5. If the child abuse or neglect has been diagnosed as involving 1 or more of the following, has the attending or primary care physician been consulted regarding emergency removal?
 - Failure to thrive
 - Munchausen Syndrome by Proxy
 - Shaken Baby Syndrome
 - Bone fracture resulting from abuse or neglect
 - Drug exposure
6. To preserve the child's current residence, is there a parent or non-parent adult who should be considered for removal from the home setting or restrained from coming into contact with the child?

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

7. Is the presenting problem sufficiently defined?

What efforts were made to provide appropriate services before the child's removal was requested?

Were services adequate?

Applicable to the problem?

Sufficient in frequency and duration?

Appropriate to parental capacity?

If services did not prevent removal, why not?

Were these efforts reasonable?

8. Is the requested placement for the child in the most family-like setting available?

9. Is the requested placement adequate to safeguard the child's welfare?

10. Are there relatives available who can care for the child? Have all identified relatives been informed? Has the licensing process started for a fit and willing relative?

11. Is there a placement available in the child's school district?

12. Is the child placed with siblings?

13. What parenting time schedule will best meet the developmental and emotional needs of the child?

TEMPORARY PROTECTIVE CUSTODY CHECKLIST

CHILDREN'S PROTECTIVE SERVICES

1. Participate in a considered removal PPC.

2. Conduct an investigation to determine the safety of the child's environment.

MCR 3.963(A). Complete the Safety Assessment and Risk Assessment.

3. Ascertain whether conditions exist which endanger the child's health, safety, or welfare.

The court has the authority to temporarily place a minor child in foster care pending investigation and preliminary hearing without first conducting an evidentiary hearing. *In re Albring*, 160 Mich App 750 (1987).

4. Provide the court with sufficient grounds to show that the child's living conditions endanger the child's health, safety, or welfare and that remaining in the home would be contrary to the child's welfare. MCR 3.963(B)(1).

5. Determine whether the case requires a joint investigation with law enforcement.

CPS must seek the assistance of and cooperate with law enforcement within 24 hours after becoming aware that 1 or more of the following conditions exists:

- (a) Abuse or neglect is the suspected cause of a child's death.
- (b) The child is the victim of suspected sexual abuse or sexual exploitation.
- (c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization and seriously impairs the child's health or physical well being.

Seek assistance if there is a need to protect the child, an agency employee or another person involved in the investigation.

Seek assistance if the child has been exposed to or had contact with methamphetamines.

Refer the case to a law enforcement agency if an alleged perpetrator is not a person responsible for the child's health and welfare.

NOTE: These joint investigations must be conducted in compliance with the investigation and interviewing protocols developed in conjunction with the prosecuting attorney and based on the Children's Justice Task Force model published in DHS Publication 794 (8-93).

6. Determine whether temporary placement with a non-custodial parent should be made.

Confirm whether there is an open Friend of the Court (FOC) case. If there is, notify FOC of CPS action taken to substantiate, make an emergency removal, or maintain the child in the home with court jurisdiction. Notify FOC of an open investigation and any change in a child's placement. MCL 722.628(18),(19).

COURT

In the first court order that sanctions removal of the child, make a detailed finding that remaining in the home would be contrary to the child's welfare. If this finding is not made in the first court ruling that sanctions a child's removal, the child is not eligible for Title IV-E foster care maintenance payments for the duration of the child's stay in foster care.

NOTICE OF HEARING

Preliminary Inquiry

Because there are no procedural requirements for a preliminary inquiry, there are no minimum notice requirements. MCR 3.962. Refer to the Notice of Hearing portion of the Key Issues section.

Preliminary Hearing

Notice to a respondent must be given as soon as the hearing is scheduled, and may be in person, in writing, on the record, or by telephone, and should be in a manner reasonably calculated to reach the parents. MCR 3.920(C)(2)(b). Refer to the Notice of Hearing portion of the Key Issues section.

ROLES AND RESPONSIBILITIES CHECKLIST

CHILDREN'S PROTECTIVE SERVICES

- 1. If the parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, then an automatic petition to terminate parental rights must be filed in the following circumstances.**

- Abandonment of a young child

- Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate

- Battering, torture, or other severe physical abuse

- Loss or serious impairment of an organ or limb

- Life-threatening injury

- Murder or attempted murder

- 2. In addition, an automatic petition for termination must be filed if the parent's rights to another child were terminated or voluntarily released following the filing of a petition for abuse/neglect in Michigan or in another state and there is current risk.**

- 3. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety? As appropriate the worker should determine whether any of the following should be recommended to the court:**

- Participation in development of the case service plan

- Compliance with the case service plan

- Permanent removal from child's residence

- Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent does not need to be living with the parent or child.

- 4. Prepare written petition or petition request depending upon local practice.**

A petition initiates child protective proceedings, the adjudicative phase of which leads to a determination of whether statutory grounds exist, under MCLA 712A.2; MSA 27.3178(598.2), for family court jurisdiction.

A petition is a verified complaint, or other written accusation filed with the court, setting forth charges against parents or custodian with ample clarity and specificity to reasonably apprise the court of matters under consideration. A petition has two essential functions: (1) to set forth the alleged basis of the court's jurisdiction over a particular child, and (2) to communicate to respondents notice of the charges against them. *In re Hatcher*, 443 Mich 426 (1993).

- 5. Determine whether the child has Native American affiliation. Inform the court of membership and/or eligibility in a federally recognized Indian tribe or band.** (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act.)

- 6. At the preliminary hearing, present to the court a factual basis for the petition, citing the relevant portion of MCL 712A.2(b).**

7. In preparing or updating the case service plan, the foster care or protective services worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:

- Failure to Thrive
- Munchausen Syndrome by Proxy
- Shaken Baby Syndrome
- Bone fracture resulting from abuse or neglect
- Drug exposure

8. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.

- Is the child placed with siblings? If not, why not?
- If not, is there a plan to ensure siblings regularly visit or have contact with one another?
- Were the parent(s) involved in the development of the case plan? If not, what efforts were made to involve the parent?
- Was the foster parent consulted regarding the needs of the child?

9. In either considering or reviewing the placement of a child, have *reasonable efforts* been made to place a child in a stable, most family-like setting?

- What kinds of placement services does the child need?
- Does the child have medical, emotional, and/or behavioral problems that need to be addressed?
- What kinds of supports do the foster parents or other temporary caregivers need?
- Is the child placed in their school district? - In their county of residence?
- Has the child's placement been disrupted? Why?

10. Within 30 days of removal, identify, locate, notify and consult with relatives to determine whether there is a fit and appropriate relative or member of the child's extended family who can meet the developmental, emotional and physical needs of the child. Inform relatives interested in placement of the benefits of foster home licensing and the availability of assistance. Begin the process or obtain an appropriate waiver.

11. If a new worker is assigned to the case, what has been done to become familiar with the case?

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

12. Present recommendations for interim protective orders.

13. If removal is requested, demonstrate to the court that continuing the child's residence in the home is contrary to the child's welfare. In other words, demonstrate that leaving the child in the home would unreasonably place the child's life, physical health, or mental well-being at risk.

14. Determine whether the case should be screened for eligibility for concurrent planning. If the case is appropriate, follow applicable policy.

15. Demonstrate that the requested placement for the child is the most similar to care that should have been provided to the child.

16. If the whereabouts of one of the parents is unknown, then make *reasonable efforts* to locate the absent parent including any of the following as appropriate:

Interview the mother and children as to who may be the father.

Determine whether mother was married at the time child(ren) were born.

Check with the Friend of the Court - Child Support Unit to determine whether paternity has already been established and whether anyone is paying support.

If paternity has been established, request a copy of the paternity acknowledgement and include it in the case file.

Document the contact in the case record.

If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

NOTE ON PATERNITY TESTING: CPS and Foster Care staff now have access to paternity testing services. An agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by DHS Central Office. *(As of the date of publication of these Guidelines, refer to DHS L-letter 08-164.)*

Exceptions:

The service is not for child support issues.

It is available one time per client.

Previous testing has been done through other sources such as the Office of Child Support or the Friend of the Court.

- 17. Until foster care services assumes responsibility, make arrangements for frequent parenting time (visitation) between the parent(s) and the child, or if so ordered by the court, arrange for the child to have a psychological evaluation or counseling or both to determine the appropriateness and conditions of parenting time.**

- 18. In transferring a case to foster care, the following should be communicated when an absent parent has not yet been located.**
 - The specific efforts that have been undertaken to locate the absent parent.
 - Any efforts that are pending at the time of transfer.
 - Any efforts that may benefit from continued attention.

- 19. Ensure that documentation necessary for timely transfer of the case to foster care has been completed.**

- 20. If the case involved death, serious injury, sexual abuse or exploitation, send a copy of the investigation report to the prosecuting attorney's office for review of compliance with investigative protocol.**

FOSTER CARE SERVICES

Post-preliminary hearing responsibilities for caseworker include the following:

- 1. Prepare initial services plan within 30 days and begin implementation. The case service plan should be guided by efforts to place the child in the most family-like setting available and in as close proximity to the parent's home as is consistent with the best interest and special needs of the child. The case service plan should address the following:**

- The background of the child and the family including family strengths which can be built upon to provide a safe environment for the child;

- An evaluation of the experiences and problems of the child;

- The schedule of services to be provided for the parent and child, and if placed in foster care, the services plan for the foster parent;

- A schedule for regular and frequent parenting time (not less than once every seven days), unless even if supervised it would be harmful to the child;

- A projection of the expected length of stay in foster care and efforts to be made to return the child home; and

- An identification of family needs, specific goals, and projected time frames for meeting the goals.

- 2. In preparing the case service plan, the foster care worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:**

- Failure to thrive

- Munchausen Syndrome by Proxy

- Shaken Baby Syndrome

- Bone fracture resulting from abuse or neglect

- Drug exposure

- 3. If one of the parents has not been located by the time the case was received from protective services, then continue to make diligent efforts to locate the absent parent, including any of the following as appropriate:**

- Interview the mother and children as to who may be the father.

- Determine whether mother was married at the time child(ren) were born.

- If paternity has been established, request a copy of the paternity acknowledgement and include in the case file.

- Document the contact in the case record.

- If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

- 4. For purposes of possible placement and as an alternative to non-relative placement, identify, locate, notify and consult with relatives to determine whether there is a fit and appropriate relative or member of the child's extended family who can meet the developmental, emotional, and physical needs of the child. Inform relatives interested in placement of the benefits of foster home licensing and the availability of assistance. Begin the process or obtain an appropriate waiver.**

- 5. Conduct a home study and begin the licensing process or an adoption study, if appropriate.**

- 6. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety? As appropriate the worker should determine whether any of the following should be recommended to the court:**

Participation in development of the case service plan

Compliance with the case service plan

Permanent removal from child's residence

Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

7. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.

Is the child placed with siblings? If not, why not?

If not, is there a plan to ensure siblings regularly visit or have contact with one another?

Were the parent(s) involved in the development of the case plan?

Was the foster parent consulted regarding the needs of the child?

8. In either considering or reviewing the placement of a child, have reasonable efforts been made to place a child in a stable, most family-like setting?

What kinds of placement services does the child need?

What kinds of supports do the foster parents or other temporary caregivers need?

Is the child placed in their school district? In their county of residence?

Has the child's placement been disrupted? Why? If so, provide notice to the court and the Lawyer Guardian Ad Litem (LGAL) MCL 712A.13b(2)(d)

9. If a new worker is assigned to the case, what has been done to become familiar with the case?

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

10. Make the initial services plan available to parties and attorneys.

11. Send copies of the initial services plan to the court.

12. Make arrangements for frequent parenting time (visitation) between the parent(s) and the child, unless parenting time has been suspended or limited by the court. If so ordered by the court, arrange for the child to have a psychological evaluation or counseling or both to determine the appropriateness and conditions of parenting time.

13. If a child is placed in foster care and a written request is made, then within 10 days provide the person who is providing foster care with the following:

Copies of all initial, updated and revised case services plans

Court orders relating to the child

The child's medical, mental and educational reports including reports compiled before the child's current placement

14. Determine whether the case should be screened for eligibility for concurrent planning. If so, follow applicable policy.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

CASAs may be assigned at, or immediately following, the preliminary hearing. CASA assignments are made at this stage at the request of either the child's lawyer-guardian ad litem, the judge or referee, or others as determined by the individual CASA program.

When CASAs are assigned at this stage they address the following:

- 1. Gather baseline information on the child, including the child's strengths and weaknesses to assist in measuring future outcomes and making recommendations in the best interest of the child.**

- 2. Make contact with a variety of people who have regular interactions with the child or who may have information that will contribute to developing an accurate picture of the child's current circumstances. Contacts may include any of the following:**
 - The child to whom the CASA is assigned
 - Medical care providers
 - School counselors and teachers
 - Foster care workers
 - Therapists/psychologists
 - Child care providers

3. The CASA must consult with the child's LGAL.

These become the core activities for a CASA volunteer.

Based on the information collected, a CASA may develop an interim dispositional report that can be available if a plea or finding of abuse or neglect is made at the adjudicatory stage of the formal hearing.

NOTE: CASAs do not make contact with the parent(s) without prior approval of the parent(s) attorney. In the case of a child's placement with a parent such as an in-home court wardship, the CASA will minimize contact with the parent and will not discuss allegations of the pending case.

NOTE: CASAs do not investigate the allegations in the petition.

COURT

- 1. The court, like all other parties in child protection proceedings, should be familiar with the concepts as described in the GENERAL EXPECTATIONS section.**

- 2. Inquire whether the child or a parent is a member of any American Indian tribe or band, or if the child is eligible for such membership. If so, ensure notification of the tribe or band [see especially *In re IEM*, 233 Mich App 438 (1999)] and follow the procedures set forth in MCR 3.980 and the Indian Child Welfare Act. MCR 3.965(B)(9).** (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act.)

- 3. Determine what efforts have been taken to locate an absent parent and what subsequent steps should be taken.**
 - Question the parent who is present as to the whereabouts of the absent parent.
 - Provide an opportunity for DHS staff to report on attempts to determine the whereabouts of the absent parent.
 - Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:
 - A due-diligence hearing specific to the efforts to locating the absent parent
 - A putative father hearing
 - An order determining parentage.

- 4. If a petition has been filed and further examination and evaluation is necessary to determine whether a petition should be authorized, then, as appropriate, order examination of a child by any of the following:**
 - Physician
 - Dentist
 - Psychiatrist
 - Psychologist

- 5. Determine whether there is probable cause to authorize the petition and whether formal court intervention is necessary.**

- 6. Determine whether the allegations in the petition require an original petition for the termination of parental rights based on MCL 722.638.**

- 7. Determine whether there is a non-parent adult, who because of a relationship with the parent and child, should be required to comply with court orders. Court orders may include any of the following:**
 - Participation in development of the case service plan
 - Compliance with the case service plan
 - Permanent removal from child's residence
 - Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

- 8. Determine whether the child may be released to a parent, guardian, or custodian under terms and**

conditions necessary for his or her physical health or mental well-being

9. If removal is requested, determine whether:

Removal of the abuser will make the child safe;

Leaving the child in the home would be contrary to the child's welfare ;

The child should have a psychological evaluation or counseling or both when considering the appropriateness and conditions of parenting time;

Services or other arrangements are reasonably available to avoid removing the child from home (for example: intensive family preservation services);

The alternative placement is adequate to safeguard the child;

The alternative placement is the most similar to the care that should have been provided to the child, consistent with the child's needs.

NOTE: Where child *abuse* is alleged, refer to MCL 712A.13a(2), (4), and (5) to determine whether to order placement of the child. Make a detailed finding that continuation of the child's residence in the home would be contrary to the child's welfare. The finding must be in a court order or transcript. Within 60 days of removal, make a detailed finding that reasonable efforts were made to prevent removal, or that reasonable efforts were not required to prevent removal. The finding must be in a court order or transcript. Reasonable efforts to prevent removal are not required if a court has determined that:

- (a) The parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k); or
- (b) The parent has been convicted of:
 - (i) Murder of another child of the parent,
 - (ii) Voluntary manslaughter of another child of the parent,
 - (iii) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or
 - (iv) A felony assault that results in serious bodily injury to the child or another child of the parent; or
- (c) Parental rights of the parent with respect to a sibling have been terminated involuntarily.

10. Ask the parent, guardian, or legal custodian whether there are relatives of the child who are able to provide care.

11. If a child is placed in foster care and a written request is made, determine whether the person who is providing foster care has received the following within 10 days of the request:

Copies of all initial, updated and revised case services plans

Court orders relating to the child

The child's medical, mental and educational reports including reports compiled before the child's current placement

12. If the court determines that foster care placement is appropriate, then issue:

An order requiring the parent, guardian, or custodian to provide the supervising agency with the name and address of the child's medical providers;

An order that each of the child's medical providers release the child's medical records.

13. If protective custody is ordered, inform the parties that:

The agency will prepare an initial service plan within 30 days of the placement;

The case may be screened for eligibility for concurrent planning;

Participation in the initial service plan is voluntary unless otherwise ordered by the court; and

The general elements of this service plan will include:

- a) The background of the child and family including family strengths which can be built upon to provide a safe environment for the child;
- b) An evaluation of the experiences and problems of the child;
- c) A projection of the expected length of stay in foster care; and
- d) An identification of family needs, specific goals, and projected time frames for meeting the goals.

14. Pending trial and upon motion of any party, review the initial service plan and custody and placement order and modify if it is in the child's best interests.

15. In cases where either an attending or primary care physician has diagnosed abuse or neglect involving 1 or more of the following, determine whether there has been a consultation with the physician, and whether the child's medical needs are appropriately considered in the case service plan.

Failure to thrive

Munchausen Syndrome by Proxy

Shaken Baby Syndrome

Bone fracture resulting from abuse or neglect

Drug exposure

NOTE: If a recommendation to return the child home is being considered in a case where a physician has made such a determination, then ensure that the physician is notified of the time and place of the proceeding and is offered the opportunity of testifying regarding the case service plan.

16. If a petition for termination of parental rights has been filed by the Agency, determine whether parenting time should be suspended.

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

1. The child welfare agency attorney, like all other participants in child protection proceedings, should be familiar with the concepts as described in the GENERAL EXPECTATIONS section.

2. Review petition for legal sufficiency.

Typically, the petition of a person other than the prosecutor initiates a child protective proceeding. In accordance with MCR 3.914, however, once the petition is filed the prosecutor must be available at the request of the family court to review the petition for legal sufficiency and to appear at the proceedings. *People v Gates*, 434 Mich 146 (1990).

3. Interview caseworker.

The agency's attorney shall provide legal consultation to the caseworker whenever appropriate, e.g., has enough evidence been gathered to support a petition? If not, what more, if anything, can be done to corroborate and prove allegations of neglect/abuse?

4. Appear at proceeding and present proofs sufficient to sustain probable cause standard of proof.

It is not required for the agency attorney to appear at this stage of the proceedings, unless specifically requested by the court. However, in some instances where there are significant contested issues, it is advisable for a prosecutor or other legal representative to appear. In some cases it may be preferable for the prosecutor to review the petition for legal sufficiency prior to the preliminary hearing. The prosecutor or other legal representative of the DHS has the burden of proving the allegations.

Prosecutors do not have authority to independently amend a petition filed by DHS. However, the prosecutor's office has standing independent of DHS to file an original or supplemental petition. *In re Hill*, 206 Mich App 689 (1994) and *In re Jagers*, 224 Mich App 359 (1997).

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

- 1. The child's lawyer-guardian ad litem, like all other parties in child protection proceedings, should be familiar with the concepts as described in the GENERAL EXPECTATIONS section.**

- 2. If possible, before the hearing, meet with the child to assess their needs and wishes with regard to the representation and issues in the case.**

- 3. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety? As appropriate the lawyer-guardian ad litem should determine whether any of the following should be recommended to the court:**
 - Participation in the development of the case service plan
 - Compliance with the case service plan
 - Permanent removal from children's residence
 - Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

- 4. Examine petition to ensure that it meets the requirements of MCR 3.961(B).**

- 5. Cross examine witnesses, if appropriate, to determine whether probable cause exists.**

- 6. Cross examine witnesses, if appropriate to determine whether placement is appropriate.**

- 7. Interview caseworker:**
 - Evaluate adequacy of caseworker's preliminary assessment of the problems that require court intervention.
 - Inquire if the worker has made separate determinations with respect to:
 - a) the harm that has already occurred; and,
 - b) the risk of future harm.
 - Determine whether the caseworker has a preliminary treatment plan: i.e., what does the caseworker hope to accomplish by jurisdiction and/or removal?
 - Inquire about services that have been offered to the family. Why were the services deemed unsuccessful?
Were services appropriate?
 - Inquire whether the removal of the alleged perpetrator from the home could result in the child remaining home.
 - Inquire about services considered and rejected and the reasons why the services were considered inappropriate.
 - Inquire whether other services are available that could keep the child safe in the child's own home.
 - Determine whether appropriate plans have been made to ensure the child's relationship with siblings.
 - Inquire as to whether parents were involved in the development of the case service plan and whether foster parents were consulted regarding the needs of the child.
 - Inquire as to what efforts were made to identify, locate, and consult with relatives for purposes of establishing an alternative placement to foster care.

- 8. Conduct independent fact gathering to ascertain harm and level of risk of future harm.**

- 9. Understand your role as the child's lawyer-guardian ad litem. Considering the child's ability to understand, explain your role to the child.**
- 10. Make a determination of the child's best interests independent of the child's expressed wishes.**
- 11. If further information is needed to ascertain and advocate for the child's best interest, after a petition has been filed but before it has been authorized, then request the court to order the examination of the child by any of the following as may be appropriate:**
 - Physician
 - Dentist
 - Psychiatrist
 - Psychologist
- 12. Consistent with Michigan Rules of Professional Conduct attempt to achieve a cooperative resolution of the case that avoids placement of the child by focusing on the parties' common interests.**
- 13. Determine the facts of the case by conducting an independent investigation including but not limited to interviewing the child's social workers, family members, police officers, doctors, and others as necessary and reviewing reports and other information.**
- 14. Arrange to meet with the child after the out-of-home placement is established so that the appropriateness of the placement can be independently evaluated.**
- 15. Determine whether or not a CASA or a GAL is appointed. If not, and if appropriate advocate for such an appointment. Communicate with the GAL or CASA.**
- 16. Obtain and review the initial service plan as soon as it is available. Where appropriate, file motion to modify the initial service plan.**
- 17. Attend foster care review board (FCRB) hearings if held for your client.**

RESPONDENT'S ATTORNEY

- 1. The parent's attorney, like all other parties in child protection proceedings, should be familiar with the concepts as described in the GENERAL EXPECTATIONS section.**
- 2. Examine petition for legal sufficiency.**
- 3. Cross examine petitioner's witnesses regarding probable cause**
- 4. Cross examine witnesses regarding placement**
- 5. Interview caseworker:**
 - Evaluate adequacy of caseworker's preliminary assessment of the problems that require court intervention.
 - Inquire if the worker has made separate determinations with respect to:
 - a) The harm that has already occurred; and
 - b) The risk of future harm.
 - Determine whether the caseworker has a preliminary treatment plan: i.e., what does the caseworker hope to accomplish by jurisdiction and/or removal?
 - Inquire about services that have been offered to the family. Why were the services deemed unsuccessful? Were services appropriate? Are there other services that could keep the child safe in the child's own home?
 - Inquire about services considered and rejected and the reasons why the services were considered inappropriate.
 - Inquire whether the removal of the alleged perpetrator from the home could result in the child remaining home.
- 6. Interview parents (with permission, if separate counsel for parents)**
 - Ask the parents about their view of the problems that brought the family to this point.
 - Elicit the parent's view of their service needs and the services offered. What do they think they need to protect the child from harm? Has the caseworker been helpful in this regard?
 - Elicit the parents' view of how they would like to remain involved in their child's daily life.
- 7. Counsel parents as to advisability of voluntary cooperation with services prior to the adjudication. (Computation of 364 days to the permanency planning hearing begins with filing of the petition.)**
- 8. Consistent with client's goals, attempt to engage the worker and other parties in creative problem solving with the purpose of preventing placement.**
- 9. Obtain commitments from parties about responsibility for initiating services and arranging parenting time. Discuss the recommended frequency of these visits. Follow up to make sure these commitments are kept.**
- 10. Conduct independent fact gathering to ascertain harms and levels of risk of future harms.**
- 11. Obtain and review the initial service plan as soon as it is available. Where appropriate, file motion to modify the initial service plan.**

12. Communicate with a GAL or CASA if appointed.

CITATIONS

JUVENILE CODE

MCL 712A.2 Family division of circuit court; authority and jurisdiction

MCL 712A.6 Jurisdiction over adults

MCL 712A.6b Authority over non-parent adults

MCL 712A.11 Preliminary inquiry; petition, contents, fingerprints, amendments, court services

MCL 712A.12 Examination of child; hearing; summons

MCL 712A.13a Definitions; petition; release of juvenile into custody; abuse, order requiring person to leave home; placement of juvenile; parenting time; review

MCL 712A.14 Taking child into custody

MCL 712A.15 Detention pending hearing, authorization, place, release

MCL 712A.17 Hearings; jury; bond; legal counsel for family independence agency; closed hearings

MCL 712A.17c Attorneys for parents and child; assignment of GAL

MCL 712A.17d Powers and duties of lawyer-guardian ad litem; appointment of child's attorney

CHILD PROTECTION LAW

MCL 722.628 Referring report or commencing investigation; informing parent or legal guardian of investigation; duties of department; assistance of and cooperation with law enforcement officials; procedures;

MCL 722.628d Categories and departmental response; listing in child abuse or neglect registry;

MCL 722.638 Submission of petition for authorization; conditions; request for termination of parental rights; conference.

MICHIGAN COURT RULES

MCR 3.914(A) and (C) Prosecuting Attorney: provides that the prosecuting attorney must review the petition for legal sufficiency, appear at proceedings when requested by the court, and act as legal consultant to the Family Independence Agency when requested by the DHS.

MCR 3.915(B) Assistance of an Attorney: outlines the procedures for appointment of counsel for the respondent and child and the procedures for waiver of counsel by the respondent.

MCR 3.916 Guardian Ad Litem: provides for the appointment of a guardian ad litem for a party if the welfare of the party requires appointment, and governs appearance of the guardian ad litem, access to information, and costs.

MCR.3.917 Court Appointed Special Advocate: provides for appointment of a volunteer CASA to investigate a child's circumstances and make recommendations to the court regarding the child's best interest.

MCR 3.963 Acquiring Physical Custody of Child: details the requirements for taking a child into temporary protective custody with or without a court order, including investigation of possible relative placements and arranging the parent's court appearance.

MCR 3.965 Preliminary Hearing: outlines the substantive and procedural requirements for authorization of the petition and placement of the child pending trial.

MCR 3.980 Child Custody Proceeding Concerning American Indian Child: details procedures for cases under the Indian Child Welfare Act.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Protective Services Manual Policy Items 712-716.

Children's Foster Care Services Manual Items 721, 722.

ICWA is covered in the Native American Affairs Manual.

PRETRIAL HEARING

PURPOSE

A pretrial hearing is a proceeding held in some jurisdictions, which has three objectives. First, it provides an opportunity for an early resolution of the case without a trial or to narrow the issues for trial. Secondly, this hearing is used to establish time frames for discovery, to exchange witness lists, and to file motions. Finally, it allows the court and the parties to agree on a trial date. In some jurisdictions the pretrial is the first hearing at which the respondent(s) are represented by an attorney. While the law provides that more than one pretrial hearing may be held, rarely is more than one such hearing held.

The pretrial can be a productive hearing because its timing allows all the parties to be more familiar with the facts of the case and to have a better understanding of what will be necessary to resolve the matter. The respondent(s) will have lawyers, the child's lawyer-guardian ad litem will have had the opportunity to conduct their mandated investigation, and the supervising agency workers will have a better understanding of what factors are critical to the welfare of the children and what services will be necessary to address those factors. Therefore, in preparing for the pretrial, each party should have an understanding of what is minimally necessary to resolve the case, what additional information is needed, a tentative list of witnesses to be called in the event a trial is necessary, and a time estimate to prepare for trial.

NOTE: In some jurisdictions alternative dispute resolution services are available through mediation centers. They have specific Child Welfare Mediation available to courts for pre-trial mediation sessions. The purpose of Child Welfare Mediation is to provide an opportunity for resolution of the case without a trial. In addition, mediation can facilitate an early and cooperative start of the case service plan.

KEY QUESTIONS

1. Are there issues that can be addressed that would resolve the case short of trial?
2. Can some of the issues in the case be resolved prior to the trial?
3. Is there a trial date?
4. Is there a discovery schedule?
5. Is the case appropriate for mediation?
6. Should there be allegations added to or deleted from the petition?
7. If the case is going to a jury trial, how will voir dire be conducted?

ROLES AND RESPONSIBILITIES CHECKLISTS

CHILDREN'S PROTECTIVE SERVICES

A pretrial is an opportunity to resolve your petition without the need for a trial. There are several things a children's protective services worker can do to prepare for a pretrial.

- 1. Come to the pretrial with an understanding of what allegations contained in your petition are essential and what, if any, allegations you would be willing to drop from consideration. You should be aware that deleting an allegation from the petition may result in services directed to that allegation being deleted from the service plan.**
- 2. Be prepared to amend the petition to offer additional allegations if the circumstances of the case require such additions.**
- 3. Bring the names, addresses, and phone numbers of witnesses who have information about the case (e.g., doctors, Families First worker). You should provide this information to the attorney representing the DHS.**
- 4. If the whereabouts of one of the parents is unknown, be prepared to report on the efforts made to locate the absent parent.**
- 5. Be prepared to offer input into the contents of the treatment plan, including whether non-parents should be included.**
- 6. Bring with you or know your schedule so that a trial or other hearings, if necessary, can be scheduled.**
- 7. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.**
 - Is the child placed with siblings? If not, why not?
 - If not, is there a plan to ensure siblings regularly visit or have contact with one another?
 - Were the parent(s) involved in the development of the case plan?
 - Was the foster parent consulted regarding the needs of the child?
- 8. In either considering or reviewing the placement of a child, have *reasonable efforts* been made to place a child in a stable, most family-like setting?**
 - What kinds of placement services does the child need?
 - What kinds of supports do the foster parents or other temporary caregivers need?
 - Is the child placed in their school district? In their county of residence?
 - Has the child's placement been disrupted? Why?
- 9. If a new worker is assigned to the case, what has been done to become familiar with the case?**

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

FOSTER CARE SERVICES

- 1. Be prepared to discuss in detail and make recommendations regarding necessary treatment services. If the initial treatment plan has been prepared, bring copies for the attorneys and the court.**
- 2. Make a recommendation regarding placement of the child(ren) including potential relative placements. If criminal records or central registry checks and/or home studies of relatives have been completed, bring copies sufficient for the attorneys and the court.**
- 3. If case responsibility has been transferred from protective services to foster care, and the whereabouts of one of the parents is unknown, be prepared to report on the efforts made to date to locate the absent parent.**
- 4. If court orders are necessary for the protection of the children or to obtain services in which the parent(s) are willing to participate prior to adjudication, be prepared to request that the court include these in its pretrial order.**
- 5. Bring with you or know your schedule so that a trial or other hearings, if necessary, can be scheduled.**
- 6. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.**
 - Is the child placed with siblings? If not, why not?
 - If not, is there a plan to ensure siblings regularly visit or have contact with one another?
 - Were the parent(s) involved in the development of the case plan?
 - Was the foster parent consulted regarding the needs of the child?
- 7. In either considering or reviewing the placement of a child, have *reasonable efforts* been made to place a child in a stable, most family-like setting?**
 - What kinds of placement services does the child need?
 - What kinds of supports do the foster parents or other temporary caregivers need?
 - Is the child placed in their school district? In their county of residence?
 - Has the child's placement been disrupted? Why?
- 8. If a new worker is assigned to the case, what has been done to become familiar with the case?**

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

CASAs may be assigned at, or immediately following, the preliminary hearing. CASA assignments are made at this stage at the request of the child's lawyer-guardian ad litem, the judge or referee, or others as determined by the individual CASA program.

If a CASA was assigned at /or following the preliminary hearing, they have no direct responsibilities about the adjudication. However, the pretrial may be an appropriate time to have Release of Information forms signed by relevant persons.

The CASA will maintain the core activities of:

- Maintaining contact with the child every 7-10 days
- Reviewing and monitoring court orders and the case service plan
- Maintaining contact with those who have current information about the child
- Communicating information to the child's attorney, foster care worker, and the court, as required

When CASAs are assigned at this stage they address the following:

- 1. Gather baseline information on the child, including the child's strengths and weaknesses to assess in measuring future outcomes and making recommendations in the best interest of the child.**

- 2. Make contact with a variety of people who have regular interactions with the child or who may have information that will contribute to developing a good picture of the child's current circumstances. Contacts may include any of the following:**
 - The child to whom the CASA is assigned
 - Medical care providers
 - School counselors and teachers
 - Foster care workers
 - Therapists/psychologists
 - Child care providers

3. The CASA must consult with the child's LGAL.

These become the core activities of the CASA.

Based on the information collected, a CASA may develop an interim dispositional report that can be available if a plea or finding of abuse or neglect is made at the adjudicatory stage of the formal hearing.

NOTE: CASAs do not make contact with the parent(s) without prior approval of the parent(s) attorney. In the case of a child's placement with a parent such as an in-home court wardship, the CASA will minimize contact with the parent and will not discuss allegations of the pending case.

NOTE: CASAs do not investigate the allegations in the petition.

COURT

- 1. Determine whether the case can be resolved short of a trial. If there is a stipulation that will either resolve the case or narrow the issues, be prepared to take a stipulation. MCR 3.971(A) permits the court, in its discretion, to accept a plea of admission or no contest “at any time after the filing of the petition.” The court must ensure that the petitioner and the lawyer-guardian ad litem have been notified of a plea offer to an amended petition. Prior to accepting the plea the court must provide an opportunity for any party to object. One parent’s plea of admission or no contest gives the court jurisdiction as to both parents. In re CR 250 Mich App 185 (2002).**

- 2. Determine what efforts have been made to locate absent parents and what subsequent steps should be taken.**
 - Question the parent who is present as to the whereabouts of the absent parent.
 - Provide an opportunity for DHS staff to report on attempts to determine the whereabouts of the absent parent.
 - Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:
 - A due-diligence hearing specific to the efforts to locating the absent parent
 - A putative father hearing
 - Issuing an order of parentage determination

- 3. Prior to accepting a plea, the court must, either orally or in writing, advise the respondent of:**
 - The allegations in the petition,
 - The right to an attorney,
 - That if a plea is accepted there will be no trial and the right to have a judge or jury hear the case will be waived, and
 - That if a plea is accepted the petitioner will not have to prove the allegations by a preponderance of the evidence.

- 4. The court must also inform the respondent that if they enter a plea, the respondent gives up the right to have witnesses appear and to cross-examine them. The consequences, including that the plea may be used as the basis for termination of parental rights, must be explained.**

- 5. The court must establish before accepting the plea that it is voluntarily made and accurate. If the respondent pleads no contest, establish that the plea is accurate by a means other than questioning the respondent.**

- 6. If a petition for termination of parental rights has been filed by the Agency, determine whether parenting time should be suspended.**

- 7. Other issues that may be addressed at pretrial include the following:**
 - Establish time frames for discovery to be completed, witness lists to be exchanged, and motions to be filed.
 - Resolve any outstanding discovery related issues.
 - If trial briefs are required or permitted, establish time frames for their filing.
 - Issue orders for placement or for services to be provided pending the trial.
 - Set trial date.

- 8. Ask the LGAL whether he or she has met with the child prior to the hearing. If the LGAL has not met with the child, require the LGAL to state on the record his or her reasons for failing to do so.**

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

1. In preparing for a pretrial, the agency's attorney should do everything necessary to become familiar with the case, and to assist Protective Services in their preparation.

Provide legal counsel as requested by Protective Services.

Be available to answer any Protective Services staff questions.

Interview witnesses suggested by Protective Services.

Determine whether other witnesses should be involved.

Determine whether a tender years motion should be filed before the trial. MCR 3.972(C)(2).

NOTE: While you will not be able to amend the DHS's petition over its objection, you may file your own petition. *In re Hill*, 206 Mich App 689 (1994) and *In re Jagers*, 224 Mich App 359 (1997).

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

1. Like the other parties, the lawyer-guardian ad litem will have a better understanding of the facts and circumstances of the case by the time of the pretrial.

Before pretrial, observe the child and, if appropriate given the child's age and maturity, conduct an interview. Determine what evidence supports the allegations in the petition as well as what contrary evidence may exist. Upon completion of investigation determine which allegations in the petition are essential, which may be deleted, and whether additional allegations should be added. Raise concerns regarding additional allegations if necessary with the child protective services worker and the prosecutor/attorney general.

2. Determine the child's best interests independent of the child's expressed wishes.

However, in determining the child's best interests, assign appropriate weight to the child's expressed wishes given the child's competence and maturity. After making this independent assessment of the child's best interests, consistent with the attorney-client privilege, inform the court of the child's wishes and preferences.

NOTE - When the child and lawyer-guardian ad litem disagree: After considering the child's age and maturity and the nature of the inconsistency between the child's wishes and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. This attorney, if appointed, serves in addition to the child's lawyer-guardian ad litem as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan Rules of Professional Conduct. An "attorney" owes the same undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as to an adult client.

3. Ensure that all or important allegations are included in the petition. Be prepared to:

Object to the court's acceptance of a plea
File an independent petition if important and necessary allegations are not part of the petition.

NOTE: Although the court cannot accept a plea before the lawyer-guardian ad litem has an opportunity to object, the court may nevertheless accept the respondent's plea.

4. If there are relatives proposed as caretakers, you should meet with these individuals and determine whether you believe your client's best interests would be served by such a placement.

5. Consistent with the Michigan Rules of Professional Conduct, you should attempt to achieve a cooperative resolution or settlement of the case by focusing on the parties' common interests.

RESPONDENT'S ATTORNEY

The pretrial is an opportunity for the respondent(s) to gain a better understanding of the evidence and to assess more accurately the chance of prevailing in whole or in part at a trial.

1. Prior to the pretrial discuss the case in detail with the respondent(s). Conduct an independent investigation of the case to ensure:

A thorough understanding of each allegation in the petition, and
The respondent(s) response to each allegation.

2. Be prepared to use the pretrial as an opportunity to gain discovery materials not previously available. Discoverable materials are available from the petitioner under MCR 3.922(A).

3. Determine whether witnesses should be subpoenaed on behalf of the respondent(s).

4. Determine whether the parent's goal is to achieve reunification with their child, and if not, whether voluntary relinquishment of parental rights is an option to consider.

5. Determine whether the circumstances of the case are such that you should counsel your client(s) to enter a plea. Prior to providing such counsel, it is important to:

Know your client's position as to each allegation in the petition
Determine if your client's plea to one or more of the allegations would satisfy the DHS and the court
Ensure that the plea is both voluntary and accurate
Carefully review the rights which your client(s) will be waiving
Inform your client(s) that the court may eventually use the plea as a basis to terminate parental rights
Prepare your client(s) for any questioning regarding the plea that might be posed by the judge.

NOTE: MCR 3.971(A) provides that the court may accept a plea of admission or no contest.

6. Determine whether a plea of no-contest is appropriate in cases where there is a possibility of criminal charges being filed based on the allegations in the petition.

7. In cases where foster care placement is being considered:

Review whether there are relatives willing and able to care for the children
If potential relative caretakers are available ensure that your clients have names, addresses and phone numbers to provide to the caseworkers.

NOTE: The Juvenile Code now places greater emphasis on relative placement.

CITATIONS

JUVENILE CODE: NO PROVISIONS

MICHIGAN COURT RULES

MCR 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings: outlines discovery in child protection proceedings and establishes that the procedures for pretrial hearings are controlled by MCR 2.401.

MCR 2.401 Pretrial Procedures; Conferences; Scheduling Orders: establishes detailed rules and procedures for the conduct of pretrials, defining the scope of issues to be dealt with at the pretrial, and what should result from the hearing.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Protective Services Manual Policy Items 712-716

Children's Foster Care Services Manual Policy Item 721 and 722

SPECIAL NOTE ON ADJUDICATORY AND DISPOSITIONAL PROCEEDINGS

The adjudicatory and dispositional proceedings are separate and distinct proceedings. However, the authors of this resource guide would like to take this opportunity to note the advantages of being ready to proceed to disposition at the immediate conclusion of, or shortly after, the adjudication hearing. *It is extremely important to the goal of permanency for children that a dispositional hearing take place very quickly after the completion of adjudicatory proceedings that result in the court taking jurisdiction over the child.* The case service plan, while formulated by the agency during the first 30-days after placement, is not formally adopted and approved by the court until the dispositional hearing. This plan establishes an agreement that the court, the service providers, and the family are committed to addressing the issues that resulted in placement. This work cannot happen in a meaningful way until the dispositional phase is completed and an agreed-upon case service plan is in place. Further, MCL 712A.19a(1) provides that the 364-day time limit for the permanency planning hearing begins to run *when the child is removed from his or her home*, and not as the statute formerly provided upon entry of the order of disposition. The following examples are offered as possible strategies to ensure that the dispositional phase happens in a timely manner.

In many jurisdictions, when the allegations in the petition are not contested by the respondent(s), the dispositional hearing is held immediately upon the conclusion of the adjudication. In these instances, the court asks that the proposed case service plan be completed in a prescribed number of days prior to the adjudication and be made available to all parties.

MCR 3.973(C)(2) provides a 35-day limit for the interval between adjudication and disposition when a child is in placement. Where the court finds that disposition cannot be addressed at the conclusion of the adjudication hearing, this time limit should be strictly enforced.

NOTE: In jurisdictions where Child Welfare Mediation is available, a mediation session can be a way to establish agreements on placement, disposition issues, early and meaningful case service plan activity, parenting time schedules and sibling visits.

ADJUDICATORY HEARING

PURPOSE

The adjudicatory hearing (sometimes called the trial or formal hearing) is the proceeding where the court determines whether factual grounds exist to take legal authority (wardship) of a child. The allegations of the child protective petition may be established by the plea of admission or no contest by a respondent, or by the finding of a judge or jury at a trial. For the court to make appropriate decisions at this critical juncture, it is important that a thorough set of facts be presented accurately and objectively. Therefore, all parties involved should be prepared to provide the court with all relevant information necessary to make an appropriate decision. Preparation is the key for all parties. The respondent(s) and their attorneys must decide whether to admit, contest, or seek modification of the allegations of the child protective petition. The petitioner (children's protective services) and their legal counsel must ensure that proof is available at trial to establish the allegations of the petition. The child's lawyer-guardian ad litem may make a recommendation to the factfinder regarding whether one or more grounds for jurisdiction have been established.

KEY QUESTIONS

1. Has the trial commenced within 63 days of the child being placed in protective custody, or within 6 months after the filing of the petition if the child is not in placement?
2. Does the petition allege facts that, if true, would establish a basis for exercise of court authority over the child?
3. Has legal counsel for the child been appointed, and is counsel present at the hearing?
4. Have the respondent(s) been personally served with a summons and petition pursuant to MCR 3.920(B)? If not, has alternate service been ordered by the court, or have respondent(s) waived notice of the hearing?
5. Does the respondent(s), in open court, make a knowing, understanding, voluntary, accurate plea to the facts alleged in the petition?
6. If the respondent(s) does not admit the material facts of the petition, does a preponderance of the evidence presented convince a judge or jury that the material allegations of the petition are true?
7. If the child protective petition has been amended, does the amended petition still “state a cause of action,” meaning does it still allege facts which, if true, cause the child to come within the jurisdictional grounds of section 2(b) of the Juvenile Code?
8. If the petition has been amended, have the petitioner and the lawyer-guardian ad litem been notified of a plea offer and been given the opportunity to object before the respondent’s plea is accepted?
9. If the allegations in the petition are adjudicated by plea of admission or proof at trial, can disposition be addressed at the same hearing without further delay?

NOTICE OF HEARING

A summons and a copy of the petition must be personally served on the respondent(s), notifying them of their essential rights and ordering them to appear before the court for trial. MCR 3.920(B)(2)(b). If personal service is impracticable, alternative service may be made upon motion and order of the court by means of mailing, posting, leaving with a person of suitable age and discretion, or publication. Refer to the Notice of Hearing portion of the Key Issues section.

ROLES AND RESPONSIBILITIES CHECKLISTS

CHILDREN'S PROTECTIVE SERVICES

1. Consult with agency counsel prior to trial.

Legal consultation may be necessary for petition drafting, proposed amendment of a petition, and for trial preparation. Advance planning is necessary to formulate trial strategy, draw up witness lists, subpoena witnesses, etc.

2. Be prepared to testify as to the facts contained in the petition.

It is important that the petitioner be able to give clear, accurate testimony in support of the allegations of the petition. The CPS worker must also bring any real evidence they may have in their possession such as photographs. Also, CPS should arrange for counsel to subpoena evidence that may be in the possession of law enforcement. The CPS worker is the lead investigator and will be expected to provide a comprehensive and detailed description of the facts established by the investigation.

NOTE: If a joint investigation with law enforcement was conducted, law enforcement may testify on key facts and evidence.

FOSTER CARE

Prepare an initial services plan within 30-days of the child's placement.

Timely achievement of permanence for children is usually served by making a formal disposition as early as possible. Disposition can often be addressed at the conclusion of the adjudicatory phase of the hearing, but only if an initial services plan has been prepared and made available to the parties. Thus, even though the foster care case manager may not have a role in the adjudication (fact-finding) phase of the hearing, the timely completion of the initial services plan may permit disposition to be addressed at the same hearing.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

If a CASA was assigned prior to the adjudicatory hearing the CASA's role is to:

- attend,
- listen and gather information,
- advise the child's lawyer-guardian ad litem as requested,
- provide support to the child if in attendance.

Should there be either a plea or finding of abuse or neglect, the CASA should be prepared to make available an interim dispositional report (if one has been developed). The report will present recommendations in the best interests of the child/children involved based on the investigations that the CASA has done since the Preliminary Hearing.

Once adjudication is completed, CASAs have an opportunity to develop a more holistic picture of the child's circumstances. CASAs:

- are usually given permission to make contact with parent(s)
- establish contacts with service providers, court workers, and caseworkers that were not available to the CASA prior to adjudication
- develop a broader understanding of the family dynamics

The CASA will maintain the core activities of:

- Maintaining contact with the child every 7-10 days
- Reviewing and monitoring court orders and the case service plan
- Maintaining contact with those who have current information about the child
- Keeping accurate notes and records on the case
- Communicating information to the child's attorney, foster care worker, and the court, as required.

When CASAs are assigned at this stage they address the following:

- 1. Gather baseline information on the child, including the child's strengths and weaknesses to assist in measuring future outcomes and making recommendations in the best interest of the child.**
- 2. Make contact with a variety of people who have regular interactions with the child or who may have information that will contribute to developing a good picture of the child's current circumstances.**
Contacts may include any of the following:
 - The child to whom the CASA is assigned
 - Medical care providers
 - School counselors and teachers
 - Foster care workers
 - Therapists/psychologists
 - Child care providers
- 3. The CASA must consult with the LGAL.**

These become the core activities of the CASA.

COURT

- 1. The court plays an essential role in ensuring an expeditious disposition in protective proceedings. To that end there are several assurances of which the court should be mindful including the following:**

Trial (adjudication) is scheduled in a timely manner

Proper parties are present

Proper notice has been served if the respondent is not present

Respondent is advised of their rights and enters a voluntary and accurate plea of admission or of no contest to the petition allegations

Petitioner and lawyer-guardian ad litem have been notified of a plea offer to an amended petition, and have been given the opportunity to object before the plea is accepted

- 2. If the case has proceeded to adjudication and an absent parent has not yet been found, determine what efforts have been made to locate the absent parent and what subsequent steps should be taken.**

Question the available parent who is present as to the whereabouts of the absent parent

Provide an opportunity for DHS staff to report on attempts to determine the whereabouts of the absent parent

Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:

A due-diligence hearing specific to the efforts to locating the absent parent

A putative father hearing

Issuing an order of parentage determination

- 3. If the respondent is not present or is present but does not enter a plea of admission, the court must preside over a bench or jury trial to determine the facts alleged in the petition.**
- 4. If the allegations of the petition are adjudicated by plea of admission or by proof at trial, the court should determine whether disposition can be addressed at the same hearing without further delay.**
- 5. If facts are not found to warrant jurisdiction, then enter an order dismissing the petition.**
- 6. If disposition must be adjourned to a separate hearing, the court should ensure that the hearing is scheduled within 35 days if the child is in custody.**
- 7. Determine whether parenting time should be suspended.**
- 8. Ask the LGAL whether he or she has met with the child prior to the hearing. This is required at the trial phase.**

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

1. Prior to the trial, provide legal counsel as requested by the Department of Human Services or their contract agencies.

MCR 3.914 provides that the prosecuting attorney may serve as a legal consultant to DHS (or an agent under contract with FIA) at all stages of a child protective proceeding. Prior to trial, this may include requests for advice on the legal sufficiency of a case, petition drafting, advice on amendment of the factual allegations of the petition in exchange for a plea of admission by a parent, and trial preparation.

2. Present a case that proves the allegations of the petition.

The prosecutor or other legal representative of DHS is responsible for proving the allegations of the petition. Efforts may be taken to avoid calling the child(ren) as a witness. Often trials can be settled by modifying the petition. However, the petition should not be altered to the extent that treatment of the underlying problem will be thwarted. For example, amending a sexual abuse petition to an emotional neglect petition may inappropriately contribute to the perpetrator's denial.

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the FIA may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

- 1. The lawyer-guardian ad litem should communicate with the petitioner and respondent(s) attorney(s) to ascertain whether the adjudication (trial) is contested or uncontested by the respondent(s).**

The approach to the adjudication hearing (trial) will differ whether the proceeding is contested or uncontested by the respondent. Coordination and communication with the other parties is necessary to determine the positions taken by the parties. The child's lawyer-guardian ad litem can be a positive force in seeking areas of compromise and commonality that balance the child's need for protection with the interest of preserving the family unit.

Consistent with the Michigan Rules of Professional Conduct, the child's lawyer-guardian ad litem should promote a cooperative resolution of the case by focusing on the parties' common interests.

- 2. The child's lawyer-guardian ad litem must make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, the lawyer-guardian ad litem must inform the court of the child's wishes and preferences, but the lawyer-guardian ad litem must advocate for the child's best interests as the lawyer-guardian ad litem perceives them.**
- 3. Conduct an independent investigation to determine the facts of the case, including interviewing the child, caseworkers, family members, and others, and reviewing reports and other information, including the agency case file.**
- 4. If possible, meet with the child to assess their needs with regard to the representation and issues in the case. This is required at the trial phase.**
- 5. Allow another attorney to substitute representation at trial only with the court's approval. A substitute attorney must be familiar with the case, review the case file, and consult with the foster parents and caseworker before the hearing unless the LGAL has done so and communicated relevant information to the substitute attorney.**

RESPONDENT'S ATTORNEY

- 1. The respondent's attorney must ascertain the strength of the petitioner's factual case.**
- 2. The respondent's attorney must ascertain the outcome (disposition) which is sought by the petitioner.**
- 3. The respondent's attorney must ascertain the interests and desires of their client.**
- 4. The respondent's attorney must determine whether there is a course of action or area of compromise that will meet both the interests of the petitioner and the respondent.**
- 5. If the respondent(s) are facing a criminal case arising from the same facts (e.g., criminal sexual conduct or child abuse) in addition to the child protective civil case, the respondent's attorney should seek to coordinate the outcomes in the two cases even if the attorney in the protective proceeding does not represent the respondent in the criminal case.**
- 6. The respondent's attorney must determine whether a written demand for trial by judge or jury should be filed pursuant to the court rules.**
- 7. If the respondent enters a plea of admission to the allegations of the petition, the respondent's attorney must ensure that the respondent is doing this knowingly and understandingly.**
- 8. If a trial is conducted, the respondent's attorney must cross-examine witnesses called by the petitioner and examine the respondent's witnesses, if any.**

CITATIONS

JUVENILE CODE

MCL 712A.17 Hearings; jury; bond; legal counsel for family independence agency; closed hearings

MCL 712A.17b Proceedings brought under section 712A.2(a)(1) and (2)(b); testimony of child or developmentally delayed alleged victims; videotaping of testimony; effective date

MCL 712A.17c Right to attorney; appointment; waiver; notice assessment of costs discharge

MCL 712A.17d Child's attorney

MICHIGAN COURT RULES

MCR 3.903(A)(26) "Trial" means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court.

MCR 3.911 Jury: limits the right to a jury to the trial, provides deadlines for demanding a jury trial, and states that jury procedure is governed by MCR 2.508 - 2.516, except for the rules concerning peremptory challenges contained in MCR 3.911(C)(2)-(3).

MCR 3.912 Judge: requires a judge to preside at a jury trial and provides deadlines for demanding that a judge rather than a referee conduct a bench trial.

MCR 3.914(A) and (C) Prosecuting Attorney: provides that the prosecuting attorney must review the petition for legal sufficiency, appear at proceedings when requested by the court, and act as legal consultant to the Family Independence Agency when requested by the FIA.

MCR 3.915(B) Assistance of Attorney: outlines the procedures for appointment of counsel for the respondent and child and the procedures for waiver of counsel by the respondent.

MCR 3.922(A) Discovery: lists the materials that are discoverable by right and on motion of a party.

MCR 3.971 Pleas of Admission Or No Contest - Respondents' Rights: provides for acceptance of a voluntary and accurate plea to a petition or, in certain circumstances, an amended petition, and details the required colloquy before acceptance of a plea by the court.

MCR 3.972 Trial: contains time, procedural, and evidentiary requirements for trials to determine whether a child is within the jurisdiction of the court.

MCR 3.980 Child Custody Proceeding Concerning American Indian Child: details procedures for cases under the Indian Child Welfare Act.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Protective Services Manual Policy Items 712-716
Native American Affairs Manual

DISPOSITIONAL HEARING

PURPOSE

The Juvenile Code requires that the case service plan be developed, be made available to the court and all parties, and be offered into evidence before entering an order of disposition. This procedure encourages full participation by all parties in case plan development. The case service plan is developed to achieve permanency for the child. Depending on the circumstances that lead to court jurisdiction, the plan to achieve permanency will either seek to reunite the child and family or, in cases of serious abuse, seek an alternative permanent home setting. If facts are found in the adjudicatory hearing that bring the child within the court's jurisdiction, the next step is to determine an appropriate disposition. The purpose of the dispositional hearing is to determine who will have custody of the child during the court wardship and to put in place the case service plan for the child and family.

The Juvenile Code requires that the case plan be developed and be made available to all parties because subsequent court proceedings will rely on the case service plan to determine whether *reasonable efforts* are being made to respond to the family issues that resulted in the wardship. The case plan also identifies any medical, emotional, or behavioral needs of the child and should incorporate services to meet those needs. It should also discuss why the placement is appropriate and, if siblings are not placed together, it should identify a plan for contact and visits. Additionally, it is used as a basis to determine whether or not the family is responding to the services being offered. As a result, the structure and content of the case plan is extremely important, and the plan's relevance to the jurisdictional facts should be carefully reviewed.

Under Michigan law, court is required at this stage of the legal proceedings to make a finding that *reasonable efforts* were made to prevent the child's removal from the home or to rectify the conditions that caused the child's removal. In its initial placement decision, the court will consider both the risk of harm presented by conditions in the parent's home and the potential effects of separation for the child. In addition, in cases where out-of-home placement is deemed necessary, Michigan law now requires the DHS to place a greater emphasis on determining whether there is an appropriate relative with whom the child can be placed as an alternative to foster care.

KEY QUESTIONS

(IF REASONABLE EFFORTS WERE MADE TO PREVENT A CHILD'S PLACEMENT)

1. What are the risks of harm to the child?

- What would be the likely harm if the child were not removed from the parent(s)?
- What would be the likely harm if the child were removed from the parent(s)?

2. Is there a non-parent adult who, because of a relationship with the parent and child, should be required to comply with court orders? Court orders may include any of the following:

- Participation in development of the case service plan
- Compliance with the case service plan
- Permanent removal from child's residence
- Permanently restraining a parent or non parent adult from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

3. Does the case involve child abuse? If so, the law presumes the child will be removed. What evidence is there to overcome that presumption?

4. What efforts were made to prevent the child's removal or to rectify the conditions that caused the child's emergency removal from the home?

What efforts have been made to provide appropriate services, including in-home services, to prevent or eliminate the need for the child's removal?

Is the presenting problem sufficiently defined?

Were services adequate?

Applicable to the problem

Sufficient in frequency and duration

Appropriate to parental capacity

If services did not prevent removal, why not?

Were these services reasonable?

If services were not provided to prevent removal or reunify the family, why not?

5. Is this a case where reasonable efforts to reunify the family are not appropriate? If so, is the agency making reasonable efforts to achieve an alternative permanent placement?

6. Is the requested placement for the child the most family-like setting available? Is there a suitable relative who is willing to provide care? Is the requested placement for the child in as close proximity to the parent's home as possible, and is it consistent with the best interests and special needs of the child?

What type of home or institution is recommended and what are the reasons for the selected placement? (Placement in school district, county, with siblings?)

What efforts are to be made by the child's parent(s) to enable the child's return home?

What efforts are to be made by the agency to return the child home?

7. What schedule of services will be provided to the parent(s), non-parent adults, child, and foster parent(s) to either facilitate the child's return home or the permanent placement of the child? What services were provided to meet any special needs of the child?

8. Has a schedule for regular and frequent parenting time (not less than once every 7 days) been arranged between the child and parent(s), unless harmful to the child?

9. Is there additional substantial abuse or neglect of which the Agency has become aware that requires the filing of a supplemental petition with the Court? (Note: For additional information on this matter, see Key Issues Section, Supplemental Petitions - New Abuse or Neglect.)

NOTICE OF HEARING

Notice of Dispositional Hearing must be given in writing or on the record at least 7 days prior to the hearing. MCR 3.920(C)(1).

Unless the Dispositional Hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920. MCR 3.973(B).

If either an attending or primary care physician has diagnosed abuse or neglect as involving 1 or more of the following, then ensure the physician is notified of the time and place of the proceeding and is offered the opportunity of testifying regarding the case service plan.

- Failure to thrive
- Munchausen Syndrome by Proxy
- Shaken Baby Syndrome
- Bone fracture resulting from abuse or neglect
- Drug exposure

ROLES AND RESPONSIBILITIES CHECKLISTS

CHILDREN'S PROTECTIVE SERVICES

1. If a CPS worker is recommending an in-home wardship, the worker stays involved and must recommend a case service plan.

2. If a CPS worker is recommending an out-of-home placement, the worker must report to the court what efforts were made:

- To prevent the child's removal from the home;
- To rectify the conditions that caused the child's emergency removal; or
- Why no efforts were made.

3. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety or, as appropriate, the worker should determine whether any of the following should be recommended to the court:

- Participation in development of the case service plan
- Compliance with the case service plan
- Permanent removal from child's residence
- Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

4. If the whereabouts of one of the parents has not been determined, then continue to make reasonable efforts as appropriate and be prepared to report on the progress made to date.

- Interview the mother and children as to who may be the father.
- Determine whether mother was married at the time child(ren) were born.
- Check with the Friend of the Court - Child Support Unit to determine whether paternity has already been established and whether anyone is paying support.
- If paternity has been established, request a copy of the paternity acknowledgement and include in the case file.
- Document the contact in the case record.
- If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

NOTE ON PATERNITY TESTING: CPS and Foster Care staff have access to paternity testing services. An agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by DHS Central Office. *(As of the date of the publication of these Guidelines, refer to DHS L-letter 99-084.)*

Exceptions:

- The service is not for child support issues.
- It is available one time per client.
- Previous testing has been done through other sources such as the Office of Child Support or the Friend of the Court.

5. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.

- Is the child placed with siblings? If not, why not?
- If not, is there a plan to ensure siblings regularly visit or have contact with one another?
- Were the parent(s) involved in the development of the case plan?
- Was the foster parent consulted regarding the needs of the child?

6. When considering or reviewing the placement of a child, have reasonable efforts been made to place a child in a stable, most family-like setting?

- What kinds of placement services does the child need?
- Does the child have medical, emotional, or behavioral problems that need to be addressed?
- What kinds of supports do the foster parent(s) or other temporary caregivers need?
- Is the child placed in the child(s) school district? In the child(s) county or residence?
- Has the child's placement been disrupted? Why?

7. Is the same worker assigned to the case? If a new worker is assigned to the case, what has been done to become familiar with the case?

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

8. The case service plan must be offered into evidence. (Psychological assessments, treatment update reports, etc. may also be offered into evidence.)

9. Children's Protective Services prepares a report which should document:

- What services, including in-home services, were provided to the child and the parent(s);
- If services were not provided to the child and the parent(s), state the reasons why;
- Likely harm to the child if separated from the parent(s);
- Likely harm if returned to the parent(s).

10. Ensure the case service plan is appropriately updated and includes any new information in each of the following areas.

- Background of the child and family, including family strengths that can be built upon to provide a safe environment for the child.
- Evaluation of the experiences and problems of the child.
- Updated projection of the expected length of stay in foster care or other substitute care.
- Update of family needs, specific goals, and projected timeframes for meeting the goals.

11. Ensure appropriate arrangements for frequent parenting time (visitation) between the parent(s) and the child(ren), unless parenting time has been suspended or limited by the court. If so ordered by the court, arrange for the child to have a psychological evaluation or counseling or both to determine the appropriateness and conditions of parenting time.

12. Ensure that documentation necessary for timely transfer of the case to Foster Care has been completed.

13. In preparing or updating the case service plan, the foster care or protective services worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:

- Failure to thrive
- Munchausen Syndrome by Proxy
- Shaken Baby Syndrome
- Bone fracture resulting from abuse or neglect
- Drug exposure

FOSTER CARE SERVICES

Prepare a case service plan and make it available to the court and all parties to the proceeding.

1. If case responsibility has been transferred from protective services to foster care and the whereabouts of one of the parents is unknown, then continue to make the following *reasonable efforts* as appropriate and be prepared to report to the court on the progress made to date.

- Interview the mother and children as to who may be the father.
- Determine whether mother was married at the time child(ren) were born.
- Check with the Friend of the Court - Child Support Unit to determine whether paternity has already been established and whether anyone is paying support.
- If paternity has been established, request a copy of the paternity acknowledgement and include in the case file.
- Document the contact in the case record.
- If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

NOTE ON PATERNITY TESTING: CPS and Foster Care staff have access to paternity testing services. An agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by FIA Central Office. *(As of the date of the publication of these Guidelines, refer to DHS L-letter 99-084.)*

Exceptions:

- The service is not for child support issues.
- It is available one time per client.
- Previous testing has been done through other sources such as the Office of Child Support or the Friend of the Court.

2. The case service plan must provide for:

- Placing the child in the most family-like setting possible;
- Placing the child in as close proximity to the child's parent(s) as is consistent with the child's best interests and special needs; and
- Providing arrangements, at least weekly, for parenting time (i.e. visitation) between the parent(s) and the child unless the court has determined that such parenting time is harmful to the child.

3. Where serious abuse has occurred and reunification is not the goal, the case service plan should provide for an alternative permanent plan.

4. If there is a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety. As appropriate the worker should determine whether any of the following should be recommended to the court:

- Participation in development of the case service plan
- Compliance with the case service plan
- Permanent removal from child's residence
- Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

5. The case service plan must document:

- The type of home or institution in which the child is to be placed and reasons for this placement selection;
- Efforts to be made by the child's parent(s) to enable the child's return home;
- Efforts to be made by the agency to return the child home;
- Schedule of services to be provided to the parent(s), child and foster parent(s) to facilitate the child's return home or other permanent placement; and
- A schedule for parenting time (at least once every 7 days) unless the court finds that even if supervised, parenting time is harmful to the child.

6. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.

- Is the child placed with siblings? If not, why not?
- If not, is there a plan to ensure siblings regularly visit or have contact with one another?
- Were the parent(s) involved in the development of the case plan?
- Was the foster parent consulted regarding the needs of the child?

7. When considering or reviewing the placement of a child, have reasonable efforts been made to place a child in a stable, most family-like setting?

- What kinds of placement services does the child need?
- What kinds of supports do the foster parent(s) or other temporary caregivers need?
- Is the child placed in the child's school district? In the child's county of residence?
- Has the child's placement been disrupted? Why?

8. If a new worker is assigned to the case, what has been done to become familiar with the case?

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

9. Update and revise case service plan at 90-day intervals if a child continues in out-of-home placement.

10. In preparing or updating the case service plan, the foster care or protective services worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:

- Failure to thrive
 - Munchausen Syndrome by Proxy
 - Shaken Baby Syndrome
 - Bone fracture resulting from abuse or neglect
 - Drug exposure
- **11. If the case falls under the Indian Child Welfare Act, demonstrate that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 USC § 1912(d).**

COURT APPOINTED SPECIAL ADVOCATE (CASA)

If a CASA was assigned prior to the dispositional hearing they shall:

- Make contact with parent(s)
- Review the case service plan
- Review court file and other files as accessible
- Write report based on information the CASA has gathered and which makes recommendations in the best interests of the child

The CASA will maintain the core activities of:

- Maintaining contact with the child every 7-10 days
- Reviewing and monitoring court orders and the case service plan
- Maintaining contact with those who have current information about the child
- Keeping accurate notes and records on the case
- Communicating information to the child's attorney, foster care worker and the court, as required.

When CASAs are assigned at this stage they address the following:

- 1 **Gather baseline information on the child, including the child's strengths and weaknesses to assist in measuring future outcomes and making recommendations in the best interest of the child.**
- 2 **Make contact with a variety of people who have regular interactions with the child or who may have information that will contribute to developing a good picture of the child's current circumstances. Contacts may include any of the following:**
 - The child to whom the CASA is assigned
 - Medical care providers
 - School counselors and teachers
 - Foster care workers
 - Therapists/psychologists
 - Child care providers

3. The CASA must consult with the child's LGAL.

These become the core activities of the CASA.

COURT

1. Enter an order of disposition, that considers:

- The case service plan; and
- Any other evidence relevant to the disposition

NOTE: With regard to placement the court should determine:

Whether child is placed in most family-like setting possible consistent with the child's needs.

The order of disposition must state:

- Whether *reasonable efforts* have been made to prevent the child's removal from the home; or
- Whether *reasonable efforts* have been made to rectify the conditions that caused the child's removal from the home. MCR 3.973(F)(3).
- Whether no *reasonable efforts* were necessary to preserve the family because a mandatory petition to terminate parental rights has been filed.
- Whether *reasonable efforts* were made to find an alternative placement for the child.

2. If appropriate, determine what efforts have been made to locate the absent parent and what subsequent steps should be taken.

Question the parent who is present as to the whereabouts of the absent parent.

Provide an opportunity for FIA staff to report on attempts to determine the whereabouts of the absent parent.

Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:

A due-diligence hearing specific to the efforts to locate the absent parent

A putative father hearing

Issuing an order of parentage determination

3. Determine whether there is a non-parent adult who, because of a relationship with the parent and child, should be required to comply with court orders? Court orders may include any of the following:

- Participation in development of the case service plan
- Compliance with the case service plan
- Permanent removal from child's residence
- Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

4. Order compliance with all or any part of the case service plan as considered necessary and enter such orders as considered necessary in the best interests of the child.

In cases where either an attending or primary care physician has diagnosed abuse or neglect as involving 1 or more of the following, then determine whether there has been a consultation with the physician, and whether the child's medical needs are appropriately considered in the case service plan:

- Failure to thrive
- Munchausen Syndrome by Proxy
- Shaken Baby Syndrome
- Bone fracture resulting from abuse or neglect
- Drug exposure

NOTE: If a recommendation is being considered in a case where a physician has made such a determination, then ensure that the physician is notified of the time and place of the proceeding and is offered the opportunity of testifying regarding the case service plan.

In cases controlled by the Indian Child Welfare Act, determine whether “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” 25 USC §1912(d). An Indian child cannot be placed unless it is established that “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” 25 USC 1912(e).

If a petition for termination of parental rights has been filed by the Agency, determine whether parenting time should be suspended.

Where required, ask the LGAL whether he or she has met with the child prior to the hearing. If the LGAL has not met with the child, require the LGAL to state on the record his or her reasons for failing to do so.

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

Before the Hearing

1. Advise agency workers as to what legal alternatives are available.
2. Review dispositional report at request of agency for legal sufficiency. **During the Hearing** Represent agency in negotiations regarding the content of the case service plan. **After the Hearing** Ensure compliance with *reasonable efforts* requirements. *It should be noted that the prosecutor represents the People of the State of Michigan and not an individual*

party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

Before the Hearing

1. Obtain and review the case service plan.

2. Discuss case service plan in advance to avoid continuances.

3. Determine whether there is a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety. As appropriate the lawyer-guardian ad litem should determine whether any of the following should be recommended to the court:

- Participation in the development of the case service plan
- Compliance with the case service plan
- Permanent removal from children's residence
- Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

1 Negotiate to seek elimination of elements of the case service plan that fail to promote the child's best interests.

2 Review agency case file.

3 Consistent with the Michigan Rules of Professional Conduct, consult with the child's parent(s), foster care providers, guardians, and caseworkers.

4 Determine a position on jurisdiction and placement and prepare accordingly.

5 Meet with the child to assess the child's needs with regard to the representation and issues in the case. Considering the child's ability to understand, explain your role as lawyer-guardian ad litem. Answer questions that the child may have about the court process. Determine child's desires/preferences for school, parenting time, etc.

6 Determine if it is in the child's best interests to attend the hearing.

7 Make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, inform the court of the child's wishes and preferences, but advocate for the child's best interests as the lawyer-guardian ad litem sees them.

8 Allow another attorney to substitute representation at the dispositional hearing only with the court's approval. A substitute attorney must be familiar with the case, review the case file, and consult with the foster parents and caseworker before the hearing unless the LGAL has done so communicated relevant information to the substitute attorney.

During the Hearing

1 Challenge the elements of the case service plan that fail to promote the child's best interests.

2 Present witnesses and introduce evidence to establish the basis for the outcome sought for the child.

3 Advocate for additional case service plan elements, if necessary.

4 Contest the determination of *reasonable efforts*, if appropriate.

5 Request court-ordered compliance with key elements of the case service plan.

After the Hearing

- 1 **Monitor implementation of case plans and court orders.**
- 2 **Review the parent-agency agreement for consistency with case service plan and court orders.**
- 3 **Verify agency compliance with treatment plan, including facilitating parenting time.**
- 4 **Make a determination as to whether the parent is complying with and benefiting from the services offered.**

RESPONDENT'S ATTORNEY

Before the Hearing

- 1 Obtain the case service plan from the court and review it.
- 2 Discuss the proposed case service plan with relevant parties well in advance so that the dispositional hearing may proceed without continuances.
- 3 Negotiate appropriate elements of the case service plan.
- 4 Counsel respondent(s) regarding voluntary release of respondent rights, where appropriate.
- 5 Request appointment of GAL to ascertain the respondent's best interests where the respondent's mental competence is in doubt.

During the Hearing

- 1 Challenge the elements of the case service plan disputed by respondent(s).
- 2 Advocate for additional case service plan elements, if appropriate.
- 3 Contest the determination of *reasonable efforts*, if appropriate.

NOTE: A judge may still order an out-of-home placement even if *reasonable efforts* have not been made.

4. Request court-ordered compliance with key elements of the case service

plan. After the Hearing

- 1 Counsel respondent(s) about the consequences of failing to comply with the case service plan.
- 2 Review the respondent-agency agreement for consistency with case service plan and court orders.
- 3 Verify agency compliance with treatment plan, including facilitating respondent parenting time.
- 4 Determine the existence of barriers to treatment plan (e.g., no transportation, competing goals of different service providers, etc.)

CITATIONS

JUVENILE CODE

MCL 712A.18 Disposition MCL 712A.18f Placement of children other than in the custody of parents, guardians, or custodians; reports; case service plans, orders of disposition, updates

MICHIGAN COURT RULES

MCR 3.971 Pleas of Admission or No Contest: provides for acceptance of a voluntary and accurate plea to a petition or, in certain circumstances, an amended petition, and details the required colloquy before acceptance of a plea by the court.

MCR 3.972 Trial: contains time, procedural, and evidentiary requirement for trials to determine whether a child is within the jurisdiction of the court.

MCR 3.973 Dispositional Hearing: contains procedural requirements for: initial dispositional hearings,

MCR 3.980 Child Custody Proceeding Concerning American Indian Child: details procedures for cases under the Indian Child Welfare Act.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Protective Services Manual Policy Items 712-716

Children's Foster Services Manual Policy Items 721 and 722

Native American Affairs Manual

90-DAY DISPOSITIONAL REVIEW HEARING

PURPOSE

Section 19(3) of the Juvenile Code requires that a review hearing be held on a child placed in foster care not more than 182 days from removal of the child, and every 91 days thereafter for the first year, then every 182 days thereafter as long as the child is under the jurisdiction of the court. This frequent case review activity places a strong emphasis on alleviating risks to a child and timely reunification of children and parent(s). Upon motion by any party or in the court's discretion, the court may determine that there is an advantage to review the case sooner than required or to return a child to the parental home with timely notice but without a hearing. The child's unique sense of time should be considered at all phases of a child protective case in making out-of-home placements and efforts to reunify.

Section 19(12) and (13) allow efforts to finalize an alternative permanency plan, guardianship or adoption to be made concurrently with efforts to reunify the child with the family.

The court must review and make three basic determinations at this hearing. The first is the extent of compliance with the treatment plan, taking into account the child's needs, the parent's capabilities, and the frequency and quality of parenting time. The second is the extent to which the conditions that caused the child's placement have been alleviated or mitigated. The third is the necessity and appropriateness of continuing the child's out-of-home placement.

KEY QUESTIONS

(IN DETERMINING *REASONABLE EFFORTS* TO PERMIT A CHILD'S RETURN HOME)

1. **Has the respondent, guardian, or custodian complied with and benefited from services provided or offered? If not, why not?** (Assess the appropriateness and coordination of the services delivered and the client's access to such services.)
2. **Is there a non-parent adult who, because of a relationship with the parent and child, should be required to comply with court orders?** Court orders may include any of the following:
 - Participation in development of the case service plan
 - Compliance with the case service plan
 - Permanent removal from child's residence
 - Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

3. **Has the child benefited from services provided?**
4. **Has parenting time between the child and parent(s) occurred frequently? If not, why?**
5. **What is the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care?**
6. **Is it necessary to prescribe additional services to rectify the conditions that caused the child to be placed in or to remain in foster care?**
7. **Is it necessary to prescribe additional actions to be taken by the parent(s) to rectify the conditions that caused the child to be placed in or to remain in foster care?**
8. **Does the child's placement continue to be stable, appropriate, and necessary? Is the child placed with siblings? If not, does the child have regular contacts/visits with siblings?**
9. **Should concurrent planning be implemented?**
10. **What is the likelihood of the child returning home before the next required review hearing?**
 - Should there be an order that permits the child's return before the next review hearing?
 - Should an earlier review hearing be scheduled?

NOTICE OF HEARING

Written notice of hearing must be given to the parent(s), attorneys, agency, and a number of other parties specified by MCR 5.921(B)(2), at least seven days prior to a review hearing. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, agency, LGAL, or an attorney for a party. Notice of hearing must be given to a non-parent adult if they have been required to comply with the case service plan. Notice of hearing must also be given to a physician under § 18f(6) of the Juvenile Code if the hearing is to determine if the child is to be returned to the child's home *and if* a physician has diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, bone fracture, or drug exposure. Refer to the Notice of Hearing portion of the Key Issues section.

ROLES AND RESPONSIBILITIES CHECKLISTS

FOSTER CARE SERVICES

1. Update the service plan at 90-day intervals with consideration for the interval of the court hearing.

2. If the whereabouts of one of the parents is yet to be determined, then continue to make *reasonable efforts* to locate the absent parent including any of the following as appropriate:

Interview the mother and children as to who may be the father.

Determine whether mother was married at the time child(ren) were born.

Check with the Friend of the Court - Child Support Unit to determine whether paternity has already been established and whether anyone is paying support.

If paternity has been established, request a copy of the paternity acknowledgement and include in the case file.

Document the contact in the case record.

If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

NOTE ON PATERNITY TESTING: CPS and Foster Care staff now have access to paternity testing services. An agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by DHS Central Office. (*As of the date of the publication of these Guidelines, refer to DHS L-letter 99-084.*) Exceptions:

The service is not for child support issues.

It is available one time per client.

Previous testing has been done through other sources such as the Office of Child Support or the Friend of the Court.

3. Make the updated service plan available to the court and to all parties to the proceeding.

4. Offer the updated service plan into evidence.

5. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety? As appropriate, the worker should determine whether any of the following should be recommended to the court:

Participation in development of the case service plan

Compliance with the case service plan

Permanent removal from child's residence

Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.

6. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.

Is the child placed with siblings? If not, why not?

If not, is there a plan to ensure siblings regularly visit with one another?

Were the parent(s) involved in the development of the case plan?

Was the foster parent consulted regarding the needs of the child?

7. In considering or reviewing the placement of a child, have *reasonable efforts* been made to place a child in a stable, family-like setting?

What kinds of placement services does the child need?

What kinds of supports do the foster parent(s) or other temporary caregivers need?

Is the child placed in the child's school district? In the child's county of residence?

Has the child's placement been disrupted? Why?

Are there relatives with whom the child could be placed?

8. If a new worker is assigned to the case, what has been done to become familiar with the case?

Note: Current law precludes delays in cases solely based on transfer from one worker to another.

9. Document each of the following in updated service plan:

Description of the child's adjustment in foster care, school and any other relevant information about behavior, medical needs, etc.

Description of the services being provided to the child to meet any special needs by the worker and relative/foster parent.

Identify whether siblings are placed together and if not, why not. If siblings are not placed together, identify schedule for sibling visits.

Services provided or offered to the child and each parent.

Whether the parent(s) has complied with and benefited from these services.

Extent of parental compliance with the case service plan, court orders, and other agreements made.

Parenting time with the child. If parenting time did not occur or was infrequent, explain the reasons.

Recommendations for additional actions to be taken by the parent(s) to rectify conditions that caused the child's placement in foster care.

Recommendations and explanations for the continuing stability, necessity, and appropriateness of the child's placement; or

Recommendation and rationale for the child's permanency plan to return home.

If the permanent plan is to not return the child home, then recommend an alternative permanent plan.

NOTE: The court may authorize a foster care worker to return a child to a parent's home provided all parties are given 7 days notice. Before the foster care worker may exercise that authority, they must give 7 days advanced notice to each party. Any party may object and request a hearing before a child is returned home.

10. In preparing or updating the case service plan, the foster care or protective services worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:

Failure to thrive

Munchausen Syndrome by Proxy

Shaken Baby Syndrome

Bone fracture resulting from abuse or neglect

Drug exposure

11. Where appropriate, implement concurrent planning.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

- 1. CASAs have the opportunity for input into the case service plan.**

- 2. Once the dispositional phase of the formal hearing is completed, parent's attorneys usually allow contact between parent(s) and CASAs.**

- 3. In preparation for the dispositional review, CASAs may:**
 - Educate foster parent(s) regarding the process,
 - Advise the child and foster parent(s) of the specific issues related to the upcoming hearing,
 - Review file and notes, write report based on information gathered, and include recommended actions.

- 4. The CASA will maintain the core activities of:**
 - Maintaining contact with the child every 7-10 days
 - Reviewing and monitoring court orders and the case service plan
 - Maintaining contact with those who have current information about the child
 - Keeping accurate notes and records on the case
 - Communicating information to the child's attorney, foster care worker, and the court, as required.

- 5. At the hearing CASAs:**
 - Accompany the child to provide support,
 - Provide information and consultation to the child's lawyer-guardian ad litem as needed,
 - Advise all parties on issues pertaining to the child,
 - Be prepared to testify, if requested.

COURT

1. If a child is placed in out-of-home care, conduct a dispositional review hearing within 182 days after removal of the child and every 91 days thereafter for the first year, and every 182 days thereafter as long as the child remains under the jurisdiction of the court.

2. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

3. If the whereabouts of one of the parents has not been determined, determine what efforts have been made and what subsequent steps should be taken.

Question the parent who is present as to the whereabouts of the absent parent.

Provide an opportunity for DHS staff to report on attempts to determine the whereabouts of the absent parent.

Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:

A due-diligence hearing specific to the efforts to locating the absent parent

A putative father hearing

Issuing an order of parentage determination

4. Determine whether there is a non-parent adult who, because of a relationship with the parent and child, should be required to comply with court orders. Court orders may include any of the following:

Participation in development of the case service plan

Compliance with the case service plan

Permanent removal from child's residence

Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent does not need to be living with the parent or child.

5. If a child remains under the jurisdiction of the court, a case may be discharged, or any order may be amended or supplemented at any time, as the court considers necessary or proper.

6. The court must review and consider the following:

Compliance with the case service plan;

Services provided or offered the child and parent(s);

Whether the parent(s) has complied with and benefited from these services;

The extent to which the parent(s) complied with the provisions, prior court orders and any parent-agency agreements;

Likely harm to child if returned to parent's care;

Likely harm to child from continued separation;

Parenting time with the child (if parenting time was infrequent, determine why);

Progress made toward alleviating or mitigating the conditions that caused the child to be placed in or remain in foster care; and

Any written or oral information concerning the child provided by foster parent(s).

See MCR 3.975(F) and MCL 712A.19(6)

7. The court may modify any part of the case service plan including, but not limited to the following:

- Prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in or remain in foster care; and
- Prescribing additional actions to be taken by the parent(s) to rectify the conditions that caused the child to be placed in or remain in foster care.

8. Determine whether *reasonable efforts* have been made and order:

- Return of the child to the parent's custody,
- Continuation of the dispositional order,
- Modification of the dispositional order,
- Modification of any part of the case service plan, or
- A new dispositional order.

9. Determine whether the case should be reviewed before the next required review hearing by considering:

- The parent's ability and motivation to make necessary changes to provide a suitable environment for the child; and
- Whether there is a reasonable likelihood that the child may be returned to the parent's home prior to the next required review hearing.

Note: The court may authorize a foster care worker to return a child to a parent's home provided all parties are given 7 days notice. Before the foster care worker may exercise that authority, they must give 7 days advanced notice to each party. Any party may object and request a hearing before a child is returned home.

10. In cases where either an attending or primary care physician has diagnosed abuse or neglect as involving 1 or more of the following, then determine whether there has been a consultation with the physician, and whether the child's medical needs are appropriately considered in the case service plan.

- Failure to thrive
- Munchausen Syndrome by Proxy
- Shaken Baby Syndrome
- Bone fracture resulting from abuse or neglect
- Drug exposure

NOTE: If a recommendation is being considered in a case where a physician has made such a determination, then ensure that the physician is notified of the time and place of the proceeding and is offered the opportunity of testifying regarding the case service plan.

11. If a petition for termination of parental rights has been filed by the Agency, parenting time may be suspended under § 19b(4) of the Juvenile Code for a person who is a subject of the petition to terminate parental rights. Parenting time may be continued if the court determines that parenting time will not harm the child.

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

- 1. Assist the agency in properly presenting their case, and respond to any elements of the case that are contested by any other party.**
- 2. Respond to requests for consultations regarding filing a petition for termination of parental rights.**

NOTE: Local practice varies as to whether the agency's attorney routinely appears at review hearings. It is not necessary for the prosecutor to appear at the review hearings. However, if any party contests the caseworker's recommendations, then the agency's attorney should appear in order to assist in properly presenting the recommendations to the Court.

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

NOTE: In jurisdictions where there exists a Foster Care Review Board (FCRB) and/or a Court Appointed Special Advocates program (CASA), attorneys have additional resources available to strengthen their representation.

Foster Care Review Boards: FCRBs periodically review selected child protection cases involving children in foster care. When reviews are conducted, attorneys representing children are encouraged to attend. The reviews provide an opportunity to provide input both on the case at hand as well as to voice concerns on systemic issues that the attorney may have observed as a practitioner in child protection proceedings.

Court Appointed Special Advocates: CASAs are responsible for taking the time to find out as much as possible about the child through contacts with teachers, parent(s), neighbors, therapists and others who can offer insights on the child's circumstances. CASAs develop a relationship with the child so that they can effectively advocate for the child's best interests. As a result they can sometimes provide specific information that can be helpful in developing the plan of representation.

Before the Hearing

- 1. Monitor implementation of case plans and court orders.**
- 2. Request amended or supplemental orders before the hearing, if appropriate.**
- 3. Is there a non-parent adult who, because of a relationship with the parent and child, should be considered in the development of the case service plan or plan to ensure the child's safety? As appropriate the lawyer-guardian ad litem should determine whether any of the following should be recommended to the court:**
 - Participation in the development of the case service plan
 - Compliance with the case service plan
 - Permanent removal from children's residence
 - Permanent restraint from coming into contact with (or within close proximity to) the child

A non-parent adult is a person who is 18 years of age or older, who has substantial and regular contact with the child, and who has a close personal relationship with the parent or caretaker, but who is not a great-grandparent, grandparent, aunt, uncle, sibling, niece or nephew. The non-parent adult does not need to be living with the parent or child.
- 4. Request an accelerated review hearing to review the case service plan, if appropriate.**
- 5. Review agency case file.**
- 6. Consult with the foster care providers, guardians, caseworkers, and, consistent with the Michigan Rules of Professional Conduct, the parent(s).**
- 7. Meet with the child to assess the child's needs with regard to the representation and issues in the case. Make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, inform the court of the child's wishes and preferences, but advocate for the child's best interests as the lawyer-guardian ad litem sees them.**

8. If disagreements have emerged between the child and the lawyer-guardian ad litem, the lawyer-guardian ad litem should inform the court of the child's position.
9. Determine continuing appropriateness of placement by independent investigation. Does the child have special needs? If so, are services being provided? Is the child benefiting?
10. Determine whether the child should attend the dispositional hearing based on the child's best interests. If the child is 11 years of age or older, respect the wish of the child to attend the review hearing.
11. Determine whether the child is placed with siblings. If not, why not? If not, how frequently are the siblings visiting one another?
12. Allow another attorney to substitute at the dispositional review hearing only with the court's approval. A substitute attorney must be familiar with the case, review the case file, and consult with the foster parents and caseworker before the hearing unless the LGAL has done so and communicated relevant information to the substitute attorney.

During the Hearing

1. Inform the court if court-ordered services are not being provided to the family, the family is not taking advantage of the services, or if the services are not accomplishing their intended purposes.
2. Address the issue of the necessity and appropriateness of continued placement separate from the necessity of ongoing court supervision and services.
3. Challenge the elements of the case service plan, if appropriate.
4. Advocate for additional case service plan elements, if appropriate.
5. Challenge the admissibility of sections of the agency report, if appropriate.
6. Contest the determination of *reasonable efforts*, if appropriate.
7. Request that key elements of the case service plan be ordered by the court.
8. Request an accelerated review date, if appropriate.

After the Hearing

1. Review new parent-agency agreement for consistency with case service plans and court orders.

- 2. Monitor implementation of updated and revised case plans and court orders.**
- 3. Follow up to make sure that the agency complies with the plan, including facilitating parenting time.**
- 4. Follow up with parent(s) in consultation with parent's legal counsel to determine if there are unforeseen barriers to the implementation of the plan.**
- 5. If timely notice is given of a request to return the child home without a hearing, investigate reasons for the proposed return before requesting a hearing. See MCR 3.975(H).**
- 6. Follow up to ensure the child's special needs are being addressed.**
- 7. Follow up to ensure that sibling visits are occurring if siblings are not placed together.**

RESPONDENT'S ATTORNEY

NOTE: In jurisdictions where there exists a Foster Care Review Board (FCRB) and/or a Court Appointed Special Advocates program (CASA), attorneys have additional resources available to strengthen their representation.

Foster Care Review Boards: FCRBs periodically review selected child protection cases involving children in foster care. When reviews are conducted, attorneys representing parent(s) are encouraged to attend. The reviews provide an opportunity to provide input both on the case at hand as well as to voice concerns on systemic issues that the attorney may have observed as a practitioner in child protection proceedings.

Court Appointed Special Advocates: CASAs are responsible for taking the time to find out as much as possible about the child through contacts with teachers, parent(s), neighbors, therapists and others who can offer insights on the child's circumstances. CASAs develop a relationship with the child so that they can effectively advocate for the child's best interests. As a result they can sometimes provide specific information that can be helpful in developing the plan of representation.

Before the Hearing

- 1. Request amended or supplemental orders before the hearing, if appropriate.**
- 2. Request an accelerated review hearing to review the case service plan, if appropriate.**
- 3. Review agency reports filed with court.**
- 4. Elicit the parent's view of the service needs and the services offered. Discuss what the parent(s) think they need to protect the child from harm. Find out if the caseworker has been helpful in this regard.**
- 5. Counsel parent(s) regarding voluntary release of parental rights, if appropriate.**
- 6. The appointment of a guardian ad litem may be requested to ascertain the parent's best interests where mental competence is in doubt.**

During the Hearing

- 1. Address the issue of the necessity and appropriateness of continued placement separate from the necessity of ongoing court supervision and services.**
- 2. Challenge the appropriateness of elements of the case service plan, if necessary.**
- 3. Advocate for additional case service plan elements, if appropriate.**

- 4. Challenge legal admissibility of sections of the agency report, if appropriate.**
- 5. Contest the determination of *reasonable efforts*, if appropriate. NOTE: A judge may still order an out-of-home placement even if *reasonable efforts* have not been made.**
- 6. Request that key elements of the case service plan be ordered by the court.**
- 7. Request an accelerated review date if it can be shown that the parent(s) have the ability and the motivation to make necessary changes and that the child could be safely returned home.**

After the Hearing

- 1. Review new parent-agency agreement for consistency with case service plan and court orders.**
- 2. Follow up to insure that the agency complies with the plan including facilitating parenting time.**
- 3. Follow up with parent(s) to determine the continuing existence of unforeseen barriers to plan implementation.**
- 4. Counsel parent(s) about the consequences of failing to comply with the case service plan.**

CITATIONS

JUVENILE CODE

712A.19 Supplemental orders of disposition; foster care, review hearings; disposition following review

MICHIGAN COURT RULES

MCR 3.975 Post-Dispositional/Procedures: Child in Foster Care: contains procedural requirements for dispositional review hearings.

MICHIGAN DHS

Children's Foster Care Services Manual Items 721 and 722

PERMANENCY PLANNING HEARING

PURPOSE

A child's supervising agency must strive to achieve a permanent placement for a child, including a return home or an alternative, within 12 months of the child's removal from his or her home. Section 19a(1) of the Juvenile Code requires the court to conduct a permanency planning hearing not more than 364 days after the child was removed, where the child remains in foster care and the parent's rights to the child have not been terminated. A key function of this hearing is to determine whether *reasonable efforts* have been made to finalize a permanency plan, and to assess the success of those efforts. The child is to be returned home unless the court finds that the reunification of parent(s) and child would cause a substantial risk of harm to the child. Failure by the parent(s) to substantially comply with the terms of the treatment plan and any condition or non-compliance may be considered as evidence of substantial risk and creates a presumption in favor of proceeding toward a hearing to terminate parental rights.

The court must obtain the views of the child regarding the permanency plan in a manner appropriate to the child's age.

If the court determines that a child cannot be returned home, or if the child has been in foster care for 15 of the most recent 22 months, then termination proceedings must be initiated by the agency within 28 days unless the agency demonstrates to the court that termination of parental rights would clearly not be in the child's best interests.

If the court determines that termination of parental rights is clearly not in the child's best interests, there is provision for a child to remain in foster care for either a limited period of time or on a long-term basis. The court must determine the best interests of the child and decide whether temporary foster care is best suited to reaching this goal or, where compelling reasons exist, long-term foster care. In either case, permanent plans for the child must continue to be explored. The court may determine whether a juvenile guardian should be appointed for the child, be permanently placed with a fit and willing relative, or, where the agency has documented a compelling reason not to follow one of the procedures outlined above, placed in another planned permanent living arrangement.

Unless a child is in a permanent foster family agreement or is placed permanently with a relative, the court must hold a review hearing not more than 91 days after the permanency planning hearing and every 91 days thereafter for the first year. Subsequent reviews must occur no later than 182 days after the last review hearing in the first year and no more than 182 days thereafter until the case is closed.

Federal law requires a court to conduct a permanency hearing every 12 months. The court is required to review children in permanent foster family agreements or in permanent placements with relatives every 182 days. Michigan's legislative history indicates that it was the legislature's intent that every review hearing after the initial permanency planning hearing is a permanency hearing.

Permanency planning hearings must be conducted by a judge or referee and must be open to the participation of the parents (unless parental rights have been terminated), the child (if of appropriate age), and foster or pre-adoptive parents (if any). MCR 3.976(D)(1).

If the permanency planning goal is not reunification, placement within the kinship network, juvenile guardianship or adoption, compelling reasons must be documented within the Initial and Updated Service Plans and court reports which detail why these goals are not in the child's best interest. Compelling reasons are:

The child is age 14 or over and refuses to consent to adoption.

The parent suffers from a chronic serious illness and the child is unable to return to the home, but there continues to be a close relationship between the child and parent.

There are financial benefits for the child if parental rights are maintained.

The child is in custodial care and treatment services are not yet completed.

There is an appropriate relative to care for the child and the relative is not willing to adopt the child.

The youth is age 18 or over.

The supervising agency has not yet provided the services detailed in the prior services plans to make reunification possible.

The child is an unaccompanied refugee minor.

KEY QUESTIONS

(IN DETERMINING *REASONABLE EFFORTS* TO PERMIT A CHILD'S RETURN HOME)

1. Have *reasonable efforts* been made to reunify the child and family?
2. Has the child been in foster care for 15 of the most recent 22 months?
3. Have the parent(s) failed to substantially comply with the terms and conditions of the service plan?
4. If the parent(s) have complied, have they benefited from the service plan?
5. Would the return home of a child cause a substantial risk of harm to the child's life, physical health, or mental well-being?
6. If the court determines that the child should not be returned home, has the agency demonstrated that termination of parental rights to the child is clearly not in the child's best interests?
7. If the court determines that termination should not be pursued, what are the child's best interests with respect to long-term placement? Is temporary or long-term foster care better suited to reaching this goal? Is guardianship better suited to reaching this goal?
8. Have the views of the child regarding the permanency plan been obtained?

NOTICE OF HEARING

Written notice of hearing must be given to the parent(s), attorneys, agency, and a number of other parties specified by MCR 3.921(B)(2), at least 14 days prior to a permanency planning hearing. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, agency, LGAL, or an attorney for a party. Refer to the Notice Requirements/Service of Process portion of the Key Issues section.

ROLES AND RESPONSIBILITIES CHECKLISTS

FOSTER CARE SERVICES

- 1. If a child remains in out-of-home care and parental rights to the child have not been terminated, a permanency planning hearing must be held not more than 364 days after the child was removed. MCL 712A.19(a)(1).**

A permanency planning hearing is based on the premise that failure to quickly decide on a long-term plan for the child could be detrimental to the child. The court can decide that (1) the child should return home; (2) the child should continue in foster care for a limited, specified time or on a long-term basis; or (3) the agency has demonstrated that termination of parental rights may be in the child's best interests. *In re Hatcher*, 443 Mich 426 (1993).

- 2. If the whereabouts of one of the parents has not been determined, then continue to make *reasonable efforts* to locate the absent parent including any of the following as appropriate:**

Interview the mother and children as to who may be the father.

Determine whether mother was married at the time the child(ren) was born.

Check with the Friend of the Court - Child Support Unit to determine whether paternity has already been established and whether anyone is paying support.

If paternity has been established, request a copy of the paternity acknowledgement and include in the case file.

Document the contact in the case record.

If the above efforts are not successful, then request a search for the absent parent through the Office of Child Support.

NOTE ON PATERNITY TESTING: CPS and Foster Care staff now have access to paternity testing services. An agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by DHS Central Office. (*As of the date of the publication of these Guidelines, refer to DHS L-letter 99-084.*)
Exceptions:

The service is not for child support issues.

It is available one time per client.

Previous testing has been done through other sources such as the Office of Child Support or the Friend of the Court.

- 3. In developing or revising the case service plan, ensure the child's relationship with siblings is addressed appropriately.**

Is the child placed with siblings? If not, why not?

If not, is there a plan to ensure siblings regularly visit with one another?

Were the parent(s) involved in the development of the case plan?

Was the foster parent consulted regarding the needs of the child?

4. In considering or reviewing the placement of a child, have *reasonable efforts* been made to place a child in a stable, most family-like setting?

What kinds of placement services does the child need?

What kinds of supports do the foster parent(s) or other temporary caregivers need?

Is the child placed in the child's school district? In the child's county of residence?

Has the child's placement been disrupted? Why?

5. If a new worker is assigned to the case, what has been done to become familiar with the case?

NOTE: Current law precludes delays in cases solely based on transfer from one worker to another.

6. The updated service plan must be made available to the court and all parties to the proceeding.

7. Offer the updated service plan into evidence. The plan must include:

Progress being made toward the child's return home and whether there is a compelling reason why the child should not be placed in the permanent custody of the court;

Whether or not the parent(s) has substantially complied with the terms and conditions of the case service plan;

Whether return of the child to the parent's home would cause a substantial risk of harm to the child's life, physical health or mental well-being;

Whether termination of parental rights is in the child's best interests; and

A recommendation for termination proceedings, continued placement in foster care for a limited period of time, or continued placement in foster care on a long-term basis. MCR 3.976(E).

8. In preparing or updating the case service plan, the foster care or protective services worker should consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving 1 or more of the following:

Failure to thrive

Munchausen Syndrome by Proxy

Shaken Baby Syndrome

Bone fracture resulting from abuse or neglect

Drug exposure

9. The court must order the caseworker to initiate proceedings to terminate parental rights if the child has been in foster care for 15 of the most recent 22 months unless the court has found that initiating termination of parental rights to the child is clearly not in the child's best interests. MCL 712A.19a(6) The court must specify the deadline for filing the petition, which may not be more than 28 days after the order.

10. In cases coming under the Indian Child Welfare Act, determine and provide the court information on whether "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 USC § 1912(d).

COURT APPOINTED SPECIAL ADVOCATE (CASA)

- 1. Review all their own materials and notes related to the case.**
- 2. Review entire case file since inception including evaluations, case service plans, and court orders.**
- 3. Compare progress of children and parent(s) to baseline information and assess the extent to which case service plans have been complied with and benefited from.**
- 4. Prepare a report specifically for the permanency planning hearing that includes an assessment of the progress made by all parties relative to baseline information and takes into consideration whether there is substantial risk of harm if the child is returned home.**

At the hearing: CASAs attend and are prepared to testify.

COURT

1. **Conduct a permanency planning hearing not more than 364 days after removal of the child.**
2. **Determine whether the agency has made reasonable efforts to finalize the permanency plan. Obtain the views of the child regarding the permanency plan. Make a detailed finding regarding the agency's efforts, and include this finding in a court order or hearing transcript.**
3. **In cases where either an attending or primary care physician has diagnosed abuse or neglect as involving 1 or more of the following, then determine whether there has been a consultation with the physician, and whether the child's medical needs are appropriately considered in the case service plan.**
 - Failure to thrive
 - Munchausen Syndrome by Proxy
 - Shaken Baby Syndrome
 - Bone fracture resulting from abuse or neglect
 - Drug exposure

NOTE: If a recommendation is being considered in a case where a physician has made such a determination, then ensure that the physician is notified of the time and place of the proceeding and is offered the opportunity of testifying regarding the case service plan.

4. **If an absent parent has not been located, determine what efforts have been made and what subsequent steps should be taken.**
 - Question the parent who is present at the hearing as to the whereabouts of the absent parent.
 - Provide an opportunity for DHS staff to report on attempts to determine the whereabouts of the absent parent.
 - Depending upon the progress being made to locate the absent parent, consider any of the following as appropriate:
 - A due-diligence hearing specific to the efforts to locating the absent parent
 - A putative father hearing
 - Issuing an order of parentage determination
5. **Consider any written or oral information concerning the child provided by a parent, guardian, custodian, foster parent(s), or institution.**
6. **Determine whether the return of a child to the parent(s) would cause a substantial risk of harm to the child's life, physical health, or mental well-being. If the court does not find a substantial risk of harm, then the court must order the child returned to the parent(s). (Failure to comply with the terms of the case service plan may be viewed as evidence of a substantial risk of harm.)**
7. **Order the agency to initiate proceedings to terminate parental rights if the child has been in foster care for 15 of the most recent 22 months unless the agency demonstrates to the court that it is clearly not in the best interests of the child, as stated in MCR 3.976(E)(2). If the agency doesn't so demonstrate, specify a deadline for filing the petition, not to exceed 28 days from the order.**
8. **If the court finds that initiating termination of parental rights to the child is clearly not in the best interests of the child, then the judge must order one of the following alternative plans:**
 - If the court determines that it is in the child's best interests, the child's placement in foster care will continue on a long-term basis; or
 - If the court determines that other permanent placement is not possible, the child's placement in foster care must continue for a limited period of time for compelling reasons to be stated by the court.The court may order appointment of a juvenile guardian for the child.

NOTE: A child must be at least 14 years of age before that child can be entered in a PFFA as defined in MCL 712A.13a(1)(h).

9. **In cases coming under the Indian Child Welfare Act, determine whether “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” 25 USC §1912(d).**

10. **Ask the LGAL whether he or she has met with the child prior to the hearing. If the LGAL has not met with the child, require the LGAL to state on the record his or her reasons for failing to do so.**

11. **Consider both in-state and out-of-state placement options for the child and assure that an out-of-state placement is in the child’s best interests.**

12. **Consider whether appointment of a juvenile guardian should be ordered.**

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

The caseworker should routinely schedule a conference with the prosecuting attorney (or other legal representative of the DHS) prior to a permanency planning hearing to determine the legal course of action relative to the permanent plan. One of four basic strategies should be decided:

Recommend return home

Pursue termination of parental rights

Pursue a juvenile guardianship

Recommend the child continue in foster care under temporary wardship on a short-term or long-term basis.

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

Before the Hearing

- 1. Discuss the permanency plan with the caseworker.**
- 2. Review agency case file.**

Consult with the foster care providers, guardians, caseworkers, and, consistent with the Michigan Rules of Professional Conduct, the parent(s).

- 3. Meet with the child to assess the child's needs with regard to the representation and long-term placement. Assure that the court obtains the views of the child regarding the permanency plan.**
- 4. If disagreements have emerged between the child and the lawyer-guardian ad litem, the lawyer-guardian ad litem should inform the court of the child's position.**
- 5. Allow another attorney to substitute at the dispositional hearing only with the court's approval. A substitute attorney must be familiar with the case, review the case file, and consult with the foster parents and caseworker before the hearing unless the LGAL has done so and communicated relevant information to the substitute attorney.**

During the Hearing

- 1. Make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, inform the court of the child's wishes and preferences, but advocate for the child's best interests as the lawyer-guardian ad litem sees them. Be prepared to address the child's best interests with respect to return home, proceedings to terminate parental rights, temporary foster care, long-term foster care, or other permanent placement.**
- 2. Inform the court if court-ordered services are not being provided to the family, the family is not taking advantage of the services, or if the services are not accomplishing their intended purposes.**
- 3. Resist attempts to delay or postpone the permanency planning decision.**

ATTORNEY FOR THE PARENTS

Before the Hearing

- 1. Discuss the permanency plan with the caseworker.**
- 2. Counsel parent(s) regarding voluntary release of parental rights, if appropriate.**
- 3. Request the appointment of a guardian ad litem to ascertain the parent's best interests where mental competence is in doubt.**

During the Hearing

- 1. Focus the court's consideration on the "substantial risk of harm" test by highlighting the parent's compliance with and benefit from the case service plan.**
- 2. Focus attention on the success of efforts to ameliorate conditions that originally brought the child under the court's jurisdiction and resist attempts to apply a shifting standard of minimally adequate care.**

CITATIONS

JUVENILE CODE

MCL 712A.19a Foster care, permanency planning hearings; court orders

MICHIGAN COURT RULES

MCR 3.976 Permanency Planning Hearings: contains procedural requirements for permanency planning hearings.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Foster Care Services Policy Manual 721 and 722

Native American Affairs Manual

TERMINATION OF PARENTAL RIGHTS

PURPOSE

The Juvenile Code provides for a court hearing, upon petition of the prosecuting attorney, child, agency, guardian, custodian, concerned person (see Juvenile Code §19b(6) for definition of concerned person), or Children's Ombudsman, to determine if the parental rights to a child should be terminated and the child placed in the permanent custody of the court. As a result of an amendment to the Child Protection Law and the Juvenile Code in 1998, Child Protective Services is now required to file a termination petition in certain instances where there have been egregious offenses against the child. MCL 722.638(1)-(2). This hearing is divided into two phases. The first phase is to determine whether there is clear and convincing evidence of one or more of the following:

1. The parent has deserted the child under certain circumstances.
2. The parent has physically injured or physically or sexually abused the child or one of the child's siblings under certain defined circumstances.
3. A non-parent adult's act caused the abuse and there is reasonable likelihood that the child will suffer from further abuse by the non-parent.
4. The parent has not rectified the conditions that have been brought to the attention of the court.
5. The parent has placed a child in a limited guardianship or the child has a guardian under the Estates and Protected Individuals Code and the parent has substantially failed, without good cause, to comply with either a limited guardianship placement plan or a court-structured plan.
6. The child has a guardian under the Estates and Protected Individuals Code and the parent has failed or neglected to provide regular and substantial support for the child for 2 years, if a support order has been entered, and the parent has regularly and substantially failed or neglected to visit, contact, or communicate with the child for 2 years.
7. The parent, without regard to intent, fails to provide proper care or custody of the child.
8. The parent is imprisoned for such a period of time that the child will be deprived of a normal home for a period of time exceeding 2 years and the parent has not provided for proper care and custody of the child.
9. The parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parent(s) have been unsuccessful.
10. The parent's conduct or capacity causes a reasonable likelihood that the child will be harmed if returned to the parent's home.
11. The parent abused a child or a sibling by:
 - abandoning a young child;
 - committing criminal sexual conduct by penetration, attempted penetration, or assault with intent to penetrate;
 - battering, torturing, or other physical abuse;
 - seriously impairing or causing the loss of an organ or limb;
 - causing a life threatening injury; or
 - murdering or attempting to murder.
 -
- 12. The parent's rights to another child were either involuntarily terminated or voluntarily released following the initiation of a child protective proceeding in Michigan or another state.
 - 13. The parent is convicted of one or more of the following and the court determines that termination is in the child's best interest because continuing the parent-child relationship would be harmful to the child.

- 1st, 2nd, 3rd, or 4th degree Criminal Sexual Conduct
- Assault with Intent to Commit Criminal Sexual Conduct involving Penetration
- Habitual assaultive criminality

The second phase is to determine if it is clearly in the child's best interests to terminate parental rights.

If the permanency planning goal is to return home, placement within the kinship network, termination of parental rights or adoption, compelling reasons must be documented within the Initial and Updated Service Plans and court reports which detail why the selected goal is in the child's best interest. Compelling reasons include:

- The child is age 14 or over and refuses to consent to adoption.
- The parent suffers from a chronic serious illness and the child is unable to return to the home, but there continues to be a close relationship between the child and parent.
- There are financial benefits for the child if parental rights are maintained.
- The child is in custodial care and treatment services are not yet completed.
- There is an appropriate relative to care for the child and the relative is not willing to adopt the child.
- The youth is age 18 or over.
- The supervising agency has not yet provided the services detailed in the prior services plans to make reunification possible.
- The child is an unaccompanied refugee minor.
- Other. (If this is the compelling reason, there must be clear documentation within the service plan of the individual circumstances of the child that necessitates this selection.)

KEY QUESTIONS

(IN DETERMINING WHETHER PARENTAL RIGHTS TO A CHILD SHOULD BE TERMINATED)

1. Does the case involve a mandatory request for termination of parental rights, which will be decided at an initial dispositional hearing?
2. Has the court, at the conclusion of a permanency planning hearing, ordered the filing of a supplemental petition for termination of parental rights?
3. Is this a supplemental petition requesting termination of parental rights prior to a permanency planning hearing based on either of the following?
 - (a) Offense(s) that led the court to take jurisdiction
 - (b) Circumstances new or different from the offense(s) that lead the court to take jurisdiction
4. Is there a compelling reason for not filing a petition to terminate parental rights?
5. Has the child been in foster care as a result of a child protective proceeding 15 of the last 22 months? If so, is there a compelling reason to not file a petition for termination?
6. In a case under the Indian Child Welfare Act, is termination of parental rights supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child? 25 USC §1912(f) and MCR 3.980(D).
7. Can one or more of the following grounds for termination of parental rights be established by clear and convincing evidence?
 - a. Has the parent(s) deserted the child under either of the following circumstances?
 - The parent(s) is unidentifiable and has deserted the child for 28 or more days and not sought custody of the child during that period of time.
 - The parent(s) has deserted the child for 91 or more days and has not sought custody of the child.
 - b. Has the child or a sibling suffered physical injury or sexual abuse under any of the following circumstances?
 - The parent(s) act caused the physical abuse or injury or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury and abuse in the foreseeable future if placed in the parent(s) home.
 - A parent(s) has had the opportunity to prevent the physical abuse or injury or sexual abuse but failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent(s) home.
 - A non-parent adult's act caused the physical abuse or injury or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the non-parent adult in the foreseeable future if placed in the parent's home.
 - c. Is the parent(s) a respondent in a proceeding brought under the Juvenile Code, and have 182 or more days elapsed since the issuance of an initial dispositional order under either of the following circumstances?
 - The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child, or
 - Other conditions exist that cause the child to come within the jurisdiction of the court, the parent(s) has received recommendations to rectify those conditions, the conditions have not been rectified by the parent(s) after the parent(s) has received notice, a hearing, and has been given a

reasonable opportunity to rectify the conditions, and there is no likelihood that the conditions will be rectified within a reasonable time considering the age of the child. (If not previously adjudicated, must prove by legally admissible evidence.)

d. Has the parent(s) placed a child in a limited guardianship under the probate code and substantially failed, without good cause, to comply with a limited guardianship placement plan to the extent that the noncompliance has resulted in a disruption of the parent-child relationship?

e. Has the parent(s) of a child, who has a guardian under the probate code, substantially failed, without good cause, to comply with a court plan regarding the child to the extent that noncompliance has resulted in a disruption of the parent-child relationship?

f. Does the child have a guardian under the probate code? If yes, have both of the following occurred?

- Does the parent(s) have the ability to support or assist in supporting the child? If yes, has the parent failed to provide regular and substantial support for the child? Is there a support order in place? If yes, has the parent failed to substantially comply with the support order?

- Does the parent(s) have the ability to visit, contact, or communicate with the child? If so, has the parent substantially failed to do so for two years?

- g. Has the parent(s), without regard to intent, failed to provide proper care or custody for the child and there is no reasonable expectation that the parent(s) will be able to provide proper care and custody within a reasonable time considering the age of the child?

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

- i. Have parental rights to 1 or more siblings of the child been terminated due to serious and chronic neglect or physical or sexual abuse and have prior attempts to rehabilitate the parent(s) been unsuccessful?

- j. Is there a reasonable likelihood, based on the conduct or capacity of the child's parent(s), that the child will be harmed if returned to the home of the parent?

- k. Has the parent(s) abused the child or a sibling of the child in one or more of the following ways:

- abandonment of a young child;
- criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
- battering, torture, or other severe physical abuse;
- loss or serious impairment of an organ or limb;
- life threatening injury; and/or
- murder or attempted murder?

- l. Have the parent's rights to another child been terminated as a result of child protective proceedings in Michigan or another state?

- m. Have the parent's rights to another child been voluntarily terminated or released as a result of child protective proceedings in Michigan or another state?

- n. Has the parent(s) been convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child?

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

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

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

8. Is termination of parental rights to the child clearly in the child's best interests?

NOTICE OF HEARING

The court shall direct the service of the summons. Each respondent parent must be personally served with a summons and supplemental petition for termination of parental rights. MCR 3.920(B)(2)(c) Non-respondent parents must be notified of the hearing as required by MCR 3.920(b)(3). Refer to the Notice of Hearing portion of the Key Issues section.

ROLES AND RESPONSIBILITIES CHECKLISTS

CHILDREN'S PROTECTIVE SERVICES AND FOSTER CARE SERVICES

- 1 Determine what grounds for termination of parental rights can be established by clear and convincing evidence.
- 2 In cases that have proceeded to termination of parental rights and one parent has never been located, assure that all *reasonable efforts* have been made to find and involve the absent parent. Be prepared to report to the court all efforts that have been made to locate the absent parent.
- 3 Determine if termination of parental rights is in the child's best interests.
- 4 Schedule a termination conference with the prosecutor's office or DHS's legal consultant to determine if the case is appropriate and legally sufficient to proceed with a termination of parental rights petition.
- 5 In consulting with the prosecutor or other legal representative, identify what further efforts need to be made toward a permanent resolution of the case, if proceeding with termination is not approved.
- 6 Prepare termination reports in contested termination cases.
- 7 Ensure that all bases for termination have been included in the petition.
- 8 Ensure that evidence and witnesses necessary to support each allegation have been subpoenaed.
- 9 Once a petition has been filed requesting termination of parental rights, the court may discontinue parenting time unless it finds that parenting time would not harm the child. If you believe the court should continue parenting time be prepared to explain why.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

Since the permanency planning hearing, the CASA has maintained regular contact with the child and the child's caregivers as well as those with current information about the child.

In preparation, CASAs:

- 1 Prepare and submit a report that supports the CASAs position for or against a decision to terminate parental rights.**
- 2 Describe the factual circumstances that support their position being mindful of the "clear and convincing" evidence standard for termination. If ICWA applies, a higher evidentiary standard and at least one expert witness is required.**
- 3 Prepare to testify in support of any recommendations they make relative to the termination.**

COURT

1. Appoint attorneys if respondent-parent(s) are unable to afford one. The court rules provide that upon request counsel must be appointed to represent parent(s) at hearings to terminate parental rights. It is axiomatic that the right to counsel includes the right to competent counsel. *In re Rogers*, 160 Mich App 500 (1987)

If respondent parent has not previously requested counsel, affirmative action by the respondent parent is required to have counsel appointed during the dispositional phase of proceedings. In other words, the court is not required on its own motion to appoint counsel for a respondent parent. *In re Hall*, 188 Mich App 217, 222 (1991)

- 1 **Determine whether the evidence establishes any of the statutory bases for permanent wardship.**
- 2 **Determine whether the termination of parental rights to the child is clearly in the child's best interests. MCL 712A.19b(5)**
- 3 **In cases that have proceeded to termination of parental rights and one parent has never been located, determine that all *reasonable efforts* have been made to find and involve the absent parent. Provide an opportunity for DHS or private agency staff to report on all efforts that have been made to locate the absent parent.**
- 4 **If the judge or referee does not issue its decision on the record following the hearing, he or she must issue an order or opinion within 70 days after commencement of the initial hearing on the petition. MCR 3.977(H).**
- 5 **Enter findings and order including a determination that *reasonable efforts* have been made to rectify the conditions that caused the child to be removed from the child's home.**
- 6 **Advise parent(s) of their appellate rights, either orally or in writing. MCR 3.977(I).**
- 7 **Provide parent(s) with a form containing instructions for appeal and inform them that the form must be returned to the court if they are requesting appellate counsel.**
- 8 **Advise the parent(s) of their right to file a denial of release of identifying information and a revocation of a denial of release.**
- 9 **In a case under the Indian Child Welfare Act, termination of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 USC §1912(f) and MCR 3.980(D).**
- 10 **Ask the LGAL whether he or she has met with the child prior to the hearing. If the LGAL has not met with the child, require the LGAL to state on the record his or her reasons for failing to do so.**

ATTORNEYS

CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

- 1 **Review petition for legal sufficiency.**
- 2 **Ensure the petition contains all possible bases for termination with special attention to MCL 712A.19b(3)(g) and (j).**
- 3 **Ensure that all witnesses necessary to support the allegations are subpoenaed.**
- 4 **Ensure mother and father are provided proper legal notice.**
- 5 **Present other evidence as necessary to achieve permanent custody.**

It should be noted that the prosecutor represents the People of the State of Michigan and not an individual party. However, the recommendations of the caseworker and the interests of the People will usually coincide. The court rules provide that the DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf.

LAWYER-GUARDIAN AD LITEM

Before the Hearing

- 1. Determine a position on whether parental rights should be terminated and prepare appropriately. Make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, inform the court of the child's wishes and preferences, but advocate for the child's best interests as the lawyer-guardian ad litem sees them.**

If the child and the lawyer-guardian ad litem disagree as to the child's best interest, the court may appoint an attorney for the child after considering the nature of the inconsistency and the age and maturity of the child. If appointed, the attorney serves in addition to the child's lawyer-guardian ad litem as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan Rules of Professional Conduct.

- 1 Consult with the foster care providers, guardians, and caseworkers and, consistent with the Michigan Rules of Professional Conduct, the child's parent(s), and review reports and other information, including the agency case file.**
- 2 Ensure petition contains all bases for termination that are available with particular attention to MCL 712A.19b(3)(g) and (j).**
- 3 Determine if alternate legal options would serve child's best interests.**
- 4 Meet with the child to assess the child's needs with regard to representation and placement, where applicable.**

During the Hearing

- 1 Present evidence to support or contest the petition's allegations that a statutory basis exists to demonstrate that the parent(s) are unfit, and that the child would be best served by the termination of parental rights.**
- 2 Present oral and written evidence to support position.**
- 3 Call witnesses to present case for termination.**
- 4 Make recommendations with respect to the child's best interests.**

After the Hearing

- 1 If parental rights are terminated, follow up on caseworker's implementation of the plan to achieve a permanent placement for the child. Advocate appropriately to ensure that *reasonable efforts* are being made to achieve a permanent plan.**
- 2 Participate in post-termination review hearings, per MCL 712A.19(c)(1).**

ATTORNEY FOR THE PARENTS

Before the Hearing

- 1 **Counsel parent(s) regarding voluntary release of parental rights, where appropriate.**
- 2 **Interview witnesses to be called by the state or child's attorney.**
- 3 **Request appointment of guardian ad litem to ascertain the parent's best interests where the parent's mental competence is in doubt.**
- 4 **Seek discovery of all materials under MCR 3.922(A).**
- 5 **Investigate all permanent placements.**

During the Hearing

1. **Present evidence to controvert the petition's claim of parental unfitness. This evidence must show that no factual basis exists for determining that the parent(s) meet any of the statutory requirements for termination. MCR 3.977**When seeking to terminate parental rights, the burden is on petitioner to show by "clear and convincing" evidence that there exists a statutory basis for termination.
 2. **Establish that the child's interests are best served by not terminating parental rights.** There must first be clear and convincing evidence of a basis to terminate before the best interests of the children may be considered when considering the termination of parental rights.
- 1 **Make recommendations regarding the court's continuing jurisdiction and placement of the child.**
 - 2 **Look for legally permanent alternatives - placement with relatives, Permanent Foster Family Agreement, or guardianship.**

After the Hearing

1. **Inform the respondent(s) of their right to appellate review of the court's order pursuant to MCR 3.993(A)(2) and 3.977(I)**

CITATIONS

JUVENILE CODE

MCL 712A.19b Termination of parental rights; notice, findings, orders MCL 722.638 Mandatory Child Protective Petitions

MICHIGAN COURT RULES

MCR 3.977 Termination of Parental Rights: details the procedures for hearings to determine whether parental rights will be terminated, and provides for termination at the initial dispositional hearing, on the basis of circumstances other than those that led the court to take jurisdiction over the child, and in other circumstances. Permits the Court to suspend parenting time upon filing of a termination petition.

MCR 3.980 Child Custody Proceeding Concerning American Indian Child: details procedures for cases under the Indian Child Welfare Act.

MICHIGAN DEPARTMENT OF HUMAN SERVICES

Children's Protective Services Policy Manual Items 712-716

Children's Foster Care Policy Manual Items 721 and 722 Native

American Affairs Manual

SUGGESTIONS FOR TERMINATION REPORT OUTLINE

Summarize Original CPS Report

- Why did this case come to the attention of CPS?
- Detail the observations and interviews of the CPS worker, police, etc.
- Include any prior CPS involvement (Early Impact, etc.)
- Date children were taken into protective custody, their condition, etc.

Preliminary Hearing

- Date of preliminary hearing.
- Parent(s) reaction to allegation.
- Insert language of petition as authorized by the referee.

Adjudicatory Hearing

- Date of hearing.
- Summarize nature of proceedings, i.e., contested, if not, attitude of parent(s), children, etc.
- Summarize the evidence, if contested.

Dispositional Hearing

- Date of hearing.
- Summarize your interviews with parent(s) and others.
- Detail the components of your treatment plan.
- Explain your recommendation for the child's placement.
- Describe parent(s) response to treatment plan so far.
- Include any observations or opinions of other child welfare workers (psychologist, therapists, sexual abuse treatment staff, etc.)
- Note whether judge entered any extraordinary orders, e.g., restraining order, etc. and why.

Quarterly Reports

- Date of report.
- Include any significant information contained in these reports which has a bearing on the welfare of the children, visits, progress of parent(s) in treatment plan, etc.

Review Hearing

- Date of hearing.
- Summarize parent(s) progress on treatment plan.
- Include observations and opinions of yourself and others involved in treatment process.
- Detail specific problem areas and provide illustrative examples as well as significant contacts.

Termination Conference

- Date of meeting with prosecutor.
- Detail why termination is only alternative, i.e., address permanency needs.
- Insert language of termination petition.
- Detail efforts to help parent(s) reestablish a home for their children and explain where parent(s) have failed and why.
- Address non-custodial parent(s) (unknown father or whereabouts unknown) issues, i.e., what efforts had been taken to identify and/or locate.

In General

- Attempt to keep events in chronological order.
- If significant contacts can be incorporated in the report itself there is no need to prepare a “log of significant contacts.”
- Be fair and objective in your analysis of the parenting deficiencies.
- Don’t be afraid to include positive information, if any.
- Be sure to explain that termination is the only realistic alternative when balancing the parenting problems with the best interests of the child.

POST-TERMINATION REVIEW HEARING

PURPOSE

The purpose of this review is to continue the court's role in all aspects of permanency planning for children. The court must conduct a post-termination review hearing on a child no later than 91 days after the termination of parental rights and every 91 days thereafter during the first year following termination of parental rights. If a child remains in a placement for more than 1 year following termination of parental rights, a review hearing must be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed.

The purpose of this hearing is to review the progress being made toward the child's adoption or other permanent placement. The court must make findings on whether *reasonable efforts* have been made to establish a permanent placement for the child. If permanency is not achieved within 91 days, the court must continue to conduct review hearings until permanency for the child is established. The court may enter orders as necessary to meet the child's needs.

Family court has the responsibility to oversee efforts being made to achieve an adoptive placement or other established permanency goal that is consistent with Michigan and federal goals. Permanency goals include reunification, adoption, guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement.

In fulfilling this oversight role, the court should identify the barriers to an adoptive placement, assign responsibility for tasks and actions to resolve these barriers, and, when necessary, consider alternatives for a child's permanent placement. According to Section 19c(3), if the court plans to appoint a guardian for the child, the appointment cannot be made without the written consent of the superintendent of the Michigan Children's Institute.

KEY QUESTIONS

1. Has an appropriate adoptive family been identified?
2. What barriers exist for an adoptive placement and petition?
3. How can those barriers be overcome?
4. Who needs to pursue what specific efforts to overcome identified barriers?
5. Have *reasonable efforts* been made to establish permanent placement of the child?
6. Considering the best interests of the child, are there any orders of the court necessary to achieve permanence?

NOTICE OF HEARING

Written notice of hearing, mailed at least seven days in advance to the agency, child's lawyer-guardian ad litem, and the child if 11 years or older, is appropriate. The foster parent(s) and any adoptive parent(s) or relative(s) providing care must be notified of the hearing. Refer to the Notice of Hearing portion of the Key Issues section.

MCR 3.921(C) defines who is entitled to notice in a juvenile guardianship proceeding, including, the child, if 11 years old or older, the Department of Human Services, the parents of the child, unless rights have terminated, any court with prior jurisdiction in a child protective proceeding, if different from the court authorizing the juvenile guardianship, attorneys for any party, the prosecuting attorney, if the prosecuting attorney has appeared in the case, the child's tribe, Indian custodian, or Secretary of the Interior, if a tribal relationship exists, the MCI superintendent, other persons directed by the court.

ROLES AND RESPONSIBILITIES CHECKLISTS

FOSTER CARE SERVICES

- 1. Make a referral to the adoption staff within 14 calendar days of a change in the permanency plan to adoption.**
- 2. Immediately following the termination of parental rights, initiate a case conference with the adoption caseworker to review the status of the case and initiate permanency plans.**
- 3. Continue to write updated service plans (quarterly reports) until the case is transferred to an adoption worker.**
- 4. Continue to monitor dental, medical, and educational plans for the child.**
- 5. Continue to monitor the child's placement and attend court hearings.**

ADOPTION SERVICES

- 1. Prepare the child's adoption evaluation study within 45 working days of the termination of parental rights.**
- 2. Identify and determine the interests of all relatives and foster parent(s) in adopting the child.**
- 3. Conduct an assessment of the child for support and/or medical subsidies. If a child is eligible for either or both subsidies, pursue certifications and contract processes. Schedule psychological and/or other relevant evaluations.**
- 4. Complete an Adoptive Family Evaluation. If the adoptive family lives in another state, refer the case immediately to the Interstate Compact Office for processing.**
- 5. Select/match child with adoptive parent(s). If the child will be moving, set up a written parenting time schedule for foster and adoptive parent(s).**
- 6. Prepare a quarterly report identifying progress toward achieving adoption, barriers and projected date of adoption for foster care workers to include with the updated service plan. Share reports with the child's lawyer-guardian ad litem.**
- 7. Provide a prospective adoptive parent(s) with written copies, other than those portions made confidential by state or federal law, of all the following regarding the prospective adoptee:**
 - Adoptee's nonidentifying information
 - Petition or petitions that resulted in each placement of the child
 - Initial and all updated case service plans concerning the child
 - Written verification that all of the above information has been provided to the adoptive parent(s)
 - A list of all information known regarding the adoptee's medical and psychological needs
- 8. Hold a conference with the prospective adoptive parent(s) and do all of the following during that conference:**
 - a. Review and discuss the information provided to the prospective adoptive parent(s)
 - b. Disclose all other information known by or available to the adoption facilitator regarding the adoptee's medical and psychological needs.
- 9. If an adoptive placement is not found for a child within 90 days, register the child on the Michigan Adoption Resource Exchange (MARE).**
- 10. When the child and adoptive parent(s) have been matched, obtain consent from the local family court for permanent court wards or from the Superintendent of the Michigan Children's Institute (MCI) for state wards.**

- 11. File a petition for adoption with the family court of the county in which the petitioner resides or where the adoptee is found.**

- 12. If the adoption is disrupted during the supervisory period (6-18 months following the adoption), obtain a Denial of Petition Order from the family division.**

- 13. Write a disruption/replacement report.**

- 14. Attend the finalization hearing.**

COURT APPOINTED SPECIAL ADVOCATE (CASA)

Involvement of the CASA is based upon:

- The decision of the court, and
- The needs of the child and their case.

The CASA maintains communication/contact with the child and other pertinent individuals until a permanent placement is found. Contacts will usually occur on a less frequent basis.

A CASA may:

- Maintain consistency for the child
- Assist in transition to adoption worker
- Review potential placements
- Provide a photo history for the child
- Monitor efforts of the systems toward permanency
- Assist in preparation of the child for adoption

Activities are dependent upon the age of the child and their relationship to the CASA.

The CASA or their representative attends post-termination reviews to update the court on the progress towards permanency and provides advocacy to that end.

At the conclusion of the case, the CASA makes arrangements and has final meeting with the child.

COURT

- 1. Review the updated service plan, child adoption evaluation, home study, and other related information, if available.**
- 2. The court must determine the extent of progress made toward:**
 - Preparing the child for an adoption, and
 - Recruiting and preparing adoptive resources for the child.
- 3. The court must determine if there are any barriers to an adoption petition and placement.**
- 4. The court must determine what specific actions are needed to overcome the identified barriers.**
- 5. The court must determine whether the case is under appeal. If legal risk adoption is pursued, ensure that the parties understand the risks.**
- 6. The court must determine the need for completion of adoption support, and/or medical subsidies.**
- 7. The court shall make detailed findings on whether *reasonable efforts* have been made to establish a permanent placement for the child and may enter such orders as considered necessary to resolve barriers and achieve a permanent placement for the child.**
- 8. The court must obtain the written consent of the superintendent of MCI if appointment of a guardian is the permanency plan for the child.**

ATTORNEYS

LAWYER-GUARDIAN AD LITEM

- 1. Understand child development concepts of attachment, separation, and loss as they relate to adoption.**
- 2. Understand adoption laws, legal processes and adoption subsidies related to special needs children.**
- 3. Understand social work processes and resources related to special needs adoption e.g., life books, child adoption evaluation, home study, etc.**
- 4. Interview adoption caseworker:**
 - Evaluate the agency's recruitment and assessment of adoptive resources, including relative/kinship, foster parent(s), prospective adoptive parent(s).
 - Evaluate the caseworker's preparation of the child and adoptive family for adoption.
 - Determine whether there are any barriers to the child's adoption.
 - Inquire about services or actions that are needed to resolve these barriers.
 - In cases where the attorney disagrees with the plan and the child is an MCI ward, consult with the MCI Superintendent.
 - Determine whether there are competing petitions to adopt the child. If so, conduct an independent assessment of the merits of each adoptive situation using the criteria outlined in the Adoption Code.
- 5. Observe/interview the child depending on the child's age and capability.**
 - Determine the child's perception of being adopted.
 - Ascertain the child's wishes if the child is of an appropriate age, understanding that if a child has attained the age of 14 they must give consent to their adoption.
- 6. Contact/interview foster/adoptive parent(s) to determine child's adjustment since being freed for an adoptive placement.**
- 7. Attend the post-termination hearing and advocate for court orders and caseworker actions that will result in a quick adoption process for the child. Allow another attorney to substitute only with the court's approval.**
- 8. Understand the permanency goals for children – reunification, adoption, guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement - which are being made for the child. Be prepared to represent the child's best interests and/or wishes as they relate to these permanency options.**
- 9. Assure that there is evidence of written consent of the superintendent of MCI if a guardian is appointed by the court.**

CITATIONS

JUVENILE CODE

MCL 712A.19c Foster care following termination of parental rights; review hearings

OTHER STATUTES

MCL 722.871 – 722.881 Assistance to guardians of juveniles; duties and responsibilities of state departments and agencies

MCL 722.954b Permanent placement of child by 12 months after removal; adoptive families; monthly home visits

MCL 722.954c Child's medical provider, disclosure to supervising agency; medical passport, contents; assessments for abuse, costs

MCL 400.203 Michigan Children's Institute; admission

MICHIGAN COURT RULES

MCR 3.978 Post-termination Review Hearing: If a child remains in foster care following the termination of parental rights to the child, the court shall conduct a review hearing, at least every 91 days, as required by MCL 712A.19c; MSA 27.3178(598.19c) to review the progress toward permanent placement of the child. The court shall make findings on whether reasonable efforts have been made to establish permanent placement of the child, and may enter such orders as it considers necessary in the best interests of the child.

Section (C) permits the court to enter orders that include appointment of a juvenile guardian, as authorized by MCL 712A.19c. Section (D) allows the court to terminate its jurisdiction when a court enters an order of adoption or appoints a juvenile guardian.

MCR 3.979 Juvenile Guardianships: Establishes the court process for:

- appointment of a juvenile guardian
- the order appointing a juvenile guardian
- court jurisdiction
- court responsibilities regarding the guardianship
- the duties and authority of the juvenile guardian
- revocation or termination of a juvenile guardianship.

MCR 3.901(B)(4) states that provisions of MCR 3.979 concerning juvenile guardianship apply only to child protective proceedings

MCR 3.903 defines a juvenile guardian as being appointed the court in a child protective proceeding directs information concerning the juvenile guardian be kept in the confidential case file. MCR 3.920 requires that proof of service for a juvenile guardian be kept in the confidential case file.

KEY ISSUES

SUMMARY OF NEW REQUIREMENTS UNDER THE ADOPTION & SAFE FAMILIES ACT OF 1997

The Adoption and Safe Families Act of 1997 (ASFA), 105 Pub L 89, clarified the “*reasonable efforts*” requirements established in the Adoption Assistance and Child Welfare Act of 1980, 96 Pub L 272, and tightened the time requirements for achieving permanent placements for children. Judges and state agencies must comply with the requirements of this federal legislation in order to maintain partial federal funding of foster care services.

Although states still must make “*reasonable efforts*” to eliminate the need for foster care placement or to return a child home after placement in foster care, the child’s health and safety now must be the paramount concern in determining what is “reasonable.” 42 USC 671(a)(15) Thus, efforts to reunify a family must *not* be made if a court has determined that:

- the parent has subjected the child to “aggravated circumstances” (as defined in state law, including but not limited to, abandonment, torture, chronic abuse, and sexual abuse);
- the parent has committed murder of another child of the parent, voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited murder or voluntary manslaughter of another child of the parent, felony assault resulting in serious bodily injury to the child or another child of the parent; or
- the parental rights of the parent to a sibling have been terminated involuntarily.

42 USC 671(a)(15)(D)

If a court determines that reunification of the family will not occur because one of the above circumstances exists, the court must hold a “permanency hearing” (which may include a termination hearing) within 30 days of the determination. 42 USC 671(a)(15)(E) Provision is also made under ASFA for “*reasonable efforts*” to be made to place the child in accordance with a permanency plan, even if that plan does not involve a return home, and for “concurrent planning” (simultaneously planning for reunification and an alternative permanent placement). 42 USC 671(a)(15)(C) and (F)

The Michigan Legislature has defined circumstances in which it is reasonable not to attempt to reunify the family. If a parent is a suspected perpetrator of the following forms of abuse or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the Department of Human Services must request termination of parental rights at the initial dispositional hearing:

- abandonment of a young child;
- criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
- battering, torture, or other severe physical abuse;
- loss or serious impairment of an organ or limb;
- life threatening injury;
- murder or attempted murder; or
- there is a risk of harm to the child and the parent's rights to another child were terminated as a result of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state, or the parent's rights to another child were voluntarily terminated following the initiation of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.

MCL 722.638(1)-(2).

Several important changes were also made to time requirements involved in child protective proceedings. A “permanency hearing” (“permanency planning hearing” under Michigan law) is now required to be held within 12 months after the child enters foster care. 42 USC 675(5)(C) Moreover, the state must file (or join in filing) a petition for termination of parental rights if a child has been in foster care for 15 of the last 22 months, unless the child is in the care of a relative, a state agency has demonstrated a compelling reason why termination would not be in the best interests of the child, or the state has not provided necessary services for family reunification (in cases where *reasonable efforts* to reunify the family must be made). 42 USC 675(5)(E)

Lastly, foster parents, preadoptive parents, and relative caretakers must be given notice and an opportunity to be heard at reviews or hearings in protective proceedings. They may not be made parties to the proceeding *solely* on the basis of this new requirement, however. 42 USC 675(5)(G)

INDIAN CHILD WELFARE ACT

Prepared by Michigan Indian Legal Services, Inc. 134 W. State Street
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I. Application of Act

A. Is there an Indian child as defined under 25 USC 1903(4)?

(4) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

NOTE: At the preliminary hearing in a child protective proceeding, the Court must “inquire if the child or parent is a member of any American Indian tribe or band. If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child’s tribe, notify the tribe or band, and follow the procedures set forth in MCR 5.980.” MCR 5.965(B)(7).

B. Does this type of proceeding fall under the Act?

Under the definition of “child custody proceeding,” 25 USC § 1903(1), *any* situation where an Indian child is being placed outside the home by a court, with the exceptions of divorce and delinquency proceedings, falls under the Act. Status offenses fall under the Act.

(1) “**child custody proceeding**” shall mean and include:

(i) “**foster care placement**” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) “**termination of parental rights**” which shall mean any action resulting in the termination of the parent-child relationship;

(iii) “**preadoptive placement**” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) “**adoptive placement**” which shall mean the permanent placement of an

Indian child for adoption, including any action resulting in a final decree of adoption.

(2) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

II. Rights of the Child's Tribe

A. Tribe has exclusive jurisdiction if child is domiciled on the Tribe's reservation.

25 USC § 1911(a) Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

See also MCR 3.980(A)(1).

B. Notification of off-reservation proceeding.

25 USC § 1912(a) Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

See also MCR 3.980(A)(2).

C. Transfer of jurisdiction to Tribe.

25 USC § 1911(b) Transfer of proceedings; declination by tribal court. In any State court proceeding for the foster care placement

of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, that such transfer shall be subject to declination by the tribal court of such tribe.

See also MCR 3.980(A)(3).

D. Right to intervene in state court proceedings.

25 USC § 1911(c) State court proceedings; intervention. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

E. Right to effect placement priorities.

25 USC § 1915(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

See also MCR 3.980(C)(5).

F. Tribal acts records and proceedings to be accorded full faith and credit.

25 USC § 1911(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes. The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

III. Rights of parent of Indian child in involuntary proceedings

A. Appointment of counsel. (This right already exists under Michigan law for parents in child protective proceedings. Michigan courts do not generally appoint counsel to parents in guardianship proceedings, even though under current law a parent cannot have a child returned upon demand so that the guardianship proceeding is a child protective proceeding as defined by the ICWA. See the definition of foster care placement above. Courts should appoint counsel in guardianship matters and can later determine if the State of Michigan of the United States is liable for the cost.)

25 USC § 1912(b) Appointment of counsel. In any case in which

the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13) [25 USCS 13].

B. Examination of records.

25 USC § 1912(c) Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

C. The parents must be offered remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

25 USC § 25 1912(d) Remedial services and rehabilitative programs; preventive measures. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

D. Higher standards for removal than provided by state law.

1. For foster care placement need to prove “by **clear and convincing evidence, including testimony of qualified expert witnesses**, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”

25 USC § 1912(e) Foster care placement orders; evidence; determination of damage to child. No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

See also MCR 3.980(C)(3).

2. To terminate rights of parent of Indian child must prove “**beyond a reasonable doubt**, including the testimony of qualified expert witnesses”

25 USC § 1912(f) Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

IV. Rights of parent of Indian child in voluntary proceedings

A. Requirements for valid consent.

25 USC § 1913(a) Consent; record; certification matters; invalid consents. Where any parent or Indian custodian voluntarily

consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

B. Withdrawal of consent to foster care.

25 USC § 1913(b) Foster care placement; withdrawal of consent. Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

C. Withdrawal of consent to termination of parental rights.

25 USC § 1913(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

D. Two years from adoption to raise fraud or duress regarding consent.

25 USC § 1913(d) Collateral attack; vacation of decree and return of custody; limitations. After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

V. Placement priorities.

25 USC § 1915 (a) Adoptive placements; preferences. In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (1) a member of the child's extended family;
- (2) other members of the Indian child's tribe; or
- (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences. Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to their home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(a) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable. The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability. A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

See also MCR 3.980(C)(5).

VI. Duty of courts to invalidate any action taken in violation of Act, 1914, 1920.

25 USC § 1914

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

25 USC § 1920

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

VII. Emergency removal. 25 USC § 1922.

Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian

custodian, as may be appropriate.

VIII. Access to adoption records. 25 U.S.C. § 1917.

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

FEDERAL LAW

25 USC § 1901 *et seq*

44 Fed Reg 67584 (1979) non-binding guidelines for state courts.

Mississippi Band of Choctaw Indians v Holyfield 104 L Ed 2d 29, 109 S Ct 1597 (1989)

MICHIGAN CASES

Matter of Morgan, 140 Mich App 594, 364 NW2d 754 (1985). (ICWA preempts state law and standards in ‘ 1912 must be followed when Indian children are before Michigan courts.)

Matter of Kreft, 148 Mich App 682, 384 NW 2d 843 (1986). (Indian parents’ rights under the ICWA exist regardless of tribal involvement.)

Matter of Johanson, 156 Mich App 608, 402 NW 2d 13 (1986). (Parent must be enrolled member of Tribe prior to the Court making its final decision.)

Matter of Jacobs, 433 Mich 24, 444 NW 2d 789 (1989). (Note that ICWA requires clear and convincing evidence before children may be placed in foster care.)

Matter of Shawboose, 175 Mich App 637, 438 NW 2d 272 (1989). (See *Johanson*.)

Matter of Miller, 182 Mich App 70, 451 NW 2d 576 (1990). (ICWA does not deny equal protection to non-Indian parents.)

Matter of Hanson, 188 Mich App 392, 470 NW 2d 669 (1991). (Person adopted before passage of ICWA in 1978 still has right to release of adoption records under § 1917.)

Matter of Kiogima, 189 Mich App 6, 472 NW 2d 13, app. den’d, cert. den’d. *Walker v Michigan Department of Social Services*, 112 S Ct 952, 117 L Ed 2d 120 (1991). (Indian mother did not have right under ‘ 1913 (c) to

withdraw release to Dept of Social Services for adoption after termination order was entered.)

Matter of Elliott, 218 Mich App 196 (1996). (Lack of mother's involvement in Indian culture does not allow court to ignore provisions of ICWA and failure to comply with explicit directive in MCR 5.965(B)(7) to inquire about respondent's mother's or the minor tribal's legal status may have constituted reason to invalidate the proceedings.)

Family Independence Agency v Maynard, ___ Mich App ___; ___ NW2d___ (1999). (The Department of Human Services (formerly FIA) has a responsibility to investigate the child's tribal affiliation if they have reason to believe that the child has Native American heritage. The DHS must also send notice to the Department of Interior if the tribal identity of the child is not known, but it is believed that the children has some Native American heritage.)

OTHER MATERIAL

Levine, *The Indian Child Welfare Act: Federal Indian law in Michigan probate court proceedings*. 65 Mich B J 452 (1986)

Dorsay, *Adoptions and the Indian Child Welfare Act*, Youth Law News, p 14 (November-December 1993)

PATERNITY PROCEDURES IN FAMILY COURT

Often in child protective cases a child has been born out of wedlock and paternity has not been legally established. It is important to establish paternity for several reasons. The foster care agency may not know who is entitled to engage in a treatment plan. A putative father may be hesitant to engage in a treatment plan until it is proven that he is the father. If the inquiry into paternity is not done early in the case, a putative father may surface just as the agency is resolved to proceed toward termination of parental rights, and the child's stay in foster care may be prolonged while paternity is established and treatment plans are reconsidered. MCR 3.903(A)(7) defines a father as follows: (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage; (b) A man who legally adopts the minor; (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor; (d) A man judicially determined to have parental rights; or (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.

A "putative father" is a man alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7). If the child in question has a father as defined in MCR 3.903(A)(7), a putative father does not have standing in a child protective proceeding to allege that he is the child's biological father. *In re CAW*, 469 Mich 192, 199 (2003)

Fortunately, since 1988 there has been a procedure set forth in court rule to inquire into paternity in family court. This is in addition to Paternity Act proceedings in circuit court, and the affidavit of parentage provided for in the Acknowledgement of Parentage Act. The proceedings call for an initial inquiry into paternity, specific notice of hearing, the taking of testimony, and

findings by the court. If determined to be the father, the rule places responsibility on the putative father to legally establish paternity. The rule also specifies that a putative father who does not take steps to establish paternity loses important legal rights in the child protective case.

INITIAL TESTIMONY

MCR 3.921(C) provides that the court may inquire into paternity at any time during a family court proceeding if the court determines that there is no legally established father:

“The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in only manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry
MCR 3.921(C)(1)

The Notice to Putative Father (**Form JC 53**) informs him that he must appear at a certain time and place to state his interest, if any, in the child(ren). The form also contains several warnings that failure of the putative father to appear for the hearing as notified will constitute a denial of parental interest in the child(ren), a waiver of notice for all subsequent hearings, and a waiver of the right to court-appointed counsel. The form also contains a bold warning that “Your failure to appear at this hearing **COULD RESULT IN THE PERMANENT TERMINATION OF YOUR PARENTAL RIGHTS.**”

MANNER OF SERVICE

PATERNITY HEARING

After proper notice to the putative father, the court may conduct a hearing to determine whether appropriate notice was given to a putative father. In addition, the court may take testimony as to the identity of the child's natural father. The court rule provides the legal standard of a preponderance of the evidence for establishing the identity of the "natural father."

- 1) Cannot Determine Paternity: If the court finds "after diligent inquiry" that the identity of the natural father cannot be determined, the court may proceed without further notice or court-appointed attorney for the unidentified person. The court should enter a written finding that the natural father is unidentifiable.
- 2) Different Father: If the testimony gives the court probable cause to believe that another identifiable person is the child's natural father, the court must start the process again and give that person proper notice of a hearing to inquire into paternity.
- 3) Paternity Determined: If the court determines by a preponderance of the evidence that the putative father is the child's natural father, the court may allow fourteen (14) or more days for the person to establish his according to MCR 3.903(A)(7).

WAIVER OF RIGHTS

A very important aspect of the MCR 3.921(C) paternity proceedings is that if the putative father either fails to appear for the paternity hearing after proper notice or fails to establish paternity within the time set by the court, the court may find that the natural father "**waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney.**" The rule does not state that the waiver of these rights is automatic. Instead, the court should make a written finding regarding the waiver of these important rights at the paternity hearing if the father fails to appear, or at a subsequent hearing if the father fails to establish paternity within the time set by the court.

NOTICE REQUIREMENTS/SERVICE OF PROCESS

Before the family court can successfully resolve a child protective matter, the court must first have **subject matter jurisdiction** over the proceeding and **personal jurisdiction** over the parties. It is up to the judge or referee through the preliminary inquiry or hearing process to determine that a complaint or petition properly alleges a child protective matter. *In re Kurzawa*, 95 Mich App 346 (1980), is an example of lack of subject matter jurisdiction. There a case reached the termination of parental rights stage before the Court of Appeals ruled that the proceedings were void because the petition essentially alleged matters of delinquency or incorrigibility. Subject matter jurisdiction is also discussed in *In re Hatcher*, 443 Mich 426 (1993).

In order to obtain **personal jurisdiction** over the parties to a child protective proceeding, the notice requirements of the Juvenile Code and Michigan Court Rules [MCR] must be met. Notice/service issues, once perfected, form a relatively minor portion of a child protective case. However, if neglected, they hold the single greatest potential for later reversal by an appellate court. Lack of personal jurisdiction over a parent, for example a non-custodial, non-respondent parent, does not deprive the court of jurisdiction over the child and other parent(s) properly served. However, before the Court can issue effective orders to the parent(s) without proper service/notice, service of process must be perfected on that parent.

It is important that attorneys, caseworkers, and court staff be familiar with the notice requirements. The Court of Appeals has observed, in what may be more than dicta, that:

“The DSS, as the petitioning party, is charged with providing that service of process is accomplished in accordance with the court rules.” *In re Adair*, 191 Mich App 710, at 715 (1991).

The *Adair* case involved a holding that a family court had proceeded without jurisdiction as to parent(s) where there was no personal service of a summons (order to appear), and no court determination that *reasonable efforts* had been made to locate the parent(s) before alternate service methods

were allowed. Although notice/service of process is handled by most family courts instead of DHS, the *Adair* case shows that the responsibility is a shared one.

PRELIMINARY INQUIRY

When protective custody (placement) of the child is not sought, and the child is not already in temporary custody, the filing of a child protective petition may be considered by the court at a preliminary inquiry. MCR 3.962 Because there are no procedural requirements for a preliminary inquiry, there are no minimum notice requirements. If the court wishes the attendance of parties at a preliminary inquiry, it would appear that any manner of notice reasonably calculated to reach the parties would be sufficient.

PRELIMINARY HEARING

Preliminary hearings in child protective cases are held when a child has been placed in protective custody on an *ex parte* basis, or when the petition is accompanied by a request for placement. Preliminary hearings are frequently scheduled on **very short notice**, either because of the 24-hour rule of MCR 3.965 when a child has been placed in temporary custody by the police or on an *ex parte* Order to Place in Temporary Custody, or because placement is being sought at the preliminary hearing. The court rule provides:

“When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974(B)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.”
MCR 3.920(C)(2)(b).

It is up to the judge or referee at the preliminary hearing to determine whether or not the parent, guardian, or legal custodian has been notified. If a parent, guardian, or legal custodian is not present, the court may choose to proceed with the hearing or to adjourn for further attempts to notify the parent(s), guardian(s), or legal custodian(s) and secure their presence. Notice to non-custodial parent(s) and other interested parties is optional and is subject to policy decisions by Children’s Protective Services and the court.

ADJUDICATION

A summons (order to appear, form JC 21), with an attached copy of the petition, may be issued and served “on a party before any juvenile proceeding.” MCR 3.920(B)(1) By a check box on the summons form, the person summoned may be directed to appear with the child in court, or the court may direct that the child’s appearance is not necessary.

WHO MUST BE SUMMONED

In a child protective matter, prior to the adjudication hearing, a summons must be issued and served on a respondent. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing at least 7 (seven) days before the adjudication.

MANNER OF SERVICE

A summons (order to appear), with a copy of the petition attached, must be served “by delivering the summons to the party personally.” MCR 3.920(B)(4)(a) This specifies a face-to-face, hand-to-hand delivery. Section 13 of the Juvenile Code provides that service may be made by any peace officer or by any other suitable person designated by the judge.

ALTERNATE SERVICE

The statute and court rules also provide that if the court finds on the basis of testimony or a motion and affidavit that personal service is impracticable or cannot be achieved, alternate means of service and notice may be utilized.

Impracticable is something different from either impractical or impossible. Impracticable means basically that personal service **may not be easily or readily affected by available means**. A Motion for Alternate Service (form JC 46) and an Order for Alternate Service (form JC 47) may be utilized by the parties and the court to accomplish alternate service. If it finds that personal service is impracticable or cannot be achieved, “the court may by ex parte order direct that [a summons] be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.”

The most common flaws in alternate service efforts are failures to appropriately utilize the Motion and Order for Alternate Service. The party seeking substitute service must first convince the court that *reasonable efforts* have been made to locate and personally serve the party. If there is a resort to substitute service prior to these efforts, or without an adequate paper trail, there is the potential for reversible error as in the *Adair* case, *supra*.

TIME LIMITS

The amount of time in advance of a hearing in which a parent must be summoned or notified is set forth in § 13 of the Juvenile Code and MCR 3.920(B)(5).

Type of Hearing Type of Service - Time Limit Plea

service 3 days prior Trial Summons, personal

Summons, personal

service 7 days prior

Certified mail 14 days inside Michigan
Certified mail 21 days outside Michigan

Over time, some differences in time limits have developed between Section 13 of the Juvenile Code and MCR 3.920. Even though the Court Rules are adopted by the Michigan Supreme Court in its rule-making capacity, the Michigan Court of Appeals has held in *In re Mayfield*, 198 Mich App 226 (1993), that notice requirements of the Juvenile Code are jurisdictional, while the requirements of the Court Rules are not. Notwithstanding the *Mayfield* case, the parties would be wise to scrupulously adhere to the time limits in the Court Rules.

OTHER PARTIES ENTITLED TO NOTICE

In addition to the parent(s) summoned for the adjudication hearing, other parties are legally entitled to notice of the hearing. MCR 3.921(B)(1) provides:

“the court shall insure that the following persons are notified of each hearing:

- (a) the respondent,
- (b) the attorney for the respondent,
- (c) the lawyer-guardian ad litem for the child,
- (d) the parents, guardian, or legal custodian, if any, other than the respondent,
- (e) the petitioner,
- (f) a party guardian ad litem appointed pursuant to these rules, and
- (g) any other person the court may direct to be notified.”

WAIVER OF NOTICE

Any party entitled to notice of a hearing may waive notice of hearing or service of process. The court rule, MCR 3.920(E), requires that the waiver shall be in writing. **Form JC 23**, Waiver of Notice Hearing, advises the parties of the basic rights and procedures that are also contained on the summons form.

A party’s appearance at and participation in a hearing constitutes a waiver of defects in service for that hearing unless the party objects to the specific defects on the record. See MCR 3.920(G).

NOTICE TO PRIOR COURT

A different type of notice is called for by MCR 3.205, the rule on Prior and Subsequent Orders and Judgments Affecting Minors. Where a proceeding involves a minor known to be subject to the prior continuing jurisdiction of another Michigan court, “the plaintiff or other initiating party” is required to mail written notice of the subsequent proceeding on form JC 30 to the clerk of the prior court. It is common that the children involved in a child protective proceeding are under the prior-continuing jurisdiction of the circuit court in a divorce, paternity, or support case. Local practice will determine whether the petitioner or the clerk of the family court is expected to complete the Notice to Prior Court.

Under prior rules, and older appellate cases, there was some confusion over whether the subsequent court could enter more than temporary orders without the explicit approval of the prior court. The authority of the family court to enter permanent orders as the subsequent court was settled by *Krajewski v Krajewski*, 420 Mich 729 (1984). The rule also reads:

“If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.” MCR 3.205(A).

INDIAN CHILD WELFARE ACT

The federal Indian Child Welfare Act, 25 USC § 1901 et seq., imposes specific notice requirements for a state child protective proceeding involving an Indian child. Child welfare professionals should familiarize themselves with the Act’s very specific definitions of Indian child, Indian tribe, and custody proceeding. Section 1912 of the Act requires that notice of proceedings and rights under the Act must be sent when foster care is recommended or termination of parental rights is requested. Under the Act, the Indian child’s tribe has the right to intervene in the proceeding, and the parent(s) or the tribe have the right to request transfer of the proceeding to the tribal court. The Act states that the notice must be given by the petitioner. Michigan has developed a notice, **Form JC 48**, for this purpose. The notice must be sent by registered mail, return receipt requested, and must be received at least ten (10) days before the proceeding. The notice must be sent to the parent(s) or Indian custodian (as defined by the Act), and to the Indian child’s tribe. If the identity or location of any of these parties cannot be determined, the notice must be sent to the Secretary of the Interior, which oversees the Bureau of Indian Affairs. Section 1922 of the Act provides that the notice requirements do not apply to the emergency removal of an Indian child to prevent imminent physical damage or harm to the child.

DISPOSITIONAL REVIEW & PERMANENCY PLANNING HEARING

Written notice of review hearings must be given at least 7 days prior to a regular review hearing, and 14 days prior to a permanency planning review hearing.

OTHER PARTIES ENTITLED TO NOTICE

In addition to the parent(s) notified of the review hearing, MCR 3.921(B)(2) also specifies other persons entitled to notice of the hearing. They are:

- (a) The agency responsible for the care and supervision of the child,
 - (b) The person or institution having court-ordered custody of the child,
 - (c) The parent of the child and the attorney for the respondent parent(s) unless parental rights have been terminated,
 - (d) The guardian or legal custodian of the child, if any,
 - (e) The guardian ad litem for the child,
 - (f) The lawyer guardian ad litem for the child,
 - (g) The attorneys for each party,
 - (h) The prosecuting attorney if the prosecuting attorney has appeared in the case,
 - (i) The child, if 11 years or older,
 - (j) Any tribal leader if there is an Indian tribe affiliation, and
 - (k) Any other person the court may direct to be notified.
- (a) the agency responsible for the care and supervision of the child,
 - (b) the foster parent(s) or custodian of the child,
 - (c) the parent(s) of the child and the attorney for the respondent parent(s) unless parental rights have been terminated,
 - (d) the guardian of the child,
 - (e) the guardian ad litem for the child,
 - (f) the attorney for the child,
 - (g) the child, if 11 years or older,
 - (h) any tribal leader if there is an Indian tribe affiliation,
 - (i) any other person the court may direct to be notified, and
 - (j) the prosecutor.

SUPPLEMENTAL OR AMENDED PETITION -

<u>Type of Hearing</u>	<u>Type of Service - Time Limit</u>
Termination of Parental Rights	Summons, personal service 14 days prior Certified mail 21 days inside Michigan Certified mail 28 days inside Michigan Publication in newspaper 21 days prior

TERMINATION

Where termination of parental rights has not been requested in the initial petition, a supplemental or amended petition for permanent wardship is legally an extension of the dispositional phase of a child protective case.

Where a supplemental or amended petition requesting termination of parental rights is filed, the court is required, under MCL 712A.20, to issue a new summons. This summons must be personally served on the respondent parent; service on the respondent parent's attorney is insufficient. Moreover, personal service on the respondent-parent is required even though the respondent-parent previously waived service during the "temporary wardship phase" of proceedings. In re Atkins, 237 Mich App 249,251 (1999) and MCR 3.902(F)

TIME LIMITS

The amount of time in advance of a termination hearing in which a parent must be summoned or notified is set forth in § 13 of the Juvenile Code and MCR 3.920(B)(5).

OTHER PARTIES ENTITLED TO NOTICE

In addition to the parent(s) summoned to or notified of the termination hearing, MCR 3.921(B)(3) also specifies other persons entitled to notice of the hearing. They are:

- (a) the agency responsible for the care and supervision of the child,
- (b) the foster parent(s) or custodian of the child,
- (c) the parent(s) of the child and the attorney for the respondent parent(s) unless parental rights have been terminated,
- (d) the guardian of the child,

- (e) the guardian ad litem for the child,
- (f) the attorney for the child,
- (g) the child, if 11 years or older,
- (h) any tribal leader if there is an Indian tribe affiliation,
- (i) any other person the court may direct to be notified, and
- (j) the prosecutor.

These interested parties may be notified by regular mail by a form JC 45 Notice of Hearing, at least 14 days before the termination hearing. MCR 3.920(C)(3)(b)

SUPPLEMENTAL PETITIONS - NEW ABUSE OR NEGLECT

MCR 3.973(H)(1)-(2) “Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are governed by MCR 3.977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.”

No right to jury trial exists at either type of hearing specified under MCR 3.973(H). See *In re Miller*, 178 Mich App 684, 686, (1989).

POST-TERMINATION REVIEW HEARING

Section 19c of the Juvenile Code and MCR 3.978 do not specify what type of notice and interested parties are required for the post-termination review of the child's progress toward adoption or other permanent placement. It would appear that written notice by regular mail at least seven days prior to the hearing would be appropriate, to the agency, child's lawyer-guardian ad litem, and the child if 11 years or older.

CHANGE IN FOSTER CARE PLACEMENT

Section 13b of the Juvenile Code requires the agency supervising the placement of the child to notify the court, foster parents, State Court Administrative Office, and the child's lawyer guardian ad litem of a change in foster care placement. The notice must include the reason for the change in placement, the number of times the child has changed placements, whether the child will have to change schools, and whether the change will separate or reunite siblings or have an effect on visitation between siblings.

FOSTER CARE REVIEW BOARD (FCRB)

CITIZEN REVIEW - BACKGROUND

The Foster Care Review Board Program (FCRB) performs third-party reviews of child foster care cases in Michigan. Established by the Michigan Legislature in 1984 Public Act 422, as subsequently amended by 1986 PA 159, 1989 PA 74, and 1997 PA 170, the FCRB helps ensure that children are safe and well cared for while in the state's foster care system, and that their cases move toward permanency in a timely and efficient manner.

The FCRB was established to support the local courts and child placing agencies in their efforts to serve these children, and to help monitor our state's compliance with federal funding legislation, especially the Adoption Assistance and Child Welfare Act of 1980, which required that states make reasonable efforts to achieve safe and timely permanency for children in their foster care systems. The FCRB works to achieve those goals by reviewing individual foster child cases within each county, and then providing case-specific recommendations to the family division of the local circuit court, to local offices of the Department of Human Services (DHS), and to contracted agencies. Review boards from counties throughout the state meet monthly to review five randomly or specifically selected cases of children who are at various stages of progress toward permanency.

The FCRB's 30 local review boards are composed of citizen volunteers from a variety of professions and backgrounds. The volunteers are recruited, screened, and then trained on key aspects of the child welfare and foster care systems, including court policy and rules, federal funding requirements, DHS policy, and the state statutes regarding child protection.

PROCESS OF REVIEW

Cases are chosen primarily through random selection, but a review can be requested by any party connected with the case. A review may be requested by contacting the local FCRB office listed at the conclusion of this FCRB summary. Once a case is opened for review, it is reviewed at least every six months until the permanency goal is achieved.

Each case review proceeds in three stages. The first stage involves the

board members reading the case file and interested parties' survey responses to determine the reasons for the out-of-home placement, the agency's plan for care and services to the child and family, and the efforts and progress being made toward permanency.

The second stage involves in-person interviews with persons defined as "interested parties" to the case. Interested parties include caseworkers, biological parents, foster parents, attorneys for the child and parents, the child or children themselves (when appropriate), CASAs, therapists, and others the board may identify as having information relevant to the case. Interested parties who cannot attend receive survey forms so that they can provide written input for the review.

During the third stage of the review process, the board compiles written findings of fact and makes *advisory* recommendations regarding the case reviewed. These recommendations, which address issues related to safety, well being, and the permanency plan, are provided to the family division of the circuit court, the DHS, private agencies, prosecuting attorneys, and interested parties. The court may use the findings at its discretion. Final decision-making authority with regard to the care of a child in foster care always rests with the family division of the circuit court.

FOSTER PARENT APPEALS

With the passage of 1997 Public Acts 163 and 170, foster care review boards were given the added responsibility of investigating foster parent appeals, which occur when a foster parent disagrees with the removal of a ward from the foster parent's home.

Foster parents (and relative caregivers) may contact the review board at 1-888-866-6566 to appeal the removal of a child from their home, except under the following conditions:

- The child has been in foster care less than 30 days.
- The child has been in foster care less than 90 days and the proposed move is to the home of a relative.
- The foster parent or relative caregiver requested or agreed to the move.
- The court has ordered the child returned home.

To initiate an FCRB appeal, a foster parent or relative caregiver must contact the board within three working days after receiving a notice of removal from the placing agency. Information regarding appeal rights and how to contact the FCRB must be provided by the agency at the time the caregiver is notified of the removal. The FCRB must complete its appeal investigation within seven working days of receiving the first call.

Based on the information provided by the agency and the foster parent, the board is responsible for determining if the move is truly in the child's best interest. If the board determines that it is, the appeal ends and the agency may move the child. On the other hand, if the board determines that it is in the child's best interest to remain with the appealing foster parent or relative, and the child is a temporary or permanent court ward, a written report with the board's recommendations is forwarded to the court. If the child is a Michigan Children's Institute (MCI) ward, the report is forwarded to the MCI superintendent. The court or the MCI Superintendent then has 7-14 days to make the final determination.

ANNUAL REPORT

The FCRB is charged with providing an objective evaluation of the foster care system as a whole and issuing an annual report to the Governor, the Legislature, and the State Court Administrative Office. As the only official

entity observing the operations of both the courts and the child placing agencies, the FCRB is in the unique and necessary position of being able to evaluate their ability (individually and together) to ensure the safety, well being, and timely permanency of children in the foster care system.

Through the process of *individual* case review, the FCRB also identifies *systemic* barriers and issues. Proposed recommendations to address those problems are then generated with the assistance of a statewide advisory committee consisting of board members, child welfare professionals, and child welfare advocates from throughout the state.

SUMMARY

Citizen review remains a cost efficient, effective means of providing the courts, DHS, the Legislature, and other interested parties with an objective perspective on both case management and systemic barriers to child safety, permanency, and well being, while simultaneously monitoring compliance with important aspects of federal funding requirements.

Citizen participation in foster care review is beneficial in several ways. First, citizens who participate develop an awareness of the foster care system and, consequently, can educate their community regarding the system's needs and challenges. Second, over time, citizen reviewers become informed advocates for children and the system; their acquired knowledge allows them to advocate effectively for needed resources and services on both the state and local levels. Third, citizen reviewers help to provide quality control in the foster care system, both by facilitating positive outcomes for children and families and by ensuring the system's compliance with federal funding requirements. Finally, citizen participation in case reviews opens the system to the community, thus broadening the base of accountability for public services provided to our state's most vulnerable children and families.

The Michigan Foster Care Review Board Program is administered by the State Court Administrative Office of the Michigan Supreme Court.

Detroit office: Cadillac Place 3034 W. Grand Blvd., Suite
8-400 Detroit, MI 48202
(313) 972-3280

Gaylord office:
P.O. Box 9 Gaylord, MI 49735
(989) 732-0494

MICHIGAN CHILDREN'S OMBUDSMAN

The Office of Children's Ombudsman (OCO) is an independent state agency created by Public Act 204 of 1994 (the Children's Ombudsman's Act) with authority to investigate children's protective services, foster care, adoption services, and juvenile justice cases handled by the Department of Human Services (DHS) and private child-placing agencies.

The mission of the Office of the Children's Ombudsman is to assure the safety and well-being of Michigan's children in need of foster care, adoption, and protective services and to promote public confidence in the child welfare system. This will be accomplished through independently investigating complaints, advocating for children, and recommending changes to improve law, policy, and practice for the benefit of current and future generations.

The OCO has the legal authority to:

- Independently investigate complaints from any individual about children involved with protective services, foster care, adoption services, and juvenile justice.
- Determine if an action or decision was made according to the laws, rules, and policies governing DHS and private child-placing agencies.
- Take all necessary action, including legal action, to protect the rights and welfare of a child.
- Investigate cases involving children who have died as a result of child abuse or neglect when there has been previous agency involvement.
- Inform complainants of the results of the OCO investigation, DHS' response and any action taken to correct the problems.
- Make recommendations to the Governor, Legislature, and the DHS director to improve the child welfare system.
- Educate the public about child welfare laws and policies.

The OCO has no legal authority to investigate complaints that exclusively involve: Friend of the Court issues (custody, parenting time, child support), guardianship, school truancy, law enforcement, court orders, and judges.

If a decision is made to open a case for investigation, the OCO will order a copy of the child's confidential DHS and/or private child-placing agency case file. An OCO investigator will then conduct an independent investigation of the complainant's issues by:

- Reviewing documents contained in the file (agency documents, court documents, medical records, etc.).
- Interviewing caseworkers, supervisors, and other professionals who have knowledge of the child's case.
- Determining whether the agency's actions and decisions complied with laws and policies and were in the best interests of the child.

Contact information for the OCO:

P.O. Box 30026, Lansing, MI 48909
(517) 373-3077 or (800) 642-4326 (MICH-FAM) TTY: (800)
649-3777 Fax: (517) 335-4471
E-mail: Childombud@michigan.gov Website: [www.michigan.gov/
oco](http://www.michigan.gov/oco)

KINSHIP CARE

Kinship programs involve the extended kinship network in providing care and protection for children in need of placement due to parental child abuse or neglect. The programs utilize family group conferences to divert children from the formal foster care system, thus providing culturally competent family and community network intervention. Kinship care may be used for family support, temporary care, emergency placement, or long-term care.

Kinship programs employ a team approach between children's protective service workers and the Kinship staff. The team identifies concerned members of the child's kinship network, convenes a family group meeting, develops a plan for the child's safety, and provides supports to kinship or community caregivers and parent(s). The process ensures that children in need of permanent families will receive timely support, assessment, and casework services with minimal court involvement. This innovative approach to permanency planning recognizes the important connections of the child, the family, and the community.

Michigan's Department of Human Services formally recognized the benefits of kinship care in April of 1997 when it incorporated aspects of kinship care policies and principles into the service policies of its Division of Children's Protective Services. The new policy states that, provided the placement will meet the health and safety needs of the child, the preferred placement for children is within the kinship family network. This network includes kin, who are defined as blood relatives or relatives by marriage, and "fictive" kin, who are defined as non-blood or marriage-related adults who have a psychological/emotional bond with the child and are identified as "family." CPS workers are also required to identify and use kinship care relationships during an investigation and they must explore kinship care options with family and/or the foster care worker. While children may be placed with kin without legal guardianship, "fictive" kin must have legal guardianship for a non-relative child to be placed in their home. If necessary, CPS workers are to work with "fictive" kin to secure legal guardianship. The state has such strong confidence in the effectiveness of kinship care that if a child is not placed within the kinship network, CPS workers are required to document the steps taken to place the child in kinship care and the reasons why the child was not placed in such care. Kinship care families may be eligible for various services (food stamps, cash assistance, etc.) in order to prevent placement in non-kinship foster care. If services are needed, CPS

workers should assist the family in securing access to them. By incorporating the principles of Kinship programs, the Department of Human Services seeks to further its mission of strengthening families by empowering them to help each other.

There are various Kinship programs throughout the state. Funding provided by The Kellogg Foundation has been used to adapt the family group conference model, which originated in New Zealand, to Michigan. In Grand Rapids, the family conference model was utilized to develop “The Family and Community Compact” through a community permanency planning initiative. The Grand Rapids Foundation administers this particular kinship program.

COURT APPOINTED SPECIAL ADVOCATES (CASA)

INTRODUCTION

Court Appointed Special Advocates (CASAs), are specially trained citizen volunteers, appointed by family court judges to advocate for abused and neglected children who come before the court in protective proceedings. The CASA sees the child every week to ten days; gathers information about the child and the case from court files; maintains contact with professionals and others with pertinent information about the child; monitors court order and case service plans; and makes regular reports to the court. In many cases the CASA is the only consistent person in the child's life.

CASA has been proven effective in achieving lasting permanence in both state and tribal courts. Studies have demonstrated that children with CASAs were less likely to re-enter the foster care system once discharged as compared to children without a CASA. Research also indicates that children and families served by CASAs have more services provided by child welfare agencies, and children with a CASA experience fewer placements than those without these volunteers.

CASA originated in Seattle, Washington in the late 1970s when Judge David Soukup, a juvenile court judge, was concerned that he had the best information possible in making decisions that would have long-term impact on a child's life. He established a program of trained volunteers who would gather information about the child and make recommendations to him in the child's best interests. The concept spread and in 2008 there are over 1,000 CASA programs nationally.

The National CASA Association and the Michigan Association of CASA have established standards for the development and operation of CASA programs. If a local program uses the name "CASA" it must meet these standards. They are basic rules of operation to ensure that programs are developed in a manner that will support their long-term sustainability. At issue is the need for sufficient planning and structure to maintain and support the CASA volunteers.

The National CASA Association recognizes four models for programs. They include:

- CASA/Attorney model in which the CASA works in partnership with the child's attorney, with the CASA providing information about the child to the attorney;
- CASA as GAL where the CASA is substituted for the child's attorney except in proceedings where the case goes to trial;
- CASA as Friend of the Court in which the CASA is an independent fact finder for the court, gathering information and reporting to the court; or
- CASA as Monitor in which the volunteer monitors court orders and reports to the court on compliance. There is no direct long-term contact with the child.

CASA programs in Michigan use three basic program structures: court-based with all costs for program and staff assumed by the court; a non-profit corporation that independently raises its own funds and provides its own staff; or a program of an existing non-profit such as a child abuse council or other type of agency with similar philosophies. Local communities determine the program structure that can best be sustained by the county.

Most programs in Michigan use the CASA/Attorney model with some modifications to meet the needs of courts and jurists.

Individual counties determine specific issues around the CASAs relationship to the court such as the question of whether the CASA will have party status or at what point in the proceedings a CASA will be appointed. The local programs in consultation with the jurists who will be appointing advocates generally resolve these issues.

The Michigan Association of CASA is a network of local program directors that serve as a support network for one another as well as in an advisory capacity to promote CASA and child advocacy issues in Michigan. MICASAA's support to local programs include statewide conferences for CASA volunteers, staff and other interested professionals; train the trainer seminars for CASA directors; and legislative advocacy efforts.

ROLES AND RESPONSIBILITIES OF A CASA

The individual appointed by the court to serve as the child's CASA must perform ten interrelated duties. The CASA must:

- 1 Act as an independent gatherer of information whose task it is to review all relevant records and interview the child, parent(s), social workers, teachers, and other persons to ascertain the facts and circumstances of the child's situation.
- 2 Ascertain the interest of the child taking into account the child's age, maturity, culture, and ethnicity consistent with providing the child with a safe home, taking into account the need for family preservation and permanency planning.
- 3 Seek cooperative solutions to the child's situation within the scope of the child's interest and welfare.
- 4 Provide written reports of findings and recommendations to the court at each hearing to ensure that all the relevant facts are before the court and ensure that appropriate motions are filed seeking child-centered relief.
- 5 Appear at all hearings to represent the child's interests, providing testimony or ensuring that appropriate witnesses are called and examined.
- 6 Explain the court proceedings and the role of CASA to the child, when appropriate, in language and terms that the child can understand.

7 Ask that clear and specific orders are entered for the evaluation, assessment, services, placement, and treatment of the child and the child's family.

8 Monitor implementation of service plans and dispositional orders to determine whether services ordered by the court are actually provided in a timely manner, and are accomplishing their desired goal. Monitor the progress of a case through the court process and advocate for timely hearings.

9 Inform the court promptly if services are not being made available to the child and/or family, if the family fails to take advantage of such services, if services are not achieving their purpose, and bring to the court's attention any violation of orders, new development, or changes in the child's circumstances.

10 Advocate for the child's interests in mental health, educational and other community systems.

In order to accomplish these goals, the following conditions must exist:

- 1. Sensitivity to the individual child's needs** CASAs should be knowledgeable about a child's culture and ethnic backgrounds, as well as age related abilities. The CASA should gain the child's trust by having regular, face to face contact with the child and be able to speak the child's native tongue or have an interpreter assigned.
- 2. Independence** The CASA must be objective and independent. There should be no conflict of interests. The CASA must be permitted to conduct a thorough fact-finding investigation. The appointment order should allow the CASA to speak for the child in other courts or proceedings such as divorce, criminal and all juvenile proceedings.
- 3. Selection and Training** The CASA must be carefully screened before appointed and receive a minimum of 30 hours training on issues related to the performance of the duties detailed above. CASAs should receive ongoing training throughout their appointment.
- 4. Early Appointment** The CASA should be appointed at the earliest stage in the court proceedings and should remain involved until the child is in a legally sanctioned permanent placement and the case is dismissed by the court system. The CASA role during the initial states of a case, prior to adjudication is to gather facts related to the child's past and current situation; to determine what services have been previously provided to prevent foster care placement and to assist what services are necessary to meet the child's needs and to reunify the family.
- 5. Status** In most cases the volunteer should be a party or have the same rights as other parties to the proceedings. In all cases the volunteer should have access to an attorney who can file legal motions, request hearings before the court when the court's orders are not being followed or are determined not to be in the child's best interests, examine and cross examine witnesses and subpoena witnesses. The volunteer should be entitled to receive copies of all requests for discovery and responses, copies of correspondence and other appropriate documents and participate in the proceedings.
- 6. Access to Information** The CASA must have complete access to all information related to the child and the child's situation. Such

information may include: records of DHS, law enforcement, the court, schools, public health, medical providers, substance abuse treatment and mental health history. The CASA must also be allowed to interview the child, parent(s), social service staff, law enforcement personnel and any other individuals who have knowledge of the child if local rules of ethics allow.

- 7. Immunity** A CASA must have immunity from liability when performing duties described in the job description unless an act, or failure to act, is willfully wrongful or grossly negligent.
- 8. Accountability** Individuals serving in the role of CASA must be held accountable for their performance by participating in regular performance evaluations.

APPENDIX A

MICHIGAN JUVENILE CODE (Relevant sections)

MICHIGAN JUVENILE CODE

MCL 712A.1 Definitions; proceedings not considered criminal proceedings; construction of chapter

(1) As used in this chapter:

(a) “Civil infraction” means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL 600.113.

(b) “County juvenile agency” means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(c) “Court” means the family division of circuit court.

(d) “Foreign protection order” means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(e) “MCI” means the Michigan children’s institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(f) “Personal protection order” means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(g) “Valid foreign protection order” means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) Except as otherwise provided, proceedings under this chapter are not criminal proceedings.

(3) This chapter shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.

MCL 712A.2 Authority and jurisdiction of court

The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. If the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction

as provided in that section. The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of

authorizing a complaint and warrant. As used in this sub-subdivision, “specified juvenile violation,” means 1 or more of the following:

(A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(B) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this paragraph, “dangerous weapon” means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(C) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency. (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403

(E) An attempt to commit a violation described in paragraphs (A) to (D).

(F) Conspiracy to commit a violation described in paragraphs (A) to (D).

(G) Solicitation to commit a violation described in paragraphs (A) to (D).

(H) A lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(I) Another violation arising out of the same transaction as a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(2) The juvenile has deserted his or her home without sufficient cause, and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile’s parent, guardian, or custodian have exhausted or refused family counseling.

(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.

(4) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile's parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, "learning program" means an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition.

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5) and the custody of that juvenile is subject to the prior or continuing order of another court of record of this state, the manner of notice to the other court of record and the authority of the court to proceed is governed by rule of the supreme court.

(c) Jurisdiction over juveniles under 18 years of age, jurisdiction of whom has been waived to the family division of circuit court by a circuit court under a provision in a temporary order for custody of juveniles based upon a complaint for divorce or upon a motion related to a complaint for divorce by the prosecuting attorney, in a divorce judgment dissolving a marriage between the juvenile's parents, or by an amended judgment relative to the juvenile's custody in a divorce.

(d) If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning a juvenile between the ages of 17 and 18 found within the county who is 1 or more of the following:

(1) Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.

(2) Repeatedly associating with criminal, dissolute, or disorderly persons.

(3) Found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.

(4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.

(5) Willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.

If a juvenile is brought before the court in a county other than that in which the juvenile resides, before a hearing and with the consent of the judge of the court in the county of residence, the court may enter an order transferring jurisdiction of the matter to the court of the county of residence. Consent to transfer jurisdiction is not required if the county of residence is a county juvenile agency and satisfactory proof of residence is furnished to the court of the county of residence. The order does not constitute a legal settlement in this state that is required for the purpose of section 55 of the social welfare act, 1939 PA 280, MCL 400.55. The order and a certified copy of the proceedings in the transferring court shall be delivered to the court of the county of residence. A case designated as a case in which the juvenile shall be tried in the same manner as an adult under section 2d of this chapter may be transferred for venue or for juvenile disposition, but shall not be transferred on grounds of residency. If the case is not transferred, the court having jurisdiction of the offense shall try the case. (e) Authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of a juvenile who does not require formal court jurisdiction but otherwise falls within subdivision (a). These services shall be used only if the juvenile and his or her parents, guardian, or custodian voluntarily accepts them.

(f) If the court operates a detention home for juveniles within the court's jurisdiction under subdivision (a)(1), authority to place a juvenile within that home pending trial if the juvenile is within the circuit court's jurisdiction under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if the circuit court orders the family division of circuit court in the same county to place the juvenile in that home. The family division of circuit court shall comply with that

order.

(g) Authority to place a juvenile in a county jail under section 27a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.27a, if the court designates the case under section 2d of this chapter as a case in which the juvenile is to be tried in the same manner as an adult and the court determines there is probable cause to believe that the offense was committed and probable cause to believe the juvenile committed that offense.

(h) Jurisdiction over a proceeding under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, in which a minor less than 18 years of age is the respondent, or a proceeding to enforce a valid foreign protection order issued against a respondent who is a minor less than 18 years of age. A personal protection order shall not be issued against a respondent who is a minor less than 10 years of age. Venue for an initial action under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, is proper in the county of residence of either the petitioner or respondent. If the respondent does not live in this state, venue for the initial action is proper in the petitioner's county of residence.

MCL 712A.2a Continuing jurisdiction beyond maximum age; definitions.

(1) Except as otherwise provided in subsection (2), if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner by court order.

(2) If the court has exercised jurisdiction over a juvenile under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, jurisdiction may be continued under section 18d of this chapter until the juvenile is 21 years of age.

(3) If the court exercised jurisdiction over a child under section 2(h) of this chapter, jurisdiction of the court continues until the order expires but action regarding the personal protection order after the respondent's eighteenth birthday shall not be subject to this chapter.

(4) This section does not apply if the juvenile is sentenced to the jurisdiction of the department of corrections.

(5) As used in this chapter, "child", "juvenile", "minor", or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the court under section 2 of this chapter and over whom the court has continuing jurisdiction pursuant to subsections

(1) and (3).

MCL 712A.2b Violation of vehicle code or corresponding ordinance; procedure.

When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a provision of an ordinance substantially corresponding to any provision of Act No. 300 of the Public Acts of 1949, the following procedure applies, any other provision of this chapter notwithstanding:

(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by section 728 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.728 of the Michigan Compiled Laws.

(b) The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.

(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter.

(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with section 732 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949,

being section 257.732 of the Michigan Compiled Laws.

(e) This section does not limit the court's discretion to restrict the driving privileges of a juvenile as a term or condition of probation.

MCL 712A.2c Court order authorizing apprehension of juvenile; contents of order; interference with execution of order; penalty.

The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or facility to which he or she was committed under section 18 of this chapter, has violated probation, has failed to appear for a hearing on a petition charging a violation of section 2 of this chapter, is alleged to have violated a personal protection order issued under section 2(h) of this chapter, or is alleged to have violated a valid foreign protection order. The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. A person who interferes with the lawful attempt to execute an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

MCL 712A.2d Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; “specified juvenile violation” defined.

(1) In a petition or amended petition alleging that a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court.

(2) In a petition alleging that a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court shall consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior delinquency record than to the other factors:

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (b) The juvenile’s culpability in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (c) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (d) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.
- (e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(3) If a case is designated under this section, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction unless a probable cause hearing is required under subsection (4).

(4) If the petition in a case designated under this section alleges an offense that if committed by an adult would be a felony or punishable by imprisonment for more than 1 year, the court shall conduct a probable cause hearing not later than 14 days after the case is designated to determine whether there is probable cause to believe the offense was committed and whether there is probable cause to believe the juvenile committed the offense. This hearing may be combined with the designation hearing under subsection (2) for an offense other than a specified juvenile offense. A probable cause hearing under this section is the equivalent of the preliminary examination in a court of general criminal jurisdiction and satisfies the requirement for that hearing. A probable cause hearing shall be conducted by a judge other than the judge who will try the case if the juvenile is tried in the same manner as an adult.

(5) If the court determines there is probable cause to believe the offense alleged in the petition was committed and probable cause to believe the juvenile committed the offense, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(6) If the court determines that an offense did not occur or there is not probable cause to believe the juvenile committed the offense, the court shall dismiss the petition. If the court determines there is probable cause to believe another offense was committed and there is probable cause to believe the juvenile committed that offense, the court may further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult as provided in subsection (2). If the court designates the case, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(7) If a case is designated under this section, the proceedings are criminal proceedings and shall afford all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere or a verdict of guilty shall result in entry of a judgment of conviction. The conviction shall have the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction.

(8) Following a judgment of conviction, the court shall enter a disposition or impose a sentence authorized under section 18(1)(n) of this chapter.

(9) As used in this section, "specified juvenile violation" means any of the following:

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(b) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

- (iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.
- (iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).
- (c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the juvenile escaped or attempted to escape was 1 of the following:
 - (i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.
 - (ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.
- (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.
- (e) An attempt to commit a violation described in subdivisions (a) to (d).
- (f) Conspiracy to commit a violation described in subdivisions (a) to (d).
- (g) Solicitation to commit a violation described in subdivisions (a) to (d).
- (h) Any lesser included offense of an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).
- (i) Any other offense arising out of the same transaction as an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).

MCL 712A.2e Waiver of jurisdiction over civil infractions; agreement.

(1) The court may enter into an agreement with any or all district courts or municipal courts within the court's geographic jurisdiction to waive jurisdiction over any or all civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction.

(2) For a civil infraction waived under subsection (1) committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. The court has jurisdiction over juveniles who commit any other civil infraction.

MCL 712A.3 Criminal charge against person under age 17; transfer of case to family division of circuit court.

(1) If during the pendency of a criminal charge against a person in any other court it is ascertained that the person was under the age of 17 at the time of the commission of the offense, the other court shall transfer the case without delay, together with all the papers, documents, and testimony connected with that case, to the family division of the circuit court of the county in which the other court is situated or in which the person resides.

(2) The court making the transfer shall order the child to be taken promptly to the place of detention designated by the family division of the circuit court or to that court itself or release the juvenile in the custody of some suitable person to appear before the court at a time designated. The court shall then hear and dispose of the case in the same manner as if it had been originally instituted in that court.

MCL 712A.3a Prior order of another court affecting child's welfare; notice, filing, service, disclosure

When any order affecting the welfare of a child is entered under this chapter by the judge of probate in any case where the child is subject to the prior or continuing order of any other court of this state, a notice thereof shall be filed in such other court and a copy of such notice shall be served personally or by registered mail upon the parents, guardian, or persons in loco parentis and upon the prosecuting attorney of the county wherein such other court is located. Such notices shall not disclose any allegations or findings of facts set forth in such petitions or orders, nor the actual person or institution to whom custody is changed. Such facts may be disclosed directly to such prosecuting attorney and shall be disclosed on request of the prosecuting attorney or by order of such other court, but shall be considered as confidential information, the disclosure of which will be subject to the same care as in all juvenile matters.

MCL 712A.4 Waiver of jurisdiction when child of 14 or older accused of felony.

(1) If a juvenile 14 years of age or older is accused of an act that if circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.

(2) Before conducting a hearing on the motion to waive jurisdiction, the court shall give notice of the hearing in the manner provided by supreme court rule to the juvenile and the prosecuting attorney and, if addresses are known, to the juvenile's parents or guardians. The notice shall state clearly that a waiver of jurisdiction to a court of general criminal jurisdiction has been requested and that, if granted, the juvenile can be prosecuted for the alleged offense as though he or she were an adult.

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required by chapter VI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 766.1 to 766.18 of the Michigan Compiled Laws.

(4) Upon a showing of probable cause under subsection (3), the court shall conduct a hearing to determine if the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction. In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
- (e) The adequacy of the punishment or programming available in the juvenile justice system.
- (f) The dispositional options available for the juvenile.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section or section 606 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or the recorder's court of the city of Detroit under this section or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws.

(6) If legal counsel has not been retained or appointed to represent the juvenile, the court shall advise the juvenile and his or her parents, guardian, custodian, or guardian ad litem of the juvenile's right to representation and appoint legal counsel. If the court appoints legal counsel, the judge may assess the cost of providing legal counsel as costs against the juvenile or those responsible for his or her support, or both, if the persons to be assessed are financially able to comply.

(7) Legal counsel shall have access to records or reports provided and received by the judge as a basis for decision in proceedings for waiver of jurisdiction. A continuance shall be granted at legal counsel's request if any report, information, or recommendation not previously available is introduced or developed at the hearing and the interests of justice require a continuance.

(8) The court shall enter a written order either granting or denying the motion to waive jurisdiction and the court shall state on the record or in a written opinion the court's findings of fact and conclusions of law forming the basis for entering the order. If a juvenile is waived, a transcript of the court's findings or a copy of the written opinion shall be sent to the court of general criminal jurisdiction.

(9) If the court does not waive jurisdiction, a transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion shall be sent to the prosecuting attorney, juvenile, or

juvenile's attorney upon request.

(10) If the court waives jurisdiction, the juvenile shall be arraigned on information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding under subsection (3) satisfies the requirements of, and is the equivalent of, the preliminary examination required by chapter VI of Act No. 175 of the Public Acts of 1927.

(11) As used in this section, "felony" means an offense punishable by imprisonment for more than 1 year or an offense designated by law as a felony.

MCL 712A.5 Jurisdiction over juvenile after 18 years of age.

The court does not have jurisdiction over a juvenile after he or she attains the age of 18 years, except as provided in section 2a of this chapter. A commitment of a juvenile to a private or public institution or agency is not valid after the juvenile has reached the age beyond which the court does not have continuing jurisdiction under section 2a of this chapter. Commitments to a private or incorporated institution or agency do not divest the court of jurisdiction unless the juvenile is adopted in a manner provided by law.

MCL 712A.6 Jurisdiction; adults.

The court has jurisdiction over adults as provided in this chapter and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.

MCL 712A.6a Hearing; attendance by parent or guardian required; exception; failure to attend.

The parent or guardian of a juvenile who is within the court's jurisdiction under section 2(a)(1) of this chapter shall attend each hearing held under this chapter unless the court excuses the parent or guardian from attendance for good cause. A parent or guardian who fails to attend the juvenile's hearing without good cause may be held in contempt and subject to fines. Failure of a parent or guardian to attend a hearing, however, is not grounds for an adjournment, continuance, or other delay of the proceeding and does not provide a basis for appellate or other relief.

MCL 712A.6b Order affecting nonparent adult.

(1) The court may issue an order that affects a nonparent adult and that does 1 or more of the following:

- (a) Requires the nonparent adult to participate in the development of a case service plan.
- (b) Requires the nonparent adult to comply with a case service plan.
- (c) Permanently removes the nonparent adult from the home of the child as provided in section 13a of this chapter.
- (d) Permanently restrains the nonparent adult from coming into contact with or within close proximity of the child.

(2) Except as provided in subsection (3), a nonparent adult who violates an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) A nonparent adult who violates an order issued under this section and who has 1 or more prior convictions for violating an order issued under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(4) This section does not prohibit a nonparent adult from being charged with, convicted of, or punished for any other violation of law the nonparent adult commits while violating an order issued under this section.

(5) This section does not prohibit the court from exercising its criminal or civil contempt powers for a violation of an order issued under this section.

(6) This section does not in any manner affect the authority or jurisdiction of the court as provided in section

6.

MCL 712A.7 Juvenile division of probate court; register of probate; appointment, duties, salary.

The judge of probate may appoint the register of probate, a deputy probate register, or clerk of his court as register of the juvenile division of the probate court. Such register of the juvenile division shall prepare all petitions for investigation, summons, writs and other necessary papers, and shall perform such duties as required by the judge of probate, and he shall exercise and be competent to do all acts required of the judge of probate, except judicial acts. Such register so appointed shall receive for his services under this chapter, in addition to his regular salary, such sum as the board of supervisors shall fix: Provided, however, That in counties having a population of 100,000, and not more than 350,000 inhabitants, according to the last federal census, the compensation shall be not less than \$500.00 annually.

MCL 712A.8 County agent; creation of office; duties; assistants.

The office of county agent is created. The county agent shall be an officer of the court and under the general supervision of the judges of the court and shall serve at their pleasure. The county agent shall organize, direct, and develop the juvenile welfare work of the court as authorized by the judge. When requested by the superintendent or director, the county agent shall supervise juveniles released from public institutions or agencies and may perform other juvenile welfare work as requested and with the approval of the judge, including services to school-age juveniles of the various school districts within the county, after consultation and agreement with the county school commissioner and the superintendents of schools in a county. The county agent or assistants shall, with the approval of the judge, make investigations and reports on juveniles or families within the county as requested by the family independence agency or by the superintendent of any state institution regarding the welfare of any juvenile. Assistant county agents shall perform the duties assigned to them by the county agent.

MCL 712A.9 Probation officers; appointment, compensation, duties; notification to social welfare office.

The judge of probate in each county may appoint 1 or more suitable persons of good character and qualified training or experience, other than the county agent or assistants, to act as probation officer, who shall receive such compensation as the board of supervisors may appropriate for that purpose, and who, at the discretion of the judge, may be authorized and empowered to perform county agent duties. The judge of probate may also appoint other probation officers who shall receive no compensation from the county treasury for the duties performed under such appointment. It shall be the duty of the judge of probate to notify the state department of social welfare of the appointment of all paid probation officers made by him under the provisions of this chapter. All probation officers shall hold office during the pleasure of the court and shall report to the said court upon all cases under their care.

MCL 712A.9a Probation.

If the court acting under section 18(1)(n) of this chapter imposes a sentence of probation in the same manner as probation could be imposed upon an adult convicted of the same offense for which the juvenile was convicted or enters an order of disposition delaying imposition of sentence and placing the juvenile on probation, the probation supervision and related services shall not be performed by employees of the department of corrections.

MCL 712A.10 Designation of probation officer or county agent as referee; duties of referee.

(1) Except as otherwise provided in subsection (2), the judge of probate may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a child is within the provisions of this chapter, if there is no objection by parties in interest. The probation officer or county agent designated to act as referee shall do all of the following:

(a) Take and subscribe the oath of office provided by the constitution.

(b) Administer oaths and examine witnesses.

(c) If a case requires a hearing and the taking of testimony, make a written signed report to the judge of probate containing a summary of the testimony taken and a recommendation for the court's findings and disposition.

(2) If a child is before the court under section 2(a)(1) of this chapter, a probation officer or county agent who is not licensed to practice law in this state shall not be designated to act as a referee in any hearing for the child, except the preliminary inquiry or preliminary hearing. This subsection shall not apply to a probation officer or county agent who has been designated to act as a referee by the probate judge prior to January 1, 1988 and who is acting as a referee as of January 1, 1988.

MCL 712A.11 Preliminary inquiry; petition; effect of juvenile attaining seventeenth birthday; fingerprints; amendment of petition or other court record; offer of court services.

(1) Except as provided in subsection (2), if a person gives information to the court that a juvenile is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(2) Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter. If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter and the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(3) The petition described in subsections (1) and (2) shall be verified and may be upon information and belief. The petition shall set forth plainly the facts that bring the juvenile within this chapter and shall contain all of the following information:

- (a) The juvenile's name, birth date, and address.
- (b) The name and address of the juvenile's parents.
- (c) The name and address of the juvenile's legal guardian, if there is one.
- (d) The name and address of each person having custody or control of the juvenile.
- (e) The name and address of the juvenile's nearest known relative, if no parent or guardian can be found.

(4) If any of the facts required under subsection (3) are not known to the petitioner, the petition shall state that the facts are not known. If the juvenile attains his or her seventeenth birthday after the filing of the petition, the court's jurisdiction shall continue beyond the juvenile's seventeenth birthday and the court may hear and dispose of the petition under this chapter.

(5) When a petition is authorized, the court shall examine the court file to determine if a juvenile has had fingerprints taken as required under section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

- (a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the juvenile so the juvenile's fingerprints can be taken.
- (b) Order the juvenile committed to the custody of the sheriff for the taking of the juvenile's fingerprints.

(6) A petition or other court record may be amended at any stage of the proceedings as the ends of justice require.

(7) If the juvenile diversion act, Act No. 13 of the Public Acts of 1988, being sections 722.821 to 722.831 of the Michigan Compiled Laws, is complied with and the court determines that court services can be used in the prevention of delinquency without formal jurisdiction, the court may offer court services to a juvenile without a petition being authorized as provided in section 2(e) of this chapter.

MCL 712A.12 Examination of child; hearing; summons.

After a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a physician, dentist, psychologist or psychiatrist, the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: Provided, That the court in its discretion may excuse but not restrict children from attending the hearing. If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

Any interested party who shall voluntarily appear in said proceedings, may, by writing, waive service of process or notice of hearing.

MCL 712A.13 Service of summons.

Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing. Service of summons, notices or orders required by this chapter may be made by any peace officer or by any other suitable person designated by the judge. The judge may, in his discretion, authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the time of hearing of any case coming within the provisions of this chapter, and such expenses and the expenses of making service as above provided, when approved by the judge, shall be paid by the county treasurer from the general fund of the county. If any person so summoned, as herein provided, shall fail without reasonable cause to appear before said court, he may be proceeded against for contempt of court and punished accordingly.

MCL 712A.13a Definitions; petition; release of juvenile; order removing abusive person from home; placement of child; duty of court to inform parties; criminal record check and central registry clearance; family-like setting; parenting time; review and modification of orders and plans; release of information; information included with order; “abuse” defined.

(1) As used in this section and sections 2, 6b, 13b, 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) “Agency” means a public or private organization, institution, or facility that is performing the functions part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile’s care and supervision.

(b) “Agency case file” means the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency, or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.

(c) “Attorney” means, if appointed to represent a child in a proceeding under section 2(b) or (c) of this chapter, an attorney serving as the child’s legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client. For the purpose of a notice required under these sections, attorney includes a child’s lawyer-guardian ad litem.

(d) “Case service plan” means the plan developed by an agency and prepared pursuant to section 18f of this chapter that includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. The case service plan may be referred to using different names than case service plan including, but not limited to, a parent/agency agreement or a parent/agency treatment plan and service agreement.

(e) “Foster care” means care provided to a juvenile in a foster family home, foster family group home, or child caring institution licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a juvenile in a relative’s home under a court order.

(f) “Guardian ad litem” means an individual whom the court appoints to assist the court in determining the child’s best interests. A guardian ad litem does not need to be an attorney.

(g) “Lawyer-guardian ad litem” means an attorney appointed under section 17c of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section

17d of this chapter. The provisions of section 17d of this chapter also apply to a lawyer-guardian ad litem appointed under each of the following:

- (i) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.
- (ii) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.
- (iii) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.

(h) “Nonparent adult” means a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

- (i) Has substantial and regular contact with the child.
- (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare.
- (iii) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.
- (i) “Permanent foster family agreement” means an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the family independence agency, which agreement is among all of the following:
 - (i) The child.
 - (ii) If the child is a temporary ward, the child’s family.
 - (iii) The foster family.
 - (iv) The child placing agency responsible for the child’s care in foster care.
- (j) “Relative” means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grand-parent, great-grandparent, great-great-grandparent, aunt or uncle, great aunt or great uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin, or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.

(2) If a juvenile is alleged to be within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter. If a petition is before the court because the family independence agency is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

(3) Except as provided in subsection (5), if a petition under subsection (2) is authorized, the court may release the juvenile in the custody of either of the juvenile’s parents or the juvenile’s guardian or custodian under reasonable terms and conditions necessary for either the juvenile’s physical health or

mental well-being.

(4) The court may order a parent, guardian, custodian, nonparent adult, or other person residing in a child's home to leave the home and, except as the court orders, not to subsequently return to the home if all of the following take place:

(a) A petition alleging abuse of the child by the parent, guardian, custodian, nonparent adult, or other person is authorized under subsection (2).

(b) The court after a hearing finds probable cause to believe the parent, guardian, custodian, nonparent adult, or other person committed the abuse.

(c) The court finds on the record that the presence in the home of the person alleged to have committed the abuse presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(5) If a petition alleges abuse by a person described in subsection (4), regardless of whether the court orders the alleged abuser to leave the child's home under subsection (4), the court shall not leave the child in or return the child to the child's home or place the child with a person not licensed under 1973 PA 116, MCL

722.111 to 722.128, unless the court finds that the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

(6) In determining whether to enter an order under subsection (4), the court may consider whether the parent who is to remain in the juvenile's home is married to the person to be removed or has a legal right to retain possession of the home.

(7) An order entered under subsection (4) may also contain 1 or more of the following terms or conditions:

(a) The court may require the alleged abusive parent to pay appropriate support to maintain a suitable home environment for the juvenile during the duration of the order.

(b) The court may order the alleged abusive person, according to terms the court may set, to surrender to a local law enforcement agency any firearms or other potentially dangerous weapons the alleged abusive person owns, possesses, or uses.

(c) The court may include any reasonable term or condition necessary for the juvenile's physical or mental well-being or necessary to protect the juvenile.

(8) If the court orders placement of the juvenile outside the juvenile's home, the court shall inform the parties of the following:

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

(b) The general elements of an initial services plan as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128.

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

(9) Before or within 7 days after a child is placed in a relative's home, the family independence agency shall perform a criminal record check and central registry clearance. If the child is placed in the home of a relative, the court shall order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement.

(10) In determining placement of a juvenile pending trial, the court shall order the juvenile placed in the most family-like setting available consistent with the juvenile's needs.

(11) If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. However, if parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

(12) Upon the motion of any party, the court shall review custody and placement orders and initial services plans pending trial and may modify those orders and plans as the court considers under this section are in the juvenile's best interests.

(13) The court shall include in an order placing a child in foster care an order directing the release of information concerning the child in accordance with this subsection. If a child is placed in foster care, within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with copies of all initial, updated, and revised case service plans and court orders relating to the child and all of the child's medical, mental health, and education reports, including reports compiled before the child was placed with that person.

(14) In an order placing a child in foster care, the court shall include both of the following:

(a) An order that the child's parent, guardian, or custodian provide the supervising agency with the name and address of each of the child's medical providers.

(b) An order that each of the child's medical providers release the child's medical records. The order may specify providers by profession or type of institution.

(15) As used in this section, "abuse" means 1 or more of the following:

(a) Harm or threatened harm by a person to a juvenile's health or welfare that occurs through nonaccidental physical or mental injury.

(b) Engaging in sexual contact or sexual penetration as defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a juvenile.

(c) Sexual exploitation of a juvenile, which includes, but is not limited to, allowing, permitting, or encouraging a juvenile to engage in prostitution or allowing, permitting, encouraging, or engaging in photographing, filming, or depicting a juvenile engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(d) Maltreatment of a juvenile.

MCL 712A.13b Change in foster care placement.

(1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

(a) The person providing the foster care requests or agrees to the change.

(b) Even though the person providing the foster care objects to a proposed change in placement, 1 of the following applies:

(i) The court orders the child returned home.

(ii) The change in placement is less than 30 days after the child's initial removal from his or her home.

(iii) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.

(iv) The change in placement is in accordance with other provisions of this section.

(2) Except as provided in subsections (1) and (7), before a change in foster care placement takes effect, the agency shall do all of the following:

(a) Notify the state court administrative office of the proposed change in placement.

(b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.

(3) Upon receipt of an appeal from foster parents under subsection (2) or (7), the foster care review board shall investigate the change in foster care placement within 7 days and shall report its findings and recommendations within 3 days to the court or, if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, to the foster care parents, to the parents, and to the agency.

(4) If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

(5) If after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. However, the agency shall not return a child to a placement from which the child was removed under subsection (7) unless the court orders that placement's restoration under subsection (6) or the MCI superintendent approves that placement's restoration under this subsection. The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the board's and agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case. The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to a hearing required by this subsection. Within 14 days after notification under this subsection, the MCI superintendent shall make a decision regarding the child's

placement and shall inform each interested party what the decision is.

(6) After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.

(7) If the agency has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, he or she may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.

(8) At the time of or immediately following a child's removal under subsection (7), the agency shall inform the foster parents about the removal and that, if they disagree with the decision, they may appeal within 3 days to a foster care review board in the manner provided in subsection (7). The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

MCL 712A.14 Officers or county agent authorized to take child into custody; notice; detention facility; release of child; preliminary hearing; order; placement of child; foster care home services.

(1) Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his or her health, morals, or welfare, or for whom there is reasonable cause to believe is violating or has violated a personal protection order issued pursuant to section 2(h) by the court under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is reasonable cause to believe is violating or has violated a valid foreign protection order. If such an officer or county agent takes a child coming within the provisions of this chapter into custody, he or she shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years taken into custody under the provisions of this chapter shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a time fixed therein. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

(2) If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

(3) If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing, which placement may be in any of the following:

(a) In the home of the child's parent, guardian, or custodian.

(b) If a child is within the court's jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (4) and (5), if a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.

(c) In a child care institution or child placing agency licensed by the state department of social services to receive for care children within the jurisdiction of the court.

(d) In a suitable place of detention.

(4) Except as otherwise provided in subsection (5), if a court is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1989. Beginning January 1, 1990, the court shall discontinue providing those services.

(5) If a court located in a county with a population in excess of 650,000 is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to

children within section 2(b) of this chapter, the court may continue to those services.

MCL 712A.15 Detention of child pending hearing; release of child; petition; limitation on custody of child pending hearing; detention in secure facility, cell, or other secure area designed to incarcerate adults; exception.

(1) In the case of a child concerning whom a complaint has been made or a petition has been filed pursuant to this chapter, the court may order the child, pending the hearing, detained in a facility as the court shall designate. The court may release the child, pending the hearing, in the custody of a parent, guardian, or custodian, to be brought before the court at the time designated. As used in this subsection, "petition" includes all of the following:

(a) Petition.

(b) Supplemental petition.

(c) Petition for revocation of probation.

(d) Supplemental petition alleging a violation of a personal protection order.

(2) Custody, pending hearing, is limited to the following children:

(a) Those whose home conditions make immediate removal necessary.

(b) Those who have a record of unexcused failures to appear at juvenile court proceedings.

(c) Those who have run away from home.

(d) Those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order.

(e) Those whose offenses are so serious that release would endanger public safety.

(f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation.

(3) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is not a less restrictive alternative more appropriate to the needs of the child. This subsection does not apply to a child who is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter or a child who is not less than 17 years of age and who is under the jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

(4) A child taken into custody pursuant to section 2(b) of this chapter or subsection (2)(a) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders or in a cell or other secure area of any secure facility designed to incarcerate adults.

(5) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in a cell or other secure area of any secure facility designed to incarcerate adults unless either of the following applies:

(a) A child is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter for an offense which, if committed by an adult, would be a felony.

(b) A child is not less than 17 years of age and is under the jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

MCL 712A.16 Detention and care of juvenile.

(1) If a juvenile under the age of 17 years is taken into custody or detained, the juvenile shall not be confined in any police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, except as otherwise provided in section 15(3), (4), and (5) of this chapter, the court may order a juvenile 15 years of age or older whose habits or conduct are considered a menace to other juveniles, or who may not otherwise be safely detained, placed in a jail or other place of detention for adults, but in a room or ward separate from adults and for not more than 30 days, unless longer detention is necessary for the service of process.

(2) The county board of commissioners in each county or of counties contracting together may provide for the diagnosis, treatment, care, training, and detention of juveniles in a child care home or facility conducted as an agency of the county if the home or facility meets licensing standards established under 1973 PA 116, MCL

722.111 to 722.128. The court or a court-approved agency may arrange for the boarding of juveniles in any of the following:

(a) If a juvenile is within the court's jurisdiction under section 2(a) of this chapter, a suitable foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(b) A child caring institution or child placing agency licensed by the department of consumer and industry services to receive for care juveniles within the court's jurisdiction.

(c) If in a room or ward separate and apart from adult criminals, the county jail for juveniles over 17 years of age within the court's jurisdiction.

(3) If a detention home or facility is established as an agency of the county, the judge may appoint a superintendent and other necessary employees for the home or facility who shall receive compensation as provided by the county board of commissioners of the county. This section does not alter or diminish the legal responsibility of the family independence agency or a county juvenile agency to receive juveniles committed by the court.

(4) If the court under subsection (2) arranges for the board of juveniles temporarily detained in private homes or in a child caring institution or child placing agency, a reasonable sum fixed by the court for their board shall be paid by the county treasurer as provided in section 25 of this chapter.

(5) A court shall not provide foster care home services subject to the court's supervision to juveniles within section 2(b) of this chapter.

(6) A juvenile detention home described in subsection (3) shall be operated under the direction of the county board of commissioners or, in a county that has an elected county executive, under the county executive's direction. However, a different method for directing the operation of a detention home may be agreed to in any county by the chief judge of the circuit court in that county and the county board of commissioners or, in a county that has an elected county executive, the county executive.

MCL 712A.17 Hearing; informality; adjournment; transcript; jury; giving security for appearance of juvenile; appearance by prosecuting attorney; legal consultant or legal representation; admitting foster care review board member to hearing; closing hearing to members of general public; “juvenile witness” defined.

(1) The court may conduct a hearing other than a criminal hearing in an informal manner. The court shall require stenographic notes or another transcript to be taken of the hearing. The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

(a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.

(b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child’s best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

(2) Except as otherwise provided in this subsection, in a hearing other than a criminal trial under this chapter, a person interested in the hearing may demand a jury of 6 individuals, or the court, on its own motion, may order a jury of 6 individuals to try the case. In a proceeding under section 2(h) of this chapter, a jury shall not be demanded or ordered on a supplemental petition alleging a violation of a personal protection order. In a criminal trial, a jury may be demanded as provided by law. The jury shall be summoned and impaneled in accordance with chapter 13 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1300 to 600.1376, and, in the case of a criminal trial, as provided in chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.1 to 768.36.

(3) A parent, guardian, or other custodian of a juvenile held under this chapter has the right to give bond or other security for the appearance of the juvenile at the hearing of the case.

(4) The prosecuting attorney shall appear for the people when requested by the court, and in a proceeding under section 2(a)(1) of this chapter, the prosecuting attorney shall appear if the proceeding requires a hearing and the taking of testimony.

(5) In a proceeding under section 2(b) of this chapter, upon request of the family independence agency or an agent of the family independence agency under contract with the family independence agency, the prosecuting attorney shall serve as a legal consultant to the family independence agency or its agent at all stages of the proceeding. If in a proceeding under section 2(b) of this chapter the prosecuting attorney does not appear on behalf of the family independence agency or its agent, the family independence agency may contract with an attorney of its choice for legal representation.

(6) A member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, shall be admitted to a hearing under subsection (1).

(7) Upon motion of a party or a victim, the court may close the hearing of a case brought under this chapter to members of the general public during the testimony of a juvenile witness or the victim if the court finds that closing the hearing is necessary to protect the welfare of the juvenile witness or

the victim. In determining whether closing the hearing is necessary to protect the welfare of the juvenile witness or the victim, the court shall consider the following:

(a) The age of the juvenile witness or the victim.

(b) The nature of the proceeding.

(c) The desire of the juvenile witness, of the witness's family or guardian, or of the victim to have the testimony taken in a room closed to the public.

(8) As used in subsection (7), "juvenile witness" does not include a juvenile against whom a proceeding is brought under section 2(a)(1) of this chapter.

MCL 712A.17a Hearings; record, tape recordings, transcription.

In any case in which a record of the hearing is kept by a recording device, no transcription need be made of the hearing in the absence of a request by an interested party. The tape of the hearing shall be stored as a permanent record of the court.

MCL 712A.17b. Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.

(1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the

named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order

of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In

determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

MCL 712A.17c Advising child or respondent of right to attorney; appointment of attorney; waiver; appointment of lawyer-guardian ad litem; costs; service until discharged by court; assistance to court.

(1) In a proceeding under section 2(a) or (d) of this chapter or a proceeding regarding a supplemental petition alleging a violation of a personal protection order under section 2(h) of this chapter, the court shall advise the child that he or she has a right to an attorney at each stage of the proceeding.

(2) In a proceeding under section 2(a) or (d) of this chapter, the court shall appoint an attorney to represent the child if 1 or more of the following apply:

- (a) The child's parent refuses or fails to appear and participate in the proceedings.
- (b) The child's parent is the complainant or victim.
- (c) The child and those responsible for his or her support are financially unable to employ an attorney and the child does not waive his or her right to an attorney.
- (d) Those responsible for the child's support refuse or neglect to employ an attorney for the child and the child does not waive his or her right to an attorney.
- (e) The court determines that the best interests of the child or the public require appointment.

(3) Except as otherwise provided in this subsection, in a proceeding under section 2(a) or (d) of this chapter, the child may waive his or her right to an attorney. The waiver by a child shall be made in open court, on the record, and shall not be made unless the court finds on the record that the waiver was voluntarily and understandingly made. The child may not waive his or her right to an attorney if the child's parent or guardian ad litem objects or if the appointment is made under subsection (2)(e).

(4) In a proceeding under section 2(b) or (c) of this chapter, the court shall advise the respondent at the respondent's first court appearance of all of the following:

- (a) The right to an attorney at each stage of the proceeding.
- (b) The right to a court-appointed attorney if the respondent is financially unable to employ an attorney.
- (c) If the respondent is not represented by an attorney, the right to request and receive a court-appointed attorney at a later proceeding.

(5) If it appears to the court in a proceeding under section 2(b) or (c) of this chapter that the respondent wants an attorney and is financially unable to retain an attorney, the court shall appoint an attorney to represent the respondent.

(6) Except as otherwise provided in this subsection, in a proceeding under section 2(b) or (c) of this chapter, the respondent may waive his or her right to an attorney. A respondent who is a minor may not waive his or her right to an attorney if the respondent's parent or guardian ad litem objects.

(7) In a proceeding under section 2(b) or (c) of this chapter, the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of the lawyer-guardian ad litem. In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d.

(8) If an attorney or lawyer-guardian ad litem is appointed for a party under this act, after a determination of ability to pay the court may enter an order assessing attorney costs against the party or the person responsible for that party's support, or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. An order assessing attorney costs may be enforced through contempt proceedings.

(9) An attorney or lawyer-guardian ad litem appointed by the court under this section shall serve until discharged by the court. If the child's case was petitioned under section 2(b) of this chapter, the court shall not discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child.

(10) To assist the court in determining a child's best interests, the court may appoint a guardian ad litem for a child involved in a proceeding under this chapter.

MCL 712A.17d Lawyer-guardian ad litem; powers and duties.

- (1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:
- (a) The obligations of the attorney-client privilege.
 - (b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.
 - (c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the courts and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.
 - (d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:
 - (i) Before the pretrial hearing.
 - (ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.
 - (iii) Before a dispositional review hearing.
 - (iv) Before a permanency planning hearing.
 - (v) Before a post-termination review hearing.
 - (vi) At least once during the pendency of a supplemental petition.
 - (vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.
 - (e) The court may allow alternative means of contact with the child if good cause is shown on the record.
 - (f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.
 - (g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.
 - (h) To attend all hearings and substitute representation for the child only with court approval.
 - (i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.
 - (j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are

accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter.

(1) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.

MCL 712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in § 28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order.

(1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile's parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the juvenile on probation, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in this subdivision, "related" means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by marriage, blood, or adoption. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile. The court shall also order, as a condition of probation or supervision that the juvenile pay the minimum state cost prescribed by section 18 of this chapter.

(c) If a juvenile is within the court's jurisdiction under section 2(a) of this chapter, or under section 2(h) of this chapter for a supplemental petition, place the juvenile in a suitable foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency

institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items the court determines are necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by this subdivision, it may dismiss the petition under this chapter.

(i) Order the juvenile to engage in community service.

(j) If the court finds that a juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29 of this chapter.

(k) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.

(l) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

(i) Placement in a juvenile boot camp will benefit the juvenile.

- (ii) The juvenile is physically able to participate in the program.
- (iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.
- (iv) The juvenile will not be a danger to other juveniles in the boot camp.

(v) There is an opening in a juvenile boot camp program.

(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program.

(m) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

- (i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under sections 115f to 115l of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115l, the amount shall not exceed the amount of the support subsidy. The reimbursement

provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, or court supervision. Twenty-five percent of all amounts collected under an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected under an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision. The court may also collect from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(3) An order of disposition placing a juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of this chapter and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may require in an order entered under this section that the juvenile, parent, guardian, or custodian reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court and in consultation with the family independence agency and the Michigan probate judges association, shall create guidelines and a model schedule the court may use in determining the ability of the juvenile, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines and model schedule shall take into account both the income and resources of the juvenile, parent, guardian, or custodian.

(7) If the court finds that a juvenile comes under section 30 of this chapter, the court shall order the juvenile or the juvenile's parent to pay restitution as provided in sections 30 and 31 of this chapter and in sections 44 and 45 of the crime victim's rights act, 1985 PA 87, MCL 780.794 and 780.795.

(8) If the court imposes restitution as a condition of probation, the court shall require the juvenile to

do either of the following as an additional condition of probation:

(a) Engage in community service or, with the victim's consent, perform services for the victim.

(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

(9) If the court finds that the juvenile is in intentional default of the payment of restitution, a court may, as provided in section 31 of this chapter, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a juvenile who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

(10) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of 1925 PA 289, MCL 28.241a, or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken and forwarded as required by section 3 of 1925 PA 289, MCL 28.243, and as required by the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's fingerprints can be taken and forwarded.

(b) Order the juvenile committed to the sheriff's custody for taking and forwarding the juvenile's fingerprints.

(11) Upon final disposition, conviction, acquittal, or dismissal of an offense within the court's jurisdiction under section 2(a)(1) of this chapter, using forms approved by the state court administrator, the clerk of the court entering the final disposition, conviction, acquittal, or dismissal shall immediately advise the department of state police of that final disposition, conviction, acquittal, or dismissal as required by section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition or sentence imposed.

(12) If the court enters an order of disposition based on an act that is a juvenile offense as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act. If the court enters a judgment of conviction under section 2d of this chapter for an offense that is a felony, serious misdemeanor, or specified misdemeanor as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act.

(13) If the court has entered an order of disposition or a judgment of conviction for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court, the family independence agency, or the county juvenile agency shall register the juvenile or accept the juvenile's registration as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(14) If the court enters an order of disposition placing a juvenile in a juvenile boot camp program, or committing a juvenile to a county juvenile agency for placement in a juvenile boot camp program, and the court receives from the family independence agency a report that the juvenile has failed to perform satisfactorily in the program, that the juvenile does not meet the program's requirements or

is medically unable to participate in the program for more than 25 days, that there is no opening in a juvenile boot camp program, or that the county juvenile agency is unable to place the juvenile in a juvenile boot camp program, the court shall release the juvenile from placement or commitment and enter an alternative order of disposition. A juvenile shall not be placed in a juvenile boot camp under an order of disposition more than once, except that a juvenile returned to the court for a medical condition, because there was no opening in a juvenile boot camp program, or because the county juvenile agency was unable to place the juvenile in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected, an opening becomes available, or the county juvenile agency is able to place the juvenile.

(15) If the juvenile is within the court's jurisdiction under section 2(a)(i) of this chapter for an offense other than a listed offense as defined in section 2(d)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the order of disposition is for a listed offense as defined in section 2(d)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the order of disposition.

(16) The court shall not impose a sentence of imprisonment in the county jail under subsection (1)(n) unless the present county jail facility for the juvenile's imprisonment would meet all requirements under federal law and regulations for housing juveniles. The court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.

(17) In a proceeding under section 2(h) of this chapter, this section only applies to a disposition for a violation of a personal protection order and subsequent proceedings.

(18) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, the court shall order the juvenile to pay costs as provided in section 18m of this chapter.

(19) A juvenile who has been ordered to pay the minimum state cost as provided in section 18m of this chapter as a condition of probation or supervision and who is not in willful default of the payment of the minimum state cost may petition the court at any time for a remission of the payment of any unpaid portion of the minimum state cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum state cost due or modify the method of payment.

MCL 712A.18a Placement or commitment of ward of the court to out-of-state institutions.

If desirable or necessary, the court may place a ward of the court in or commit a ward of the court to a private institution or agency incorporated under the laws of another state and approved or licensed by that state's department of social welfare, or the equivalent approving or licensing agency, for the care of children of similar age, sex, and characteristics.

MCL 712A.18b Reimbursement order; failure to comply, contempt of court; assignment of wages.

Whenever the court under section 18 of this act enters a reimbursement order and the parent or other adult legally responsible for the care of the child fails or refuses to obey and perform the order, and has been found guilty of contempt of court for such failure or refusal, the court making the order may order an assignment to the county or state of the salary, wages or other income of the person responsible for the care of the child, which assignment shall continue until the support is paid in full. The order of assignment shall be effective 1 week after service upon the employer of a true copy of the order by personal service or by registered or certified mail. Thereafter the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the county or state until notified by the court that the support arrearage is paid in full. An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee. Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected.

MCL 712A.18c Retention of jurisdiction of child committed under § 712A.18(1)(e); effective date of subsection (2); annual review; release of child.

(1) If a child is committed under section 18(1)(e) of this chapter for an offense which, if committed by an adult, would be punishable by imprisonment for more than 1 year or an offense expressly designated by law to be a felony, the court shall retain jurisdiction over the child.

(2) If a child is committed under section 18(1)(e) of this chapter and the child was adjudicated as being in the court's jurisdiction under section 2(a) of this chapter, the court shall retain jurisdiction over the child. This subsection shall take effect June 1, 1991.

(3) If the court has retained jurisdiction over a child under this section, the court shall conduct an annual review of the services being provided to the child, the child's placement, and the child's progress in that placement. In conducting this review, the court shall examine the child's annual report prepared pursuant to section 3 of the juvenile facilities act. The court may order changes in the child's placement or treatment plan based on the review.

(4) If the court has retained jurisdiction over a child under this section, the child may be released only with the approval of the court. Except as otherwise provided in section 18d, the child shall be automatically released upon reaching 19 years of age.

MCL 712A.18d Juvenile committed under § 712A.18(1)(e); review hearing; burden of proof; determination; notice; legal counsel; costs; commitment reports; section nonapplicable

to juvenile convicted of crime under chapter.

(1) If a juvenile is committed under section 18(1)(e) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530,

and 750.531 of the Michigan Compiled Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued. In making this determination, the court shall consider all of the following:

- (a) The extent and nature of the juvenile's participation in education, counseling, or work programs.
- (b) The juvenile's willingness to accept responsibility for prior behavior.
- (c) The juvenile's behavior in his or her current placement.
- (d) The juvenile's prior record and character and his or her physical and mental maturity.
- (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.
- (f) The recommendations of the institution, agency, or facility charged with the child's care for the juvenile's release or continued custody.
- (g) Other information the prosecuting attorney or juvenile may submit.

(2) The juvenile has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety.

(3) Unless adjourned for good cause, a review hearing shall be scheduled and held as near as possible to, but before, the juvenile's nineteenth birthday. If the institution, agency, or facility to which the juvenile was committed believes the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), any time before the juvenile becomes 21 years of age.

(4) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, the juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(5) The institution, agency, or facility charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section

803.225 of the Michigan Compiled Laws, for use by the court at a review hearing held under this section.

(6) This section does not apply to a juvenile convicted under this chapter for committing a crime.

MCL 712A.18e Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and fingerprints; comparing fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; notice to victim; definitions; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of § 750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption from disclosure; divulging, using, or publishing information as misdemeanor.

(1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of the following:

(a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

(b) An adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(c) A conviction under section 2d of this chapter. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise provided by law.

(3) An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) An application under this section is invalid unless it contains the following information and is signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the

records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$25.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application. If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and if the name of the victim is known to the prosecuting attorney, the prosecuting attorney shall give the victim of that offense written notice of the application and forward a copy of the application to the victim under section 46a of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.796a of the Michigan Compiled Laws. The notice shall be sent by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this section concerning that adjudication and to make a written or oral statement. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

(b) "Serious misdemeanor" means that term as defined in section 61 of Act No. 87 of the Public Acts of 1985, being section 780.811 of the Michigan Compiled Laws.

(c) "Victim" means that term as defined in section 31 of Act No. 87 of the Public Acts of 1985, being section 780.781 of the Michigan Compiled Laws.

(8) Upon the hearing of the application, the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant is considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section does not create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside under this section.

(d) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) Consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) is exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) Except as provided in subsection (13), a person, other than the applicant, who knows or should

have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section is guilty of a misdemeanor.

MCL 712A.18f Report; preparation and contents of case service plan; order of disposition; updating and revising case service plan; rules; review by child's physician in case of abuse and neglect.

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

- (a) If services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services that were provided.
 - (b) If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided.
 - (c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.
 - (d) Likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.
- (2) Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding.
- (3) The case service plan shall provide for placing the child in the most family-like setting available and in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs. The case service plan shall include, but is not limited to, the following:
- (a) The type of home or institution in which the child is to be placed and the reasons for the selected placement.
 - (b) Efforts to be made by the child's parent to enable the child to return to his or her home.
 - (c) Efforts to be made by the agency to return the child to his or her home.
 - (d) Schedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement.
 - (e) Except as otherwise provided in this subdivision, unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a of this chapter or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent, which shall not be less than once every 7 days.
- (4) Before the court enters an order of disposition, the court shall consider the case service plan; any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem; and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home. The court may order compliance with all or any part of the case service plan as the court considers necessary.
- (5) If a child continues in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals as required by the rules promulgated under 1973 PA 116, MCL 722.111 to

722.128. The agency shall consult with the foster parents when it updates and revises the case service plan, and shall attach a statement summarizing the information received from the foster parents to the updated and revised case service plan. Updated and revised case service plans shall be available to the court and all the parties to the proceeding. Within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with the information itemized in section 13a(13) of this chapter.

(6) To ensure that the case service plan addresses the child's medical needs in relation to abuse and neglect, the family independence agency shall review a child's case with the child's attending physician of record during a hospitalization or with the child's primary care physician, but only if a physician has diagnosed the child's abuse or neglect as involving 1 or more of the following:

- (a) Failure to thrive.
- (b) Munchausen syndrome by proxy.
- (c) Shaken baby syndrome.
- (d) A bone fracture that is diagnosed as being the result of abuse or neglect.
- (e) Drug exposure.

(7) If a child is placed outside of his or her home and the family independence agency is required to review the child's case with a physician under subsection (6), then in a judicial proceeding to determine if the child is to be returned to his or her home, the court must allow the child's attending physician of record during a hospitalization or the child's primary care physician to testify regarding the case service plan. The court shall notify each physician of the hearing's time and place.

MCL 712A.18g Commitment under § 712A.18(1)(e).

(1) In addition to any other disposition under this act, a juvenile other than a juvenile sentenced in the same manner as an adult under section 18(1)(n) of this chapter shall be committed under section 18(1)(e) of this chapter to a detention facility for a specified period of time if all of the following circumstances exist:

- (a) The juvenile is under the jurisdiction of the juvenile division of the probate court under section 2(a)(1) of this chapter.
- (b) The juvenile is adjudicated as or convicted of violating a criminal municipal ordinance or law of this state or the United States.
- (c) The juvenile is found to have used a firearm during the criminal violation.

(2) The period of time specified under subsection (1) shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(3) "Firearm" means that term as defined in section 3t of chapter 1 of the Revised Statutes of 1846, being section 8.3t of the Michigan Compiled Laws.

MCL 712A.18h Commitment to department of corrections prohibited; exception.

A juvenile sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections. This section does not apply if the juvenile was convicted of a specified juvenile violation as defined in section 2d of this chapter.

MCL 712A.18i Delay in sentencing.

- (1) A delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile under section 18(1)(n) of this chapter any time during the delay.
- (2) If the court has entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct an annual review of the probation, including but not limited to the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine any annual report prepared under section 3 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.223 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation. The court may order changes in the juvenile's probation based on the review including but not limited to imposition of sentence.
- (3) If the court entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence. In making this determination, the court shall consider the following:
 - (a) The extent and nature of the juvenile's participation in education, counseling, or work programs.
 - (b) The juvenile's willingness to accept responsibility for prior behavior.
 - (c) The juvenile's behavior in his or her current placement.
 - (d) The prior record and character of the juvenile and his or her physical and mental maturity.
 - (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.
 - (f) The recommendations of any institution or agency charged with the juvenile's care for the juvenile's release or continued custody.
 - (g) Other information the prosecuting attorney or juvenile may submit.
- (4) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction, any time before the juvenile becomes 21 years of age.
- (5) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile or impose sentence and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to

comply.

(6) A commitment report prepared as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation may be used by the court at a review hearing held under this section.

(7) The court shall conduct a final review of the juvenile's probation not less than 3 months before the end of the probation period. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (3) and all of the following criteria:

(a) The effect of treatment on the juvenile's rehabilitation.

(b) Whether the juvenile is likely to be dangerous to the public if released.

(c) The best interests of the public welfare and the protection of public security.

(8) Not less than 14 days before a final review hearing under subsection (7) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(9) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(10) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subsection (9), the court may impose sentence or may order any of the following for the juvenile:

(a) A change of placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical education program.

(f) Incarceration in a county jail for not more than 30 days as provided in this chapter. If a juvenile is

under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(11) If a sentence of imprisonment is imposed under this section, the juvenile shall receive credit for the period of time served on probation.

MCL 712A.18j Escape by juvenile from facility or residence; notification; “escape” defined.

(1) If a juvenile escapes from a facility or residence in which he or she has been placed for a violation described in section 2(a)(1) of this chapter, other than his or her own home or the home of his or her parent or guardian, the individual at that facility or residence who has responsibility for maintaining custody of the juvenile at the time of the escape shall immediately notify 1 of the following of the escape or cause 1 of the following to be immediately notified of the escape:

(a) If the escape occurs in a city, village, or township that has a police department, the police department of that city, village, or township.

(b) Except as provided in subdivision (a), 1 of the following:

(i) The sheriff department of the county in which the escape occurs.

(ii) The department of state police post having jurisdiction over the area in which the escape occurs.

(2) A police agency that receives notification of an escape under subsection (1) shall enter that notification into the law enforcement information network without undue delay.

(3) As used in this section, “escape” means to leave without lawful authority or to fail to return to custody when required.

MCL 712A.18k DNA identification profiling; providing samples for chemical testing

(1) An individual shall provide samples for chemical testing for DNA identification profiling or a determination of the sample’s genetic markers and shall provide samples for chemical testing for a determination of his or her secretor status if any of the following apply:

(a) The individual is found responsible for a violation of section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a violation of section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

(b) The individual is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

(ii) A violation of section 167(1)(c), (f), or (i) of the Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, indecent exposure.

(iv) A violation of section 451 of the Michigan penal code, 1931 PA 328, MCL 750.451, first and second prostitution violations.

(v) A violation of section 454 of the Michigan penal code, 1931 PA 328, MCL 750.454, leasing a house for purposes of prostitution.

(vi) A violation of section 462 of the Michigan penal code, 1931 PA 328, MCL 750.462, female under the age of 17 in a house of prostitution.

(2) Notwithstanding subsection (1), if at the time the individual is convicted of or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the individual that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the individual is not required to provide another sample or pay the fee required under subsection (4).

(3) The samples required to be collected under this section shall be collected by the investigating law enforcement agency and transmitted by the investigating law enforcement agency to the department of state police in the manner prescribed under the DNA identification profiling system act, 1990 PA 250, MCL

28.171 to 28.176.

(4) Until October 1, 2003, the court shall order each individual found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of \$60.00. The assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.

(5) An assessment required under subsection (4) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.

(6) After reviewing a verified petition by an individual against whom an assessment is imposed under subsection (4), the court may suspend payment of all or part of the assessment if it determines the individual is unable to pay the assessment.

(7) The court that imposes the assessment prescribed under subsection (4) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments or portions of assessments collected as follows:

(a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

(b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(8) Beginning December 31, 2002, the director of the department of state police shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (4) to all of the following:

(a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.

(b) The house of representatives appropriations subcommittee on state police and military affairs.

(c) The senate appropriations subcommittee on state police.

(9) The family independence agency or a county juvenile agency, investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of an individual convicted of or found responsible for an offense described in subsection (1) shall forward the DNA identification profile to the department of state police at or before the time the court imposes sentence or enters an order of disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the individual.

(10) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(11) As used in this section:

(a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.

(b) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(c) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the individual is convicted or found responsible. Investigating law enforcement agency does not include a probation officer employed by the department of corrections.

(d) "Sample" means a portion of an individual's blood, saliva, or tissue collected from the individual.

MCL 712A.181 Evaluation of juvenile for psychiatric or psychological treatment; court order.

If a juvenile is found to be within the court's jurisdiction under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation of section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, having to do with cruelty to animals, or would be a violation of sections 71 to 80 of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80, having to do with arson, the court shall order that the juvenile be evaluated to determine the need for psychiatric or psychological treatment. If the court determines that psychiatric or psychological treatment is appropriate for that juvenile, the court may order that treatment. This section does not preclude the court from entering any other order of disposition allowed under this chapter.

MCL 712A.18m Payment of costs; minimum amounts; disposition; definitions.

- (1) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:
 - (a) \$60.00, if the juvenile is found to be within the court's jurisdiction for a felony.
 - (b) \$45.00, if the juvenile is found to be within the court's jurisdiction for a serious misdemeanor or a specified misdemeanor.
 - (c) \$40.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor not described in subdivision (b) or of an ordinance violation.
- (2) Of the costs ordered to be paid, the clerk of the court shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost in subsection (1).
- (3) If a juvenile who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 29 of this chapter. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum state cost, are waived.
- (4) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.
- (5) As used in this section:
 - (a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.
 - (b) "Minimum state cost" means the applicable minimum cost to be ordered under subsection (1).
 - (c) "Ordinance violation" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.
 - (d) "Serious misdemeanor" means that term as defined in section 61 of the crime victim's rights act, 1985 PA 87, MCL 780.811.
 - (e) "Specified misdemeanor" means that term as defined in section 1 of 1989 PA 196, MCL 780.901.

MCL 712A.19 Termination of cause; supplemental order of disposition; placement of child in foster care; rehearing; record; scope and time of review hearing; notice of review; factors to be reviewed; modification of plan; determination as to placement; order; determination as to review; issuance of order without hearing; access to agency report; agency report and other information as evidence.

- (1) Subject to section 20 of this chapter, if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a "supplemental order of disposition". If the family independence agency becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the department shall file a supplemental petition with the court.

(2) Except as otherwise provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be cancelled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(3) Except as otherwise provided in subsection (4), if, in a proceeding under section 2(b) of this chapter, a child is subject to the jurisdiction of the court and removed from his or her home, a review hearing shall be held not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding reviewing hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be cancelled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(4) If a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency. A review hearing under this subsection shall not be cancelled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon the motion of any party or at the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

(5) Written notice of a review hearing under subsection (2), (3), or (4) shall be served upon all of the following:

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) The foster parent or custodian of the child.
- (c) If the parental rights to the child have not been terminated, the child's parents.
- (d) If the child has a guardian, the guardian for the child.
- (e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

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

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

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

(j) Other persons as the court may direct.

(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care. The court may modify any part of the case service plan including, but not limited to, the following:

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(b) Prescribing additional actions to be taken by the parent, guardian, nonparent adult, or custodian, to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(8) At a review hearing under subsection (2), (3), or (4), the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

(9) If in a proceeding under section 2(b) of this chapter a child is placed in foster care, the court shall determine at the dispositional hearing and each review hearing whether the cause should be reviewed before the next review hearing required by subsection (2), (3), or (4). In making this determination,

the court shall consider at least all of the following:

- (a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.
- (b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by subsection (2), (3), or (4).
- (10) Unless waived, if not less than 7 days' notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.
- (11) An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

MCL 712A.19a Permanency planning hearing; conditions; time limitation; purpose; notice; statement; return of child to parent; noncompliance with case service plan; other conditions as evidence; termination of parental rights to child; alternative placement plans; information considered as evidence.

(1) Subject to subsection (2), if a child remains in foster care and parental rights to the child have been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than 12 months after each preceding permanency planning hearing during the continuation of foster care. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter, but no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under subsection (2). A permanency planning hearing shall not be cancelled or delayed beyond the number of months required by this subsection or days as required under subsection (2), regardless of whether there is a petition for termination of parental rights pending.

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(i) Murder of another child of the parent.

(ii) Voluntary manslaughter of another child of the parent.

(iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.

(3) A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court.

(4) Not less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon all of the following:

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

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

(c) If the parental rights to the child have not been terminated, the child's parents.

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

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

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

(g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

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

(i) Other persons as the court may direct.

(5) If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(6) If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court shall order the agency to initiate proceedings to terminate parental rights to the child not later than 42 days after the permanency planning hearing, unless the court finds that initiating the termination of parental rights to the child is clearly not in the child's best interests.

(7) If the agency demonstrates under subsection (7) that initiating the termination of parental rights to the child is clearly not in the child's best interests, then the court shall order either of the following alternative placement plans:

(a) If the court determines that other permanent placement is not possible, the child's placement in foster care shall continue for a limited period to be stated by the court.

(b) If the court determines that it is in the child's best interests, the child's placement in foster care shall continue on a long-term basis.

(8) In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

MCL 712A.19b Termination of parental rights to child; petition; hearing; record; notice; findings; order; “concerned person ” defined.

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

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

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) The child’s foster parent or custodian.
- (c) The child’s parents.
- (d) If the child has a guardian, the child’s guardian.
- (e) If the child has a guardian ad litem, the child’s guardian ad litem.
- (f) If tribal affiliation has been determined, the Indian tribe’s elected leader.
- (g) The child’s attorney and each party’s attorney.
- (h) If the child is 11 years of age or older, the child.
- (i) The prosecutor.

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

(a) The child has been deserted under any of the following circumstances:

- (i) The child’s parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent’s identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
- (ii) The child’s parent has deserted the child for 91 or more days and has not sought custody of the

child during that period.

(iii) The child's parent voluntarily surrendered the child to an emergency service provider under chapter XII and did not petition the court to regain custody within 28 days after surrendering the child.

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

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

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

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

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

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

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

(d) The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(e) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or

more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

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

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

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

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

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

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

(i) Abandonment of a young child.

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

- (iii) Battering, torture, or other severe physical abuse.
- (iv) Loss or serious impairment of an organ or limb.
- (v) Life threatening injury.
- (vi) Murder or attempted murder.
 - (vii) Voluntary manslaughter.
 - (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
- (l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.
- (m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.
- (n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:
 - (i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.
 - (ii) A violation of a criminal statute, an element of which is the use of force or the threat of force, and which subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

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

(4) If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended under this subsection establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

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

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

MCL 712A.19c Review of child's placement in foster care and progress toward adoption or other permanent placement; applicability of section.

(1) Except as provided in section 19(4) and subject to subsection (2), if a child remains in placement the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 from the immediately preceding review hearing before the end of the year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be cancelled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be cancelled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

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

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

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

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

MCL 712A.20 Temporary or permanent custody.

The court in all cases involving custody shall state in the order for disposition or any supplemental order of disposition whether the child is placed in the temporary or permanent custody of the court. If the child is placed in the temporary custody of the court, no supplemental order of disposition providing permanent custody, or containing any other order of disposition shall be made except at a hearing pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter or at a rehearing provided by section 19 of this chapter. If the child is placed in the permanent custody of the court, all parental rights are terminated, though such rights may be reinstated by a supplemental order of disposition after rehearing pursuant to section 21.

MCL 712A.21 Petition for rehearing; affirming, modifying, or setting aside order; conduct of rehearing; order for supplemental disposition; applicability of section to criminal proceeding; “interested person” construed.

(1) At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this chapter. Upon the rehearing, the court may affirm, modify, or set aside any order reviewed under this section. If parental rights have been terminated by an order entered in the proceedings and custody of the juvenile has been removed from the parents, guardian, or other person, the petition for rehearing shall be filed not later than 20 days after the date of entry of the order terminating parental rights. The petition shall set forth in detail the place, manner, and all other information requested by the court in reference to the proposed future custody of the juvenile. The rehearing shall be conducted in accordance with the provisions of this chapter relating to the conduct of original hearings. The court may enter an order for supplemental disposition while the juvenile remains under the court’s jurisdiction.

(2) This section does not apply to a criminal proceeding under this chapter.

(3) As used in subsection (1), “interested person” includes a member of a local foster care review board established under Act No. 422 of the Public Acts of 1984, being sections 722.131 to 722.140 of the Michigan Compiled Laws, to which that juvenile’s case has been assigned.

MCL 712A.22 Annual report.

The state court administrative office shall publish an annual report evaluating the court regarding its duty under this act to engage in obtaining permanency for children. The report shall include at least information and statistics detailing the court’s adherence to each time period prescribed by this act or court rule for the management and disposition of children’s cases that are petitioned under section 2(b) of this chapter and, if the court fails to adhere to a time period, the specific reasons for that failure.

MCL 712A.23 Use of evidence against juvenile.

Evidence regarding the disposition of a juvenile under this chapter and evidence obtained in a dispositional proceeding under this chapter shall not be used against that juvenile for any purpose in any judicial proceeding except in a subsequent case against that juvenile under this chapter. This

section does not apply to a criminal conviction under this chapter.

MCL 712A.24 Placement in institutions; summary of information; conveyance of child; progress report.

Whenever the court shall place a child in any public or private institution or agency, it shall transmit with the order of disposition or supplemental order of disposition a summary of its information concerning such child, and such child may be placed in the care of a county agent, probation officer, juvenile matron or some other reliable person designated by the court to be conveyed to the institution, and the same compensation shall be paid by the state for the transportation of said child as is paid to county agents in like cases. Whenever the court shall place a child in a private or incorporated institution or agency, it shall require a progress report concerning said child which shall be made at least once every 6 months from the date of the order.

MCL 712A.25 Payment of expenses.

(1) Except as otherwise provided by law, expenses incurred in carrying out this chapter shall be paid upon the court's order by the county treasurer from the county's general fund.

(2) A county that is a county juvenile agency shall pay expenses for county juvenile agency services incurred in carrying out this chapter from the block grant distributed under section 117a of the social welfare act, 1939 PA 280, MCL 400.117a, and other funds made available for that purpose and is not obligated under subsection (1) to pay for juvenile justice services other than county juvenile agency services as required by section 117a of the social welfare act. As used in this subsection, "county juvenile agency services" and "juvenile justice service" mean those terms as defined in section 117a of the social welfare act.

MCL 712A.26 Contempt of court; punishment.

The court shall have the power to punish for contempt of court under chapter 17 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745, any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce this chapter.

MCL 712A.27 Quarters, equipment and supplies for use of juvenile division.

Suitable quarters, equipment, and supplies shall be provided by the board of supervisors of each county for the use of the juvenile division of the probate court in said county.

MCL 712A.28 Case records; opening records; order in respect to payments by parent; copy; publicizing action taken against parents or adult; administration of court; reports; form; copies; definitions.

(1) Before June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. The records shall be open only by court order to persons having a legitimate interest, except that diversion records shall be open only as provided in the juvenile diversion act.

(2) Beginning June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. Except as otherwise provided in this subsection, records of a case brought before the court shall be open to the general public. Diversion records shall be open

only as provided in the juvenile diversion act. Except as otherwise provided in section 49 of the crime victim's rights act, 1985 PA 87, MCL 780.799, if the hearing of a case brought before the court is closed under section 17 of this chapter, the records of that hearing shall be open only by court order to persons having a legitimate interest.

(3) If the court issues an order in respect to payments by a parent under section 18(2) of this chapter, a copy shall be mailed to the department of treasury. Action taken against parents or adults shall not be released for publicity unless the parents or adults are found guilty of contempt of court. The court shall furnish the family independence agency and a county juvenile agency with reports of the administration of the court in a form recommended by the Michigan association of probate and juvenile court judges. Copies of these reports shall, upon request, be made available to other state departments by the family independence agency.

(4) As used in this section:

(a) "Juvenile diversion act" means the juvenile diversion act, 1988 PA 13, MCL 722.821 to 722.831.

(b) "Persons having a legitimate interest" includes a member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a.

MCL 712A.29 Allocation and application of money collected; “victim payment” defined.

(1) If a child is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same order of disposition, money collected from that child, or his or her parent or parents, for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50% of the money collected from that child, or his or her parent or parents, shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, and other assessments or payments. If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid, additional money collected shall be applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state costs prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of costs.

(c) Payment of fines.

(d) Payment of assessments and other payments.

(4) In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state costs prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and costs.

(c) Payment of assessments and other payments.

(5) Money allocated for payment of costs under subsection (3) shall be paid to the county treasurer for deposit in the general fund of the county. Money allocated for payment of fines under subsection (3) shall be paid to the county treasurer to be used for library purposes as provided by law.

(6) One-third of the money allocated for payment of fines and costs under subsection (4) shall be paid to the treasurer of the political subdivision whose ordinance was violated, and 2/3 of that money

shall be paid to the county treasurer for deposit in the general fund of the county.

(7) As used in this section, “victim payment” means restitution ordered under sections 30 and 31 and under the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834, paid to the victim or the victim’s estate, but not to a person who reimbursed the victim for his or her loss, or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

MCL 712A.30 “Offense” and “victim” defined; order of restitution.

(1) For purposes of this section and section 31:

(a) “Juvenile offense” means a violation by a juvenile of a penal law of this state or a violation by a juvenile of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.

(b) “Victim” means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a juvenile offense. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of the commission of a juvenile offense.

(2) Except as provided in subsection (8), at the dispositional hearing for a juvenile offense, the court shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile make full restitution to any victim of the juvenile’s course of conduct that gives rise to the disposition or to the victim’s estate.

(3) If a juvenile offense results in damage to or loss or destruction of property of a victim of the juvenile offense, or results in the seizure or impoundment of property of a victim of the juvenile offense, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss, or destruction.

(ii) The value of the property on the date of disposition.

(c) Pay the costs of the seizure or impoundment, or both.

(4) If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim’s estate for after-tax income loss suffered by the victim as a result of the juvenile offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim’s family that has been incurred as a result of the juvenile offense.

(e) Pay an amount equal to the costs of actual homemaking and child care expenses incurred as a

result of the juvenile offense.

(5) If a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

(6) If the victim or victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money.

(7) If the victim is deceased, the court shall order that the restitution be made to the victim's estate.

(8) The court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or any other legal entities that have compensated the victim or victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution, for the costs of services provided, to persons or entities that have provided services to the victim as a result of the juvenile offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its actions. If an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited by the state treasurer in the crime victim's rights fund created under section 4 of Act No. 196 of the Public Acts of 1989, being section 780.904 of the Michigan Compiled Laws, or its successor fund.

(9) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the juvenile make restitution under this section within a specified period or in specified installments.

(11) If the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation. The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(12) A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment.

(13) An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

(14) Notwithstanding any other provision of this section, a juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, "parent" does not include a foster parent.

(16) If the court orders a parent to pay restitution under subsection (15), the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the parent may have. If a parent is required to pay restitution under subsection (15), the court shall provide for payment to be made in specified installments and within a specified period of time.

(17) A parent who has been ordered to pay restitution under subsection (15) may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent.

(18) In each case in which payment of restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the juvenile caseworker or probation officer determines the restitution is not being paid as ordered, the juvenile caseworker or probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(19) If the court determines that an individual who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of restitution to the department of corrections when the court determines that the individual is remanded to the department's jurisdiction.

MCL 712A.31 Determining amount of restitution; factors in disposition report; disclosure of matters described in subsection (1); burden of demonstrating amount or type of restitution.

(1) In determining the amount of restitution to order under section 30 of this chapter, the court shall consider the amount of the loss sustained by any victim as a result of the juvenile offense. In determining whether to order the juvenile's supervisory parent to pay restitution under section 30(15) of this chapter, the court shall consider the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter.

(2) The court may order the person preparing a report for the purpose of disposition to obtain information pertaining to the factors set forth in subsection (1). That person shall include the information collected in the disposition report or in a separate report, as the court directs.

(3) The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the juvenile offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter shall be on the supervisory parent.

MCL 712A.32 Order to appear for identification; notice of right to attorney; appointment of attorney.

(1) If a complaint or petition is filed with the court against a juvenile for violating a criminal law of this state or of a local unit of government of this state, the court may, at the request of the person or entity submitting the complaint or petition, order the juvenile to appear at a place and time designated by the court for identification by another person. Identification under this section may include identification in a corporeal lineup.

(2) If the court orders identification proceedings under this section, the court shall notify the juvenile and the juvenile's parent, guardian, or custodian that he or she has the right to consult an attorney and to have an attorney present during the identification proceedings. If the juvenile and the juvenile's parent, guardian, or custodian cannot afford an attorney but request an attorney, the court shall appoint an attorney to represent the juvenile.

APPENDIX B

MICHIGAN COURT RULES (Relevant Sections)

MICHIGAN COURT RULES

(Current as of 9/18/2009)

Rule 2.004 Incarcerated Parties

(A) This subrule applies to

- (1) Domestic relations actions involving minor children, and
- (2) Other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights, in which a party is incarcerated under the jurisdiction of the Department of Corrections.

(B) The party seeking an order regarding a minor child shall

- (1) Contact the department to confirm the incarceration and the incarcerated party's prison number and location;
- (2) Serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and
- (3) File with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

(D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.

(E) The purpose of the telephone call described in this subrule is to determine

- (1) Whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,
- (2) Whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,
- (3) Whether the incarcerated party is capable of self-representation, if that is the party's choice,
- (4) How the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and
- (5) The scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call.

(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Rule 3.901 Applicability of Rules

(A) Scope.

- (1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.
- (2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides.
- (3) The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides. MCL

722.631 governs privileges in child protective proceedings.

(B) Application. Unless the context otherwise indicates:

- (1) MCR 3.901-3.928, 3.980, and 3.991-3.993 apply to delinquency proceedings and child protective proceedings;
- (2) MCR 3.931-3.950 apply only to delinquency proceedings;
- (3) MCR 3.951-3.956 apply only to designated proceedings;
- (4) MCR 3.961-3.978 apply only to child protective proceedings;
- (5) MCR 3.981-3.989 apply only to minor personal protection order proceedings.

Rule 3.902 Construction

(A) In General. The rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties. Limitations on corrections of error are governed by MCR 2.613.

(B) Philosophy. The rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:

- (1) Receive the care, guidance, and control, preferably in the minor's own home, that is conducive to the minor's welfare and the best interests of the public; and
- (2) When removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor's parents should have given the minor.

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

- (1) "Case" means an action initiated in the family division of the circuit court by:
 - (a) Submission of an original complaint, petition, or citation;
 - (b) Acceptance of transfer of an action from another court or tribunal; or
 - (c) Filing or registration of a foreign judgment or order.
- (2) "Child protective proceeding" means a proceeding concerning an offense against a child.
- (3) "Confidential file" means
 - (a) That part of a file made confidential by statute or court rule, including, but not limited to,

- (i) The diversion record of a minor pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*;
 - (ii) The separate statement about known victims of juvenile offenses, as required by the Crime Victim's Rights Act, MCL 780.751 *et seq.*;
 - (iii) The testimony taken during a closed proceeding pursuant to MCR 3.925(A)(2) and MCL 712A.17(7);
 - (iv) The dispositional reports pursuant to MCR 3.943(C)(3) and 3.973(E)(4);
 - (v) Fingerprinting material required to be maintained pursuant to MCL 28.243;
 - (vi) Reports of sexually motivated crimes, MCL 28.247;
 - (vii) Test results of those charged with certain sexual offenses or substance abuse offenses, MCL 333.5129;
- (b) The contents of a social file maintained by the court, including materials such as
- (i) Youth and family record fact sheet;
 - (ii) Social study;
 - (iii) Reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school, and police reports);
 - (iv) Family Independence Agency records;
 - (v) Correspondence;
 - (vi) Victim statements.
- (4) "Court" means the family division of the circuit court.
- (5) "Delinquency proceeding" means a proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3).
- (6) "Designated proceeding," means a proceeding in which the prosecuting attorney has designated, or has requested the court to designate, the case for trial in the family division of the circuit court in the same manner as an adult.
- (7) "Father" means:
- (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
 - (b) A man who legally adopts the minor;
 - (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
 - (d) A man judicially determined to have parental rights; or
 - (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.
- (8) "File," means a repository for collection of the pleadings and other documents and materials related to a case.
- (9) An authorized petition is deemed "filed" when it is delivered to, and accepted by, the clerk of the court.
- (10) "Formal calendar" means judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child

protective proceeding.

(11) “Guardian” means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.

(12) “Juvenile Code” means 1944 (1st Ex Sess) PA 54, MCL 712A.1 et seq., as amended.

(13) “Legal Custodian” means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.

(14) “Legally admissible evidence” means evidence admissible under the Michigan Rules of Evidence.

(15) “Minor” means a person under the age of 18, and may include a person of age 18 or older over whom the court has continuing jurisdiction pursuant to MCL 712A.2a.

(16) “Officer” means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor.

(17) “Parent” means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.

(18) “Party” includes the

(a) Petitioner and juvenile in a delinquency proceeding;

(b) Petitioner, child, respondent, and parent, guardian, or legal custodian in a protective proceeding.

(19) “Petition” means a complaint or other written allegation, verified in the manner provided in MCR 2.114(B), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.

(20) “Petition authorized to be filed” refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.

(21) “Petitioner” means the person or agency who requests the court to take action.

(22) “Preliminary inquiry” means informal review by the court to determine appropriate action on a petition.

(23) “Putative father” means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).

(24) “Records” means the pleadings, motions, authorized petition, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.

(25) “Register of actions” means the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards. See MCR 8.119(D)(1)(c).

(26) “Trial” means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court.

(B) Delinquency Proceedings. When used in delinquency proceedings, unless the context otherwise indicates:

(1) “Detention” means court-ordered removal of a juvenile from the custody of a parent, guardian, or legal custodian, pending trial, disposition, commitment, or further order.

(2) “Juvenile” means a minor alleged or found to be within the jurisdiction of the court for having committed an offense.

(3) “Offense by a juvenile” means an act that violates a criminal statute, a criminal ordinance, a traffic law, or a provision of MCL 712A.2(a) or (d).

(4) “Prosecuting attorney” means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1) “Agency” means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(2) “Child” means a minor alleged or found to be within the jurisdiction of the court pursuant to MCL 712A.2(b).

(3) “Contrary to the welfare of the child” includes, but is not limited to, situations in which the child’s life, physical health, or mental well-being is unreasonably placed at risk.

(4) “Foster care” means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to,

(a) Care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq.*, or

(b) Care provided to a child in a relative’s home pursuant to an order of the court.

(5) “Lawyer-guardian ad litem” means that term as defined in MCL 712A.13a(1)(f).

(6) “Nonparent adult” means a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

(a) Has substantial and regular contact with the child,

(b) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare, and

(c) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.

(7) “Offense against a child” means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.

(8) “Placement” means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.

(9) “Prosecutor” or “prosecuting attorney” means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

(10) Except as provided in MCR 3.977(B), “respondent” means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.

(D) Designated Proceedings.

(1) “Arraignment” means the first hearing in a designated case at which

(a) The juvenile is informed of the allegations, the juvenile’s rights, and the potential consequences of the proceeding;

(b) The matter is set for a probable cause or designation hearing; and,

(c) If the juvenile is in custody or custody is requested pending trial, a decision is made regarding custody pursuant to MCR 3.935(C).

- (2) “Court-designated case” means a case in which the court, pursuant to a request by the prosecuting attorney, has decided according to the factors set forth in MCR 3.952(C)(3) that the juvenile is to be tried in the family division of circuit court in the same manner as an adult for an offense other than a specified juvenile violation.
- (3) “Designated case” means either a prosecutor-designated case or a court-designated case.
- (4) “Designation hearing” means a hearing on the prosecuting attorney’s request that the court designate the case for trial in the same manner as an adult in the family division of circuit court.
- (5) “Preliminary examination” means a hearing at which the court determines whether there is probable cause to believe that the specified juvenile violation or alleged offense occurred and whether there is probable cause to believe that the juvenile committed the specified juvenile violation or alleged offense.
- (6) “Prosecutor-designated case” means a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be tried in the same manner as an adult in the family division of the circuit court.
- (7) “Sentencing” means the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the offense for which the juvenile was convicted or the decision to delay the imposition of such a sanction.
- (8) “Specified juvenile violation” means any offense, attempted offense, conspiracy to commit an offense, or solicitation to commit an offense, as enumerated in MCL 712A.2d, that would constitute:
- (a) Burning of a dwelling house, MCL 750.72;
 - (b) Assault with intent to commit murder, MCL 750.83;
 - (c) Assault with intent to maim, MCL 750.86;
 - (d) Assault with intent to rob while armed, MCL 750.89;
 - (e) Attempted murder, MCL 750.91;
 - (f) First-degree murder, MCL 750.316;
 - (g) Second-degree murder, MCL 750.317;
 - (h) Kidnapping, MCL 750.349;
 - (i) First-degree criminal sexual conduct, MCL 750.520b;
 - (j) Armed robbery, MCL 750.529;
 - (k) Carjacking, MCL 750.529a;
 - (l) Robbery of a bank, safe, or vault, MCL 750.531;
 - (m) Possession, manufacture, or delivery of, or possession with intent to manufacture or deliver, 650 grams (1,000 grams beginning March 1, 2003) or more of any schedule 1 or 2 controlled substance, MCL 333.7401, 333.7403;
 - (n) Assault with intent to do great bodily harm less than murder, MCL 750.84, if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);
 - (o) First-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);
 - (p) Escape or attempted escape from a medium security or high security facility operated by the Family Independence Agency or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a;
 - (q) Any lesser-included offense of an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p); or

- (r) Any offense arising out of the same transaction as an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p).
- (9) “Tried in the same manner as an adult,” means a trial in which the juvenile is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction.
- (E) Minor Personal Protection Order Proceedings. When used in minor personal protection order proceedings, unless the context otherwise indicates:
- (1) “Minor personal protection order” means a personal protection order issued by a court against a minor under jurisdiction granted by MCL 712A.2(h).
- (2) “Original petitioner” means the person who originally petitioned for the minor personal protection order.
- (3) “Prosecutor” or “prosecuting attorney” means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

Rule 3.911 Jury

- (A) Right. The right to a jury in a juvenile proceeding exists only at the trial.
- (B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:
 - (1) 14 days after the court gives notice of the right to jury trial, or
 - (2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial. The court may excuse a late filing in the interest of justice.
- (C) Jury Procedure. Jury procedure in juvenile cases is governed by MCR 2.508-2.516, except as provided in this subrule.
 - (1) In a delinquency proceeding,
 - (a) Each party is entitled to 5 peremptory challenges, and
 - (b) The verdict must be unanimous.
 - (2) In a child protective proceeding,
 - (a) Each party is entitled to 5 peremptory challenges, with the child considered a separate party, and
 - (b) A verdict in a case tried by 6 jurors will be received when 5 jurors agree.
 - (3) Two or more parties on the same side, other than a child in a child protective proceeding, are considered a single party for the purpose of peremptory challenges.
 - (a) When two or more parties are aligned on the same side and have adverse interests, the court shall allow each such party represented by a different attorney 3 peremptory challenges.
 - (b) When multiple parties are allowed more than 5 peremptory challenges under this subrule, the court may allow the opposite side a total number of peremptory challenges not to exceed the number allowed to the multiple parties.
 - (4) In a designated case, jury procedure is governed by MCR 6.401-6.420.

Rule 3.912 Judge

(A) Judge Required. A judge must preside at:

- (1) a jury trial;
- (2) a waiver proceeding under MCR 3.950;
- (3) the preliminary examination, trial, and sentencing in a designated case;
- (4) a proceeding on the issuance, modification, or termination of a minor personal protection order.

(B) Right; Demand. The parties have the right to a judge at a hearing on the formal calendar. A party may demand that a judge rather than a referee preside at a nonjury trial by filing a written demand with the court within:

- (1) 14 days after the court gives notice of the right to a judge, or
- (2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no

later than 21 days before trial. The court may excuse a late filing in the interest of justice.

(C) Designated Cases.

(1) The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause is waived. The judge who presides at a preliminary examination may accept a plea in the designated case.

(2) The juvenile has the right to demand that the same judge who accepted the plea or presided at the trial of a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case.

(D) Disqualification of Judge. The disqualification of a judge is governed by MCR 2.003.

Rule 3.913 Referees

(A) Assignment of Matters to Referees.

(1) General. Subject to the limitations in subrule (A)(2), the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A) and to make recommended findings and conclusions.

(2) Attorney and Nonattorney Referees.

(a) Delinquency Proceedings. Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court under MCL 712A.2(a)(1).

(b) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, a progress review under MCR 3.974(A), or an emergency removal hearing under MCR 3.974(B).

(c) Designated Cases. Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions.

(d) Minor Personal Protection Actions. A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice

law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions.

(B) Duration of Assignment. Unless a party has demanded trial by jury or by a judge pursuant to MCR 3.911 or 3.912, a referee may conduct the trial and further proceedings through disposition.

(C) Advice of Right to Review of Referee's Recommendations. During a hearing held by a referee, the referee must inform the parties of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 3.991(B).

Rule 3.914 Prosecuting Attorney

(A) General. On request of the court, the prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding or any delinquency proceeding.

(B) Delinquency Proceedings.

(1) Petition Approval. Only the prosecuting attorney may request the court to take jurisdiction of a juvenile under MCL 712A.2(a)(1).

(2) Appearance. The prosecuting attorney shall participate in every delinquency proceeding under MCL 712A.2(a)(1) that requires a hearing and the taking of testimony.

(C) Child Protective Proceedings.

(1) Legal Consultant to Agency. On request of the Michigan Family Independence Agency or of an agent under contract with the agency, the prosecuting attorney shall serve as a legal consultant to the agency or agent at all stages of a child protective proceeding.

(2) Retention of Counsel. In a child protective proceeding, the agency may retain legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency.

(D) Designated Proceedings.

(1) Specified Juvenile Violation. In a case in which the petition alleges a specified juvenile violation, only the prosecuting attorney may designate the case, or request leave to amend a petition to designate the case, for trial of the juvenile in the same manner as an adult.

(2) Other Offenses. In a case in which the petition alleges an offense other than the specified juvenile violation, only the prosecuting attorney may request the court to designate the case for trial of the juvenile in the same manner as an adult.

(E) Minor Personal Protection Orders. The prosecuting attorney shall prosecute criminal contempt proceedings as provided in MCR 3.987(B).

Rule 3.915 Assistance of Attorney

(A) Delinquency Proceedings.

(1) Advice. If the juvenile is not represented by an attorney, the court shall advise the juvenile of the right to the assistance of an attorney at each stage of the proceedings on the formal calendar, including trial, plea of admission, and disposition.

(2) Appointment of an Attorney. The court shall appoint an attorney to represent the juvenile in a delinquency proceeding if:

(a) The parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings;

(b) The parent, guardian, or legal custodian is the complainant or victim;

(c) The juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney, and the juvenile does not waive an attorney;

(d) Those responsible for the support of the juvenile refuse or neglect to retain an attorney for the juvenile, and the juvenile does not waive an attorney; or

(e) The court determines that the best interests of the juvenile or the public require appointment.

(3) Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent, guardian, legal custodian, or guardian ad litem objects or when the appointment is

based on subrule (A)(2)(e). The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.

(B) Child Protective Proceedings.

(1) Respondent.

(a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that

(i) the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney, and,

(ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.

(b) The court shall appoint an attorney to represent the respondent at any hearing conducted pursuant to these rules if

(i) the respondent requests appointment of an attorney, and

(ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.

(c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child.

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so.

(b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

(C) Appearance. The appearance of an attorney is governed by MCR 2.117(B).

(D) Duration.

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and,

for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.

(a) Costs. When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law.

Rule 3.916 Guardian Ad Litem

(A) General. The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.

(B) Appearance. The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement regarding the existence of any interest that the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters.

(C) Access to Information. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed.

(D) Costs. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement as provided by law.

Rule 3.917 Court Appointed Special Advocate

(A) General. The court may, upon entry of an appropriate order, appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.

(B) Qualifications. All court appointed special advocates shall receive appropriate screening.

(C) Duties. Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.

(D) Term of Appointment. A court appointed special advocate shall serve until discharged by the court.

(E) Access to Information. Upon appointment by the court, the special advocate may be given access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem.

Rule 3.920 Service of Process

(A) General.

(1) Unless a party must be summoned as provided in subrule (B), a party shall be given notice of a juvenile proceeding in any manner authorized by the rules in this subchapter.

(2) MCR 2.004 applies in juvenile proceedings involving incarcerated parties.

(B) Summons.

- (1) In General. A summons may be issued and served on a party before any juvenile proceeding.
- (2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:
 - (a) In a delinquency proceeding, a summons must be served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile, directing them to appear with the juvenile for trial. The juvenile must also be served with a summons to appear for trial. A parent without physical custody must be notified by service as provided in subrule (C), unless the whereabouts of the parent remain unknown after a diligent inquiry.
 - (b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C).
 - (c) In a personal protection order enforcement proceeding involving a minor respondent, a summons must be served on the minor. A summons must also be served on the parent or parents, guardian, or legal custodian, unless their whereabouts remain unknown after a diligent inquiry.
- (3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:
 - (a) Identify the nature of hearing;
 - (b) Explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;
 - (c) If the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and
 - (d) Have a copy of the petition attached.
- (4) Manner of Serving Summons.
 - (a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.
 - (b) If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.
 - (c) If personal service of a summons is not required, the court may direct that it be served in a manner reasonably calculated to provide notice.
- (5) Time of Service.
 - (a) A summons shall be personally served at least:
 - (i) 14 days before hearing on a petition that seeks to terminate parental rights or a permanency planning hearing,
 - (ii) 7 days before trial or a child protective dispositional review hearing, or
 - (iii) 3 days before any other hearing.
 - (b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subrule (a) requires for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required by subrule (a) if the party to be served resides outside Michigan.
 - (c) If service is by publication, the published notice must appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The

published notice need not include the petition itself. The notice must be published at least once 21 days before a hearing specified in subrule (a)(i), 14 days before trial or a hearing specified in subrule (a)(ii), or 7 days before any other hearing.

(C) Notice of Hearing.

(1) General. Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules (C)(2) and (C)(3), or as otherwise provided in the rules.

(2) Preliminary Hearing; Emergency Removal Hearing.

(a) When a juvenile is detained, notice of the preliminary hearing must be given to the juvenile and to the parent of the juvenile as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

(b) When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974(B)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

(3) Permanency Planning Hearing; Termination Proceedings.

(a) Notice of a permanency planning hearing must be given in writing at least 14 days before the hearing.

(b) Notice of a hearing on a petition requesting termination of parental rights in a child protective proceeding must be given in writing at least 14 days before the hearing.

(4) Failure to Appear. When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena.

(D) Subpoenas.

(1) The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired.

(2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

(3) Except as otherwise stated in this subrule, service of a subpoena is governed by MCR 2.506.

(E) Waiver of Notice and Service. A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subrule (B), the party must be provided the advice required by subrule (B)(3).

(F) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (C), except that a summons must be served for trial or termination hearing as provided in subrule (B).

(G) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney.

(H) Proof of Service.

(1) Summons. Proof of service of a summons must be made in the manner provided in MCR 2.104(A).

- (2) Other Papers. Proof of service of other papers permitted or required to be served under these rules must be made in the manner provided in MCR 2.107(D).
- (3) Publication. If the manner of service used involves publication, proof of service must be made in the manner provided in MCR 2.106(G)(1), and (G)(3) if the publication is accompanied by a mailing.
- (4) Content. The proof of service must identify the papers served.
- (5) Failure to File. Failure to file proof of service does not affect the validity of the service.

Rule 3.921 Persons Entitled to Notice

(A) Delinquency Proceedings.

(1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):

- (a) The juvenile,
- (b) The custodial parents, guardian, or legal custodian of the juvenile,
- (c) The noncustodial parent who has requested notice at a hearing or in writing,
- (d) The guardian ad litem or lawyer-guardian ad litem of a juvenile appointed pursuant to these rules,
- (e) The attorney retained or appointed to represent the juvenile, and
- (f) The prosecuting attorney.

(2) Notice to the Petitioner. The petitioner must be notified of the first hearing on the petition.

(3) Parent Without Physical Custody. A parent of the minor whose parental rights over the minor have not been terminated at the time the minor comes to court, must be notified of the first hearing on the formal calendar, unless the whereabouts of the parent are unknown.

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

- (a) The respondent,
- (b) The attorney for the respondent,
- (c) The lawyer-guardian ad litem for the child,
- (d) Subject to subrule (C), the parents, guardian, or legal custodian, if any, other than the respondent,
- (e) The petitioner,
- (f) A party's guardian ad litem appointed pursuant to these rules, and
- (g) Any other person the court may direct to be notified.

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

- (a) The agency responsible for the care and supervision of the child,
- (b) The person or institution having court-ordered custody of the child,
- (c) The parents of the child, subject to subrule (C), and the attorney for the respondent parent, unless parental rights have been terminated,
- (d) The guardian or legal custodian of the child, if any,
- (e) The guardian ad litem for the child,
- (f) The lawyer-guardian ad litem for the child,
- (g) The attorneys for each party,
- (h) The prosecuting attorney if the prosecuting attorney has appeared in the case,
- (i) The child, if 11 years old or older,
- (j) Any tribal leader, if there is an Indian tribe affiliation, and
- (k) Any other person the court may direct to be notified.

(3) Termination of Parental Rights. Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2).

(C) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

- (1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice must include the following information:

- (a) If known, the name of the child, the name of the child's mother, and the date and place of birth of the child;
- (b) That a petition has been filed with the court;
- (c) The time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
- (d) A statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

(2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine, as appropriate, that:

- (a) The putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.
 - (b) A preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
 - (c) There is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).
 - (d) After diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.
- (3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if
- (a) He fails to appear after proper notice, or
 - (b) He appears, but fails to establish paternity within the time set by the court.

(D) Failure to Appear; Notice by Publication. When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings, except a hearing on the termination of parental rights.

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) Discovery.

- (1) The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:
- (a) All written or recorded statements and notes of statements made by the juvenile or respondent that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;
 - (b) All written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;
 - (c) The names of prospective witnesses;
 - (d) A list of all prospective exhibits;
 - (e) A list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;

(f) The results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;

(g) The results of any lineups or showups, including written reports or lineup sheets; and

(h) All search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.

(2) On motion of a party, the court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right under subrule (A)(1) if timely requested. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.

(3) Depositions may only be taken as authorized by the court.

(4) Failure to comply with subrules (1) and (2) may result in such sanctions, as applicable, as set forth in MCR 2.313.

(B) Notice of Defenses; Rebuttal.

(1) Within 21 days after the juvenile has been given notice of the date of trial, but no later than 7 days before the trial date, the juvenile or the juvenile's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of the names and addresses of defense witnesses.

(2) Within 7 days after receipt of notice, but no later than 2 days before the trial date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above-listed defenses. The notice shall include names and addresses of rebuttal witnesses.

(3) Failure to comply with subrules (1) and (2) may result in the sanctions set forth in MCL 768.21.

(C) Motion Practice. Motion practice in juvenile proceedings is governed by MCR 2.119.

(D) Pretrial Conference. The court may direct the parties to appear at a pretrial conference. The scope and effect of a pretrial conference are governed by MCR 2.401, except as otherwise provided in or inconsistent with the rules of this subchapter.

(E) Notice of Intent.

(1) Within 21 days after the parties have been given notice of the date of trial, but no later than 7 days before the trial date, the proponent must file with the court, and serve all parties, written notice of the intent to:

(a) Use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.

(b) Request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.

(c) Use a videotaped deposition as permitted by law.

(d) Admit out-of-court hearsay statements under MCR 3.972(C)(2), including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.

(2) Within 7 days after receipt or notice, but no later than 2 days before the trial date, the nonproponent parties must provide written notice to the court of an intent to offer rebuttal testimony or evidence in opposition to the request and must include the identity of the witnesses to

be called.

(3) The court may shorten the time periods provided in subrule (E) if good cause is shown.

Rule 3.923 Miscellaneous Procedures

(A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may:

- (1) Examine a witness,
- (2) Call a witness, or
- (3) Adjourn the matter before the court, and
 - (a) Cause service of process on additional witnesses, or
 - (b) Order production of other evidence.

(B) Examination or Evaluation. The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

(C) Fingerprinting and Photographing. A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing, or both, of a minor concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.

(D) Lineup. If a complaint or petition is filed against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the prosecuting attorney, order the juvenile to appear at a place and time designated by the court for identification by another person, including a corporeal lineup pursuant to MCL 712A.32. If the court orders the juvenile to appear for such an identification procedure, the court must notify the juvenile and the juvenile's parent, guardian or legal custodian that the juvenile has the right to consult with an attorney and have an attorney present during the identification procedure and that if the juvenile and the juvenile's parent, guardian or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian or legal custodian.

(E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

(F) Impartial Questioner. The court may appoint an impartial person to address questions to a child witness at a hearing as the court directs.

(G) Adjournments. Adjournments of trials or hearings in child protective proceedings should be granted only

- (1) For good cause,
- (2) After taking into consideration the best interests of the child, and
- (3) For as short a period of time as necessary.

Rule 3.924 Information Furnished on Request by Court

Persons or agencies providing testimony, reports, or other information at the request of the court, including otherwise confidential information, records, or reports that are relevant and material to the proceedings following authorization of a petition, are immune from any subsequent legal action with respect to furnishing the information to the court.

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Files; Setting Aside Adjudications

(A) Open Proceedings.

(1) General. Except as provided in subrule (A)(2), juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.

(2) Closed Proceedings; Criteria. The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings; the age, maturity, and preference of the witness; and, if the witness is a child,

the preference of a parent, guardian, or legal custodian that the proceedings be open or closed. The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1).

(B) Record of Proceedings. A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.

(C) Judgments and Orders. The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.

(D) Public Access to Records; Confidential File.

(1) General. Records of the juvenile cases, other than confidential files, must be open to the general public.

(2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) Destruction of Court Files and Records. This subrule governs the destruction of court files and records.

(1) Destruction Generally; Effect. The court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.

(2) Delinquency Files and Records.

(a) The court must destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age.

(b) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained as a nonpublic record.

(c) Except as provided by subrules (a) and (b), the court must destroy the files and records pertaining to a person's juvenile offenses, other than any adjudicated offense described in MCL 712A.18e(2), when the person becomes 30 years old.

(d) If the court destroys its files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.

(3) Child Protective Files and Records.

(a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.

(b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

(F) Setting Aside Adjudications and Convictions.

(1) Adjudications. The setting aside of juvenile adjudications is governed by MCL 712A.18e.

(2) Convictions. The court may only set aside a conviction as provided by MCL 780.621 *et seq.*

(G) Access to Juvenile Offense Record of Convicted Adults. When the juvenile offense record of an adult convicted of a crime is made available to the appropriate agency, as provided in MCL 791.228(1), the record must state whether, with regard to each adjudication, the juvenile had an attorney or voluntarily waived an attorney.

Rule 3.926 Transfer of Jurisdiction; Change of Venue

(A) Definition. As used in MCL 712A.2, a child is "found within the county" in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.

(B) Transfer to County of Residence. When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may transfer the case to the court in the county of residence before trial.

(1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child's sole legal parent, that county will be presumed to be the county of residence.

(2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:

(a) The county of residence of the parent or parents, guardian, or legal custodian.

(b) Whether the child has ever lived in the county, and, if so, for how long.

(c) Whether either parent has moved to another county since the inception of the case.

(d) Whether the child is subject to the prior continuing jurisdiction of another court.

(e) Whether a court has entered an order placing the child in the county for the purpose of adoption.

(f) Whether the child has expressed an intention to reside in the county.

(g) Any other factor the court considers relevant.

(3) If the child has been placed in a county by court order or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for the purpose of adoption.

(C) Costs. When a court other than the court in a county in which the minor resides orders disposition, it will be responsible for any costs incurred in connection with such order unless

(1) The court in the county in which the minor resides agrees to pay the costs of such disposition, or

(2) The minor is made a state ward pursuant to the Youth Rehabilitation Services Act, MCL 803.301 *et seq.*, and the county of residence withholds consent to a transfer of the case.

(D) Change of Venue; Grounds. The court, on motion by a party, may order a case to be heard before a court in another county:

(1) For the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or

(2) When an impartial trial cannot be had where the case is pending.

All costs of the proceeding in another county are to be borne by the court ordering the change of venue

(E) Bifurcated Proceeding. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.

(F) Transfer of Records. The court entering an order of transfer or change of venue shall send the

original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge. Where the courts have agreed to bifurcate the proceedings, the court adjudicating the case shall send any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case.

(G) Designated Cases. Designated cases are to be filed in the county in which the offense is alleged to have occurred. Other than a change of venue for the purpose of trial, a designated case may not be transferred to any other county, except, after conviction, a designated case may be transferred to the juvenile's county of residence for entry of a juvenile disposition only. Sentencing of a juvenile, including delayed imposition of sentence, may only be done in the county in which the offense occurred.

Rule 3.927 Prior Court Orders

In a juvenile proceeding involving a minor who is subject to a prior order of another Michigan court, the manner of notice to the other court and the authority of the family division of the circuit court to proceed are governed by MCR 3.205.

Rule 3.961 Initiating Child Protective Proceedings

- (A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition.
- (B) Content of Petition. A petition must contain the following information, if known:
 - (1) The child's name, address, and date of birth.
 - (2) The names and addresses of:
 - (a) The child's mother and father,
 - (b) The parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,
 - (c) The nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and
 - (d) Any court with prior continuing jurisdiction.
 - (3) The essential facts that constitute an offense against the child under the Juvenile Code.
 - (4) A citation to the section of the Juvenile Code relied on for jurisdiction.
 - (5) The child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe.
 - (6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated.
 - (7) The information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

Rule 3.962 Preliminary Inquiry

- (A) Purpose. When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.
- (B) Action by Court. A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:
 - (1) Deny authorization of the petition.
 - (2) Refer the matter to alternative services.
 - (3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

Rule 3.963 Protective Custody of Child

(A) **Taking Custody Without Court Order.** An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.

(B) **Court-Ordered Custody.**

(1) The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court may also include in such an order authorization to enter specified premises to remove the child.

(2) The order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination.

(3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing, whether there has been a central registry clearance, and whether a criminal history check has been initiated.

(C) **Arranging for Court Appearance.** An officer or other person who takes a child into protective custody must:

(1) Immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;

(2) Inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;

(3) Immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;

(4) If the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;

(5) Ensure that the petition is prepared and submitted to the court;

(6) Prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.

Rule 3.965 Preliminary Hearing

(A) **Time for Preliminary Hearing.**

(1) **Child in Protective Custody.** The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released.

(2) **Severely Physically Injured or Sexually Abused Child.** When the Family Independence Agency submits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722.628(3)(c), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) **Procedure.**

- (1) The court must determine if the parent, guardian, or legal custodian has been notified, and if the lawyer-guardian ad litem for the child is present. The preliminary hearing may be adjourned for the purpose of securing the appearance of an attorney, parent, guardian, or legal custodian or may be conducted in the absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made.
- (2) The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.
- (3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court must read the allegations in the petition in open court, unless waived.
- (4) The court shall determine if the petition should be dismissed or the matter referred to alternate services. If the court so determines the court must release the child. Otherwise, the court must continue the hearing.
- (5) The court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).
- (6) The court must advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912.
- (7) The court shall allow the respondent an opportunity to deny or admit the allegations and make a statement of explanation.
- (8) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.
- (9) The court must inquire if the child or either parent is a member of any American Indian tribe or band. If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980.
- (10) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown. If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing and subject to subrules (C) and (D).
- (11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, the placement of the child pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.
- (12) If the court authorizes the filing of the petition, the court:
 - (a) may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child; or
 - (b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made.
- (13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of

relatives of the child who might be available to provide care. If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1) Placement; Proofs. If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.

(2) Criteria. If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs.

(3) Findings. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

(4) Record Checks; Home Study. If the child has been placed in a relative's home,

(a) The court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before, or within 7 days after, the placement, and

(b) The court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.

(5) No Right to Bail. No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.

(6) Parenting Time or Visitation.

(a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.

(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.

(7) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:

(a) An order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) An order that each of the child's medical providers release the child's medical records.

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child. The court must make this determination no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) Reasonable efforts to prevent a child's removal from the home are not required if a court of

competent jurisdiction has determined that

(a) The parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k); or

(b) The parent has been convicted of:

(i) Murder of another child of the parent,

(ii) Voluntary manslaughter of another child of the parent,

(iii) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) A felony assault that results in serious bodily injury to the child or another child of the parent;
or

(c) Parental rights of the parent with respect to a sibling have been terminated involuntarily.

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

(1) That the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

(2) That participation in the initial service plan is voluntary unless otherwise ordered by the court;

(3) That the general elements of an initial service plan include:

(a) The background of the child and the family,

(b) An evaluation of the experiences and problems of the child,

(c) A projection of the expected length of stay in foster care, and

(d) An identification of specific goals and projected time frames for meeting the goals; and

(4) That, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child's attending physician of record or primary care physician.

Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan. On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.

(B) Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

(a) A child has been removed from the home;

(b) The supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;

(c) The supervising agency has provided written notice of the placement decision;

(d) A person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and

(e) The child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7 days of the filing of the petition.

(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

(1) General. The court must conduct a hearing upon notice from the Foster Care Review Board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a permanent ward of the Michigan Children's Institute.

(2) Procedure.

(a) Time. The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the Foster Care Review Board that there is a disagreement regarding a placement change.

(b) Notice. The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(c) Evidence. The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.

(d) Findings. The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child's best interests.

Rule 3.971 Pleas of Admission or No Contest

(A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

- (1) Of the allegations in the petition;
- (2) Of the right to an attorney, if respondent is without an attorney;
- (3) That, if the court accepts the plea, the respondent will give up the rights to
 - (a) Trial by a judge or trial by a jury,
 - (b) Have the petitioner prove the allegations in the petition by a preponderance of the evidence,
 - (c) Have witnesses against the respondent appear and testify under oath at the trial,
 - (d) Cross-examine witnesses, and
 - (e) Have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
- (4) Of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

(1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). If the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is placed by the court unless the trial is postponed:

- (1) on stipulation of the parties;
- (2) because process cannot be completed; or
- (3) because the court finds that the testimony of a presently unavailable witness is needed. When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent,

guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

(B) Preliminary Proceedings.

(1) The court shall determine that the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of the respondent provided notice has been served on the respondent. The child may be excused as the court determines the child's interests require.

(2) The court shall read the allegations in the petition, unless waived.

(C) Evidentiary Matters.

(1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.

(2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(20) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(e), (f), (r), or (s), performed with or on the child by another person may be admitted into evidence through the testimony of the person to whom the statement is made as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

(b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.

(c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

(D) Recommendation by Lawyer-Guardian ad Litem. At the conclusion of the proofs, the lawyer-guardian ad litem for the child may make a recommendation to the finder of fact regarding whether one or more of the statutory grounds alleged in the petition have been proven.

(E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven.

Rule 3.973 Dispositional Hearing

(A) Purpose. A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.

(B) Notice. Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.

(C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than 35 days, except for good cause.

(D) Presence of Parties.

(1) The child may be excused from the dispositional hearing as the interests of the child require.

(2) The respondent has the right to be present or may appear through an attorney.

(3) The court may proceed in the absence of parties provided that proper notice has been given.

(E) Evidence; Reports.

(1) The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges. However, as provided by MCL 722.631, no assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(2) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value. The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.

(3) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making the reports when those individuals are reasonably available.

(4) Written reports, other than those portions made confidential by law, case service plans, and court orders, including all updates and revisions, shall be available to the foster parent, child caring institution, or relative with whom the child is placed. The foster parents, child caring institution, or relative with whom the child is placed shall not have the right to cross-examine individuals making such reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in subrule (E)(2).

(F) Dispositional Orders.

(1) The court shall enter an order of disposition as provided in the Juvenile Code and these rules.

(2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A.18f. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child.

(3) The court, on consideration of the written report prepared by the agency responsible for the care and supervision of the child pursuant to MCL 712A.18f(1), shall, when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made:

(a) To prevent the child's removal from home, or

(b) To rectify the conditions that caused the child to be removed from the child's home.

(4) Medical Information. Unless the court has previously ordered the release of medical

information, the order placing the child in foster care must include the following:

(a) An order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) An order that each of the child's medical providers release the child's medical records.

(G) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

(1) Follow the review procedures in MCR 3.975 for a child in placement, or

(2) Review the progress of a child at home pursuant to the procedures of MCR 3.974(A).

(H) Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are governed by MCR 3.977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR

3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A) Review of Child's Progress.

(1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. A progress review does not require a hearing.

(2) Time. The progress of the child must be reviewed no later than 182 days after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care.

(3) Change of Placement. Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).

(B) Emergency Removal.

(1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.

(2) Notice. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921.

(3) Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.

(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:

- (i) To be represented by an attorney at the dispositional review hearing;
- (ii) To contest the continuing placement at the dispositional review hearing within 14 days; and
- (iii) To use compulsory process to obtain witnesses for the dispositional review hearing.

(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.

(C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court,

except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) No later than every 91 days following entry of the original order of disposition; or

(2) No later than every 182 days after the first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 3.976(E)(3).

(D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) The ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) The reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

(1) Review of Case Service Plan. The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) The services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) Whether the parent, guardian, or legal custodian has benefited from the services provided or

offered;

(c) The extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;

(d) The extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;

(e) Any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and

(f) Any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

(2) Progress Toward Returning Child Home. The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

(1) Order the return of the child home,

(2) Order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,

(3) Change the placement of the child,

(4) Modify the dispositional order,

(5) Modify any part of the case service plan,

(6) Enter a new dispositional order, or

(7) Continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

Rule 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

- (1) The child may be returned to the parent, guardian, or legal custodian;
- (2) A petition to terminate parental rights should be filed;
- (3) The child may be placed in a legal guardianship;
- (4) The child may be permanently placed with a fit and willing relative; or
- (5) The child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)(4).

(B) Time.

(1) An initial permanency planning hearing must be held within 28 days after a petition has been adjudicated and both of the following occur:

(a) A court of competent jurisdiction has determined that

(i) A parent is found to have abused the child, or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or

(ii) The parent's rights to another child were terminated involuntarily, and

(b) The court has determined that reasonable efforts are not required to reunify the child and the family.

(2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than one year after an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or workers at the supervising agency.

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

(C) Notice. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(D) Hearing Procedure; Evidence.

(1) Procedure. Each permanency planning hearing must be conducted by a judge or a referee. Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency

planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

(1) Determining Whether to Return Child Home. At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order.

(3) Other Placement Plans. If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that termination of parental rights is not in the best interest of the child, the court must either

(a) Continue the placement of the child in foster care for a limited period to be set by the court if the court determines that other permanent placement is not possible, or

(b) Place the child in foster care on a long-term basis if the court determines that it is in the child's best interests.

Rule 3.977 Termination of Parental Rights

(A) General.

(1) This rule applies to all proceedings in which termination of parental rights is sought.

Proceedings for termination of parental rights involving an Indian child, as defined by 25 USC 1901 *et seq.*, are governed by MCR 3.980 in addition to this rule.

(2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:

(a) The agency,

(b) The child,

(c) The guardian, legal custodian, or representative of the child,

(d) A concerned person as defined in MCL 712A.19b(6),

(e) The state children's ombudsman, or

(f) the prosecuting attorney, without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.

(3) The burden of proof is on the party seeking by court order to terminate the rights of the respondent over the child. There is no right to a jury determination.

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes

(1) The natural or adoptive mother of the child;

(2) The father of the child as defined by MCR 3.903(A)(7).

"Respondent" does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload.

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) The original, or amended, petition contains a request for termination;

(2) At the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) At the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) Are true, and

(b) Establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

(4) Unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.

(F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) The supplemental petition for termination of parental rights contains a request for termination;

(b) At the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true; and

(ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

(2) Unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interests of the child.

(3) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(G) Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

(1) Time.

(a) Filing Petition. The supplemental petition for termination of parental rights may be filed at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first.

(b) Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court

and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) Order. The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition

(a) Are true, and

(b) Come within MCL 712A.19b(3),

(4) Unless the court finds by clear and convincing evidence that termination of parental rights to the child is not in the best interest of the child.

(H) Findings.

(1) General. The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient. If the court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs, but no later than 70 days after the commencement of the hearing to terminate parental rights.

(2) Denial of Termination. If the court finds that the parental rights of respondent should not be terminated, the court must make findings of fact and conclusions of law.

(3) Order of Termination. An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.

(I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) Respondent is entitled to appellate review of the order.

(b) If respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within 21 days after notice of the order is given. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

(d) Respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

(2) Appointment of Attorney. If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall enter an order appointing an attorney. In the interest of justice, the court may appoint an attorney where the request is filed untimely.

(3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court may, on motion or its own initiative, order transcripts prepared at public expense.

(J) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights.

Rule 3.978 Post-Termination Review Hearings

- (A) Review Hearing Requirement. Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency.
- (B) Notice; Right to be Heard. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing.
- (C) Findings. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.
- (D) Termination of Jurisdiction. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.

Rule 3.980 American Indian Children

(A) Notice; Transfer. If any Indian child as defined by the Indian Child Welfare Act, 25 USC 1901 *et seq.*, is the subject of a protective proceeding or is charged with an offense in violation of MCL 712A.2(a)(2)-(4) or (d), the following procedures shall be used:

- (1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter shall be transferred to the tribal court having jurisdiction.
- (2) If the child does not reside on a reservation, the court shall ensure that the petitioner has given notice of the proceedings to the child's tribe and the child's parents or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior.
- (3) If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case.

(B) Emergency Removal.

- (1) An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child.
- (2) An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.

(C) Removal Hearing.

- (1) After Emergency Removal. If an Indian child is removed under subrule (B)(1) or (2), a removal hearing must be completed within 28 days of removal from the parent or Indian custodian.
- (2) Non-Emergency Removal. Except in cases of emergency removal under subrules (B)(1) or (2), a removal hearing must be completed before an Indian child may be removed from the parent or Indian custodian.
- (3) Evidence. An Indian child must not be removed from a parent or Indian custodian, or, for an Indian child removed under subrules (B)(1) or (2), remain removed from a parent or Indian custodian pending further proceedings, without clear and convincing evidence, including the testimony of at least one expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.
- (4) A removal hearing may be combined with any other hearing.
- (5) The Indian child, if removed from home, must be placed, in descending order of preference, with:
 - (a) A member of the child's extended family,
 - (b) A foster home licensed, approved, or specified by the child's tribe,
 - (c) An Indian foster family licensed or approved by a non-Indian licensing authority,
 - (d) An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The court may order another placement for good cause shown.

- (D) Termination of Parental Rights. In addition to the required findings under MCR 3.977, the parental rights of a parent of an Indian child must not be terminated unless there is also evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

Rule 3.991 Review of Referee Recommendations

(A) General.

(1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court shall review the recommendations if requested by a party in the manner provided by subrule (B).

(2) If no such request is filed within the time provided by subrule (B)(3), the court may enter an order in accordance with the referee's recommendations.

(3) Nothing in this rule prohibits a judge from reviewing a referee's recommendation before the expiration of the time for requesting review and entering an appropriate order.

(4) After the entry of an order under subrule (A)(3), a request for review may not be filed.

Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

(1) Be in writing,

(2) State the grounds for review,

(3) Be filed with the court within 7 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and

(4) Be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E) Review Standard. The judge must enter an order adopting the referee's recommendation unless:

(1) The judge would have reached a different result had he or she heard the case; or

(2) The referee committed a clear error of law, which

(a) Likely would have affected the outcome, or

(b) Cannot otherwise be considered harmless.

(F) Remedy. The judge may adopt, modify, or deny the recommendation of the referee, in whole or in part, on the basis of the record and the memorandums prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

(G) Stay. The court may stay any order or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

Rule 3.992 Rehearings; New Trial

(A) Time and Grounds. Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.

(B) Notice. All parties must be given notice of the motion in accordance with Rule 3.920.

(C) Response by Parties. Any response by parties must be in writing and filed with the court and served on the opposing parties within 7 days after notice of the motion.

(D) Procedure. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.

(E) Hearings. The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the hearing. The court shall state the reasons for its decision on the motion on the record or in writing.

(F) Stay. The court may stay any order, or grant bail to a detained juvenile, pending a ruling on the motion.

Rule 3.993 Appeals

(A) The following orders are appealable to the Court of Appeals by right:

- (1) An order of disposition placing a minor under the supervision of the court or removing the minor from the home,
- (2) An order terminating parental rights,
- (3) Any order required by law to be appealed to the Court of Appeals, and
- (4) Any final order.

(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.

(C) Procedure; Delayed Appeals.

(1) Applicable Rules. Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.

(2) Delayed Appeals; Termination of Parental Rights. The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.

APPENDIX C

SCAO FORMS

(See also the Numerical Index of Approved Circuit Court Family Division Juvenile Forms at <http://courts.michigan.gov/scao/courtforms/numjuv.pdf> for the new and updated forms.)

Form #	Form Name	Last Revised
JC 02	Complaint (Request for Action, Child Protective Proceedings)	9/06
JC 03	Order Appointing Attorney/Guardian Ad Litem/Lawyer-Guardian Ad Litem	9/03
JC 04b	Petition (Child Protective Proceedings)	9/08
JC 05b	Order to Take Child(ren) Into Protective Custody (Child Protective Proceedings)	6/09
JC 06	Waiver of Attorney or Request for Appointment of Attorney	11/05
JC 07	Appearance of Attorney/Guardian Ad Litem/Lawyer-Guardian Ad Litem	6/03
JC 11a	Order After Preliminary Hearing (Child Protective Proceedings)	6/09
JC11b	Order After Pretrial Hearing (Child Protective Proceedings)	9/07
JC 12a	Proof of Service/Non-Service	9/06
JC 12b	Proof of Service/Non-Service	9/06
JC 15	Motion and Authorization/Denial	6/03
JC 17	Order of Disposition (Child Protective Proceedings)	9/07
JC 17a	Order of Disposition, Child in Home (Child Protective Proceedings)	9/06
JC 19	Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)	6/09
JC 21	Summons: Order to Appear (Child Protective Proceedings)	11/05
JC 23	Waiver of Summons/Notice of Hearing	11/05
JC 29	Order to Transfer Case	6/03
JC 32	Publication of Hearing	9/07
JC 34	Financial Statement	6/03
JC 36	Request and Order to Terminate Court Jurisdiction	9/06
JC 37	Request for Financial Information	9/07
JC 38	Order for Reimbursement	6/03
JC 39	Order for Assignment of Wages	6/03
JC 40	Order for Contempt of Court	6/03
JC 41	Motion and Order to Close Proceedings to Public	11/05
JC 42	Request and Order for Review of Referee Recommendation	6/03
JC 44	Advice of Rights After Order Terminating Parental Rights (Juvenile Code)	11/05
JC 45	Notice of Hearing	9/07
JC 46	Motion for Alternate Service	6/03
JC 47	Order for Alternate Service	9/07
JC 48	Notice of Proceedings Concerning American Indian Child	9/07
JC 49	Order of Adjudication (Child Protective Proceedings)	9/07
JC 50	Request for Confidentiality	11/05
JC 51	Statement of Preference	6/03
JC 53	Notice to Putative Father	11/05
JC 58	Order Canceling Wage Assignment	6/03
JC 60	Notice of Intent to Intercept State Income Tax	6/03
JC 61	Order to Intercept State Income Tax	6/03

Form #	Form Name	Last Revised
JC 62	<u>Order to Cancel State Income Tax Intercept</u>	6/03
JC 63	<u>Order Following Hearing to Terminate Parental Rights (Child Protective Proceedings)</u>	6/09
JC 65	<u>Order Removing Alleged Abuser From Child's Home (Child Protective Proceedings)</u>	9/07
JC 75	<u>Order Following Emergency Removal Hearing (Child Protective Proceedings)</u>	6/09
JC 76	<u>Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)</u>	6/09
JC 79	<u>Publication of Hearing, Notice to Putative Father</u>	6/03
JC 81	<u>Request and Order for Court-Appointed Appellate Counsel</u>	11/05
JC 82	<u>Affidavit of Service Performed by Lawyer-Guardian Ad Litem</u>	9/07
JC 83	<u>Affidavit of Efforts to Locate Absent Parent</u>	8/05
JC 90	<u>Order Correcting Identifying Information (Child Protective Proceedings)</u>	9/08

APPENDIX D

MICHIGAN STATUTES AFFECTING CHILD PROTECTIVE PROCEEDINGS OR CHILD ABUSE AND NEGLECT ACTIONS

MICHIGAN STATUTES AFFECTING CHILD PROTECTIVE PROCEEDINGS OR CHILD ABUSE AND NEGLECT ACTIONS

Public Act 218 of 2007 (SB 271): Effective 1/1/08. This act amends MCL 722.115, requiring background checks, including the taking of fingerprints, for foster care providers before a foster care license can be issued or renewed.

Public Act 300 of 2008 (SB 1418): Effective 12/17/08. This act amends MCL 722.623, et seq., revising and adding to current requirements for coordination between Friend of the Court offices and the Dept. of Human Services in cases of child abuse and neglect.

Public Act 405 of 2008 (SB 1419): Effective 1/5/09. This act amends MCL 552.520, requiring a Friend of the Court office, upon notification of a child abuse or neglect investigation by the Dept. of Human Services, to notify the DHS of any procedural developments in an open Friend of the Court case while the case is pending.

Public Act 510 of 2008 (SB 1420): Effective 1/12/09. This act amends MCL 722.623, requiring a person employed in a professional capacity in a Friend of the Court office to report suspected child abuse or neglect.

Public Act 511 of 2008 (SB 1421): Effective 1/12/09. This act adds new MCL 722.628e, requiring the Dept. of Human Services to implement an investigation checklist to be used in each investigation of child abuse or neglect handled by DHS throughout the state.

Public Act 577 of 2008 (SB 158): Effective 4/1/09. This act amends MCL 750.136b to include in the definition of child abuse the commission of an act likely to cause physical harm.

