

# Termination of Parental Rights Hearing ~Judicial Bench Card

MCR 3.977 | SCAO Form JC 63 | MCL 712A.19b

*The termination of parental rights hearing is divided into two phases. The first phase is to determine whether there is clear and convincing evidence to support statutory grounds for termination of parental rights. The second phase is to determine if it is in the child's best interests to terminate parental rights.*

## Procedural Issues

Must hold hearing within 42 days of filing supplemental petition (21 day extension permitted for good cause).

Was legally sufficient notice given to the parties?

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see *ICWA/MIFPA bench card* & [MJI Quick Reference Flowcharts](#) for the heightened legal standards.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Has the LGAL met with or observed the child and complied with the statutory duties in [MCL 712A.17d](#)?



## Required Judicial Findings/Orders

Determine if at least one statutory ground for termination has been proven by clear and convincing evidence.

If a statutory ground has been proven, determine if the termination of parental rights is in the child's best interests.

If grounds do not exist and/or termination is not in the child's best interests, dismiss the petition.

If grounds exist and termination is in the child's best interests, order the termination of parental rights (and that further efforts to reunify the family must not be made).

State on the record, or in writing, findings of fact, conclusions of law and include the statutory basis for the termination of parental rights order.

If in writing, the decision shall be filed within 28 days after taking final proofs, but not later than 70 days after commencement of the hearing.

If termination of parental rights is ordered:

- Determine whether to maintain the child as a county ward or commit the child to the MCI Superintendent.

Schedule post-termination review hearing within 91 days of termination of parental rights and:

- Every 91 days for the first year.
- Every 182 days the second year and beyond.

## Evidentiary Standards

Termination Sought at Initial Disposition:

- Rules of evidence **do** apply.
- Clear and convincing legally admissible evidence.

Termination Sought Based on Original Allegations:

- Rules of evidence do not apply, other than those with respect to privileges that have not been abrogated by [MCL 722.631](#).
- Clear and convincing evidence that is relevant and material.

Termination Sought Based on New or Different Allegations:

- Rules of evidence **do** apply, only to the new or different allegations.
- Clear and convincing legally admissible evidence.

## Best Interests Determination

A finding that termination is in the child's best interests must be supported by a preponderance of the evidence.

The court must consider the best interests of each child individually (unless similarly situated)

The court must consider relative placement when making a best interests determination.

The court may consider this non-exhaustive list, when making a best interests determination:

- Child-parent bond.
- The child's age and need for stability and permanency.
- The opinion of experts, including psychologists, therapists, LGAL, and caseworker.
- The child's wishes.
- The likelihood of the child being adopted.
- The child's bond with siblings, if appropriate.

**Continued on reverse**

# ***Termination of Parental Rights Hearing Cont.***

## ***Judicial Bench Card***

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### ***Mandatory Advice of Rights to Parent Upon Termination***

The court shall inform a parent of the following rights verbally, or in writing, immediately after entry of an order terminating parental rights. SCAO [form JC 44](#) may be used to provide the written advice of rights.

- Parent is entitled to appellate review.
- If the parent is unable to afford an attorney, the court will appoint one to assist with an appeal and furnish the attorney with portions of the transcript and record as may be required.
- A request for assistance of an attorney must be made within 14 days after notice of the order terminating parental rights is given, or order entered denying a post-judgment motion.
- Parent has the right to keep identifying information current with the Central Adoption Registry.
- Parent has the right to file a denial of release of identifying information.