

# **GUIDELINES FOR ACHIEVING PERMANENCY IN CHILD PROTECTION PROCEEDINGS**

Production of the fourth edition of this book was made possible through grants from The Governor's Task Force on Child Abuse and Neglect.

**©2004, 2010, 2012**

# ACKNOWLEDGEMENTS

This 2012 edition of the Guidelines to Achieving Permanency in Child Protective Proceedings is the result of years of work on the part of many groups and individuals. The Guidelines would not be what they are today without the original funding support of the Michigan State Bar Foundation, the State Court Administrative Office of the Michigan Supreme Court, and the continued funding of the Governor's Task Force on Child Abuse and Neglect.

Special thanks goes to the many judges, attorneys, court personnel, private agencies, Department of Human Services staff, Governor's Task Force on Child Abuse and Neglect members, and others involved in the child welfare system who have contributed suggestions, ideas, and updates that have been included in this edition of the Guidelines. Many were instrumental in the original development of the Guidelines and all have provided editorial expertise throughout its editions.

Justice Elizabeth A. Weaver, (retired)  
Chair, Governor's Task Force on Child Abuse and Neglect  
Summer, 2012

# INTRODUCTION

## GUIDELINES FOR ACHIEVING PERMANENCY IN CHILD PROTECTION PROCEEDINGS

This manual serves 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 require periodic updates of the manual.

Evolving federal and state legislative initiatives are an effort to improve how courts and the service delivery system respond to child and family issues when neglect or abuse occurs. The focus of statutes, procedural rules and agency regulations is to:

- Specify timelines in court procedures
- Emphasize child safety and child well-being in all decisions
- 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 may presume that termination of parental rights is in the child’s best interests
- Clarify when it is “*contrary to the welfare of the child*” to remain in the parental home
- Reduce continuances and adjournments in child protection proceedings
- Closely monitor progress towards a child’s permanent placement both before and after a termination of parental rights
- Ensure, through the use of concurrent planning, a more timely permanency plan when returning home is not viable
- Ensure the consideration of relative placements, placements with siblings (or a plan for continued contact), and the use of subsidized guardianships in appropriate cases
- Increase efforts to achieve permanency for older youth or to provide them with the skills and connections needed for a successful transition to adulthood

These guidelines have been revised to reflect recent changes in the hope that Michigan’s children and families will be better served by 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.

## NOTES

Changes to DHS policy are anticipated pursuant to the Modified Settlement Agreement, which was the result of the Children's Rights lawsuit filed against the State of Michigan. As DHS policy changes are implemented, the changes will be incorporated into the content of the Yellow Book, as appropriate. The most current DHS policies and settlement information can be accessed on the DHS website at: <http://michigan.gov/dhs>

# **FOREWORD**

## **GENERAL EXPECTATIONS**

These guidelines have been developed as an easy-to-use resource to facilitate the considerable work involved in the preparation for, and involvement in, a child protection proceeding. While the guidelines articulate the specific responsibilities at each stage of a child protection proceeding for each person involved, the following set of general expectations is offered as a framework 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 age-appropriate considerations for working with children including a child's concept of time, mastery and understanding of language, and educational needs.**

**Understand child development concepts of attachment, separation, and loss as they relate to child protection 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 Temporary Protective Custody 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.

Protective Services Worker	Court
Child Welfare Agency Attorney	Respondents' Attorney
Lawyer Guardian Ad Litem	Foster Care Worker
Court Appointed Special Advocate	Juvenile Guardian

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. Included at the end of each section are the relevant cites to the Juvenile Code, the Child Protection Law, the Michigan Court Rules and the DHS policy manuals.

## **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 includes links to the SCAO approved court forms most commonly used in child welfare proceedings. Throughout this text you will find hyperlinked statutes, court rules, and other child welfare resources for your convenience.

# TABLE OF CONTENTS

<b><u>TABLE OF CONTENTS (Including Guidelines Format)</u></b>	<b>Chapter 1</b>
<b><u>PRELIMINARY HEARING</u></b>	<b>Chapter 2</b>
<b><u>PRETRIAL HEARING</u></b>	<b>Chapter 3</b>
<b><u>ADJUDICATORY HEARING</u></b>	<b>Chapter 4</b>
<b><u>DISPOSITIONAL HEARING</u></b>	<b>Chapter 5</b>
<b><u>90-DAY DISPOSITIONAL REVIEW HEARING</u></b>	<b>Chapter 6</b>
<b><u>PERMANENCY PLANNING HEARING</u></b>	<b>Chapter 7</b>
<b><u>TERMINATION OF PARENTAL RIGHTS HEARING</u></b>	<b>Chapter 8</b>
<b><u>POST-TERMINATION REVIEW HEARING</u></b>	<b>Chapter 9</b>
<b><u>KEY ISSUES</u></b>	<b>Chapter 10</b>
SUMMARY OF REQUIREMENTS UNDER THE ADOPTION AND SAFE FAMILIES ACT OF 1997	
SUMMARY OF REQUIREMENTS UNDER THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008	
SUMMARY OF NEW REQUIREMENTS UNDER THE CHILD ABUSE PREVENTION AND TREATMENT ACT (CAPTA) REAUTHORIZATION ACT OF 2010	
INDIAN CHILD WELFARE ACT	
JUVENILE GUARDIANSHIPS	
PATERNITY PROCEDURES IN FAMILY COURT	
YOUNG ADULT VOLUNTARY FOSTER CARE IN MICHIGAN	
NOTICE REQUIREMENTS/SERVICE OF PROCESS THROUGHOUT A CHILD WELFARE CASE	
FOSTER CARE REVIEW BOARD (FCRB)	
MICHIGAN CHILDREN’S OMBUDSMAN	
COURT APPOINTED SPECIAL ADVOCATES (CASA)	
MiTEAM PRACTICE MODEL	
<b><u>SCAO FORMS INDEX</u></b>	

# PRELIMINARY HEARING

## PURPOSE

A preliminary hearing is a court proceeding to determine if the court should authorize the filing of a petition for formal court action. A petition may be authorized 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* standard affects this stage of the proceeding by requiring close scrutiny of all out of home placement requests. This scrutiny requires consideration of whether continuing in the child's residence poses a substantial risk of harm to the child, as well as an investigation into alternative services or other arrangements that could safeguard the child in the parents' home. In the event that this assessment reveals that an out-of-home placement is required to keep the child safe, efforts should be made to ensure the most family-like setting that meets the child's needs, allows the child to continue in the same school, and allows the child to have frequent sibling contact. Finally, the court must focus attention on the development of an initial service plan by the caseworker. Michigan law requires the court, in all out-of-home placements, to inform all parties that an initial service plan will be developed by the caseworker within 30 days, to inform the parties 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 engage in services voluntarily and encourages a more timely resolution. The statute requires frequent parenting time pending trial unless parenting time would be harmful to the child. [MCR 3.965](#).

**SPECIAL NOTE TO ATTORNEYS & CPS:** 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 MAKING REASONABLE EFFORTS TO PREVENT PRE-ADJUDICATION REMOVALS)

**Prior to the preliminary hearing, it is important for protective services staff to consider whether children should be taken into temporary protective custody. If Children's Protective Services is considering requesting removal, a Family Team Meeting (FTM) should be conducted either before the removal request or soon after the removal if the removal was based on emergency circumstances. The following questions help the decision maker determine whether temporary protective custody is necessary or whether there are alternatives to removal.**

1. Is the case one where a mandatory petition is required by statute?
2. Are there prevention services available to eliminate the necessity of a petition, or allow the children to remain at home with conditions of placement ordered by the court?
3. If requesting out of home placement, **all** of the following must apply:
  - Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
  - No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the substantial risk of harm.
  - Continuing the child's residence in the home is *contrary to the child's welfare*.
  - Consistent with the circumstances, *reasonable efforts* were made to prevent or eliminate the need for removal of the child.
  - Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.
4. Is this potentially an Indian child, thereby requiring *active efforts* to prevent removal under the federal Indian Child Welfare Act? (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues section on the Indian Child Welfare Act)
5. If the child abuse or neglect has been diagnosed as involving one or more of the following, has the attending or primary care physician been consulted regarding potential removal and received notice so that they are able to testify?
  - Failure to thrive
  - Munchausen Syndrome by Proxy
  - Shaken Baby Syndrome
  - Bone fracture resulting from abuse or neglect
  - Drug exposure
  - Methamphetamine 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?

*Note: 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. What efforts were made to provide appropriate services before requesting the child's removal?
  - 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? If not, what arrangements may be made for the child to continue to attend his/her school pursuant to the McKinney Vento Act?

*Note:* Every school district has a McKinney Vento liaison that can help to retain youth in their school. Additionally, the Fostering Connections Act added transportation costs to maintenance payments, so they can be paid by DHS. [MCL 380.1148\(2\)](#) provides that school districts must allow a child to enroll or remain in the school selected by the child's foster care worker). See [FOM 722-6](#). Studies have indicated that, typically, every change in schools results in a six-month delay for a child, so avoiding a change in schools is critical to maintaining the child's education.

12. Is there medical information that needs to accompany the child to his placement? When was the child's last medical examination?
13. Will the child be placed with siblings? If not, what are the reasons and what efforts will be made to ensure frequent sibling visitation?
14. What parenting time schedule will best meet the developmental and emotional needs of the child? What other means of contact may help meet the emotional needs of the child? (e.g., regular phone calls, email, cards, letters, etc.)

# TEMPORARY PROTECTIVE CUSTODY CHECKLIST

## CHILDREN'S PROTECTIVE SERVICES

1. **Participate in a Family Team Meeting prior to removal request.**
2. **Conduct an investigation to determine the safety of the child's environment and complete the Safety Assessment and Risk Assessment. The investigation should include:**
  - Face-to-face interviews with the alleged child victim(s), the child's caretaker(s), the alleged perpetrator(s)
  - Visit the family's home
  - Review of documents, such as police reports, criminal history, medical reports, school reports, CPS case file, etc.
  - Interview neighbors, friends, relatives or professionals that have had contact with the family
  - Assessment of the child's safety
  - Assessment of the child's future risk of abuse and/or neglect
  - Assessment of the family's needs and strengths
3. **If there is reasonable cause to believe that the child is at a substantial risk of harm or that the child's surroundings present an imminent risk of harm and removal is necessary to protect the child's health or safety, an officer may take the child into protective custody without a court order. The officer must immediately notify DHS. If the child is not released to a parent, DHS must contact the designated judge or referee to seek an order for placement of the child pending a preliminary hearing.**
4. **If the court is closed when the DHS requests removal, the designated judge or referee can order placement by transmitting a written order either electronically or otherwise to the county DHS office and filing the order with the court the next day.**
5. **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\(B\)\(1\)](#).**<sup>1</sup>
6. **Determine whether this is an Indian child. The federal Indian Child Welfare Act prescribes procedures for cases involving Indian children.** (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues section).

---

<sup>1</sup> 2012 PA 163 amends the Juvenile Code to alter court orders to address emergency removal procedures and require the court to transmit a removal order electronically or otherwise. The Act amends the procedures for taking a child into protective custody and the process of obtaining an ex parte removal order pending a preliminary hearing. The provisions in this book reflect those changes. Because the court rules are likely to change to mirror the legislative amendments, we will electronically update this chapter when the new court rules are enacted.

7. **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 one or more of the following conditions exists:
- Abuse or neglect is the suspected cause of a child's death.
  - The child is the victim of suspected sexual abuse or sexual exploitation.
  - 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.
  - Law enforcement involvement is necessary for the protection of the child, a department employee, or another person involved in the investigation.
  - The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.
  - The child has been exposed to or had contact with methamphetamine production. The child is required to have immediate medical attention for risk of exposure to methamphetamine. [MCL 722.623](#) and [722.628](#).

*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 Governor's Task Force on Child Abuse and Neglect Model Child Abuse Protocol published in [DHS Publication 779 \(Rev. 10/07\)](#).

8. **Determine whether to place child with non-custodial parent temporarily.** Confirm whether there is an open Friend of the Court (FOC) case. If there is, notify FOC of CPS action taken to 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\(18\) and \(19\)](#).

## 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 will not be eligible for Title IV-E foster care maintenance payments for the duration of the child's stay in foster care. If the court issues an ex parte order for an emergency removal pending a preliminary hearing, the court must make the following findings:

- There was reasonable cause to believe that the child was at a substantial risk of harm or was in surroundings that presented an imminent risk of harm, and the child's immediate removal from those surroundings was necessary to protect the child's health and safety.
- The circumstances warranted issuing an ex parte order pending the preliminary hearing.
- Reasonable efforts were made to prevent or eliminate the need for removal of the child.
- No remedy other than protective custody was reasonably available to protect the child.
- Continuing to reside in the home was contrary to the child's welfare.

The order should be supported by written findings of fact. At the preliminary hearing phase of a child welfare case, it is important to make an inquiry to determine whether the child is an Indian child. If the child is of tribal descent, ensure the federal Indian Child Welfare Act's *active efforts* and tribal notice provisions are followed. If the child is an Indian child as defined in the Indian Child Welfare Act, expert testimony is required before a child can be removed from his parents. The Indian Child Welfare Act specifies that the expert must be knowledgeable in the traditions and customs of the tribe that the child is or may qualify for membership in. (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act.)

## NOTICE REQUIREMENTS

### **Preliminary Inquiry**

The court may conduct a preliminary inquiry if a petition does not request the child's removal from home. The inquiry may be conducted off the record without parties present. The court may deny authorization of the petition, refer the matter to alternative services, or authorize the filing of the petition if there is probable cause to believe that one or more of the allegations is true. There are no minimum notice requirements for a preliminary inquiry. [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. The notice may be given 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\(D\)\(2\)\(b\)](#). Refer to the Notice of Hearing portion of the Key Issues section.

**Note:** There are separate court rules for preliminary hearings ([MCR 3.965](#)) and emergency removal hearings. [MCR 3.974\(B\)\(3\)](#) addresses the hearing requirements for a child who is taken into custody after the first dispositional order and provides that if a child is taken into protective custody, an emergency removal hearing must be conducted within 24 hours of the removal.

# 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 it is determined there is a risk of harm to the child and either:** The parent's rights to another child were terminated as a result of child protection proceedings in Michigan or similar laws in another state; the parent's rights to another child were voluntarily released following the filing of a petition for abuse/neglect in Michigan or in another state AND the proceedings involved abuse that included one or more of the following:<sup>2</sup>
  - 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.
  - Voluntary manslaughter.
  - Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
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 safety plan? 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.

---

<sup>2</sup> 2012 PA 115 modifies the Juvenile Code to add provisions allowing termination of parental rights of a parent who abused the child or sibling of the child and the abuse included sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, [MCL 722.622](#), [MCL 712A.19b\(k\)\(ix\)](#). Parental rights may also be terminated if the parent's rights to another child were voluntarily terminated and the prior termination involved sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, [MCL 722.622](#), [MCL 712A.19b\(m\)\(ix\)](#).

*Note: 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 [MCL 712A.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 a custodian with ample clarity and specificity to reasonably inform 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 notify respondents of the charges against them. *In re Hatcher*, 443 Mich 426 (1993). See [SCAO form JC04b](#).
- 5. Determine whether the child has tribal 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 specific, relevant portion of [MCL 712A.2\(b\)](#).**
- 7. In preparing or updating the case service plan, the protective services worker must consult with either the attending or primary care physician when a child's abuse or neglect has been diagnosed as involving one or more of the following:**
  - Failure to Thrive
  - Munchausen Syndrome by Proxy
  - Shaken Baby Syndrome
  - Bone fracture resulting from abuse or neglect
  - Drug exposure
  - Methamphetamine 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(s)?
  - 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 the most stable and family-like setting possible?**
  - 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 support do the foster parents or other temporary caregivers need?
  - Is the child placed in their school district? In their county of residence?
  - Can transportation arrangements be made under the McKinney Vento Act to allow the child educational

continuity?

- 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 there are other family members not available for placement, can they assist the parent or child in other ways, such as to provide respite care, supervise parenting time, or provide transportation to services?**
- 12. If a new worker is assigned to the case, what has been done to familiarize the new worker with the case?**
- 13. Present recommendations for interim protective orders.**
- 14. 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 present a substantial risk of harm to the child's life, physical health, or mental well-being.**
- 15. Determine whether the case should be screened for eligibility for concurrent planning. If the case is appropriate, follow applicable policy.**
- 16. Demonstrate that the requested placement for the child is adequate to safeguard the child's health and welfare, and in the most family-like setting.**
- 17. If the whereabouts of one of the parents is unknown, make and document *reasonable efforts* to locate the absent parent. These efforts should include any or all of the following as appropriate:**
  - Interview the child's custodial parent, relatives, and friends to obtain as much information as possible about the absent parent.
  - Ask the child about his or her absent parent if it is appropriate after consideration of the child's age and development.
  - Check telephone books, internet, Friend of the Court (FOC), and other available directories.
  - Conduct an inquiry in the DHS Service Workers Support System (SWSS), Client Information Management System (CIMS), Bridges, Infoview, and other available databases.
  - Search [Department of Corrections](#) records.
  - Determine whether the mother was married at the time child(ren) were born.
  - Check with the Friend of the Court to determine whether paternity has already been established and whether anyone is paying support.
  - If paternity has been established by an acknowledgment of parentage, request a copy and include it in the case file.
  - Document all efforts and contacts 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.

Consult the State Court Administrative Office's [Absent Parent Protocol](#).



**NOTE ON PATERNITY TESTING:** CPS and Foster Care staff have access to paternity testing services. An agreement was established with Paternity Genetic Testing Services. For families receiving Title IV-D services, all costs for these tests will be borne by DHS Central Office, unless the client has already received a test, the parent is seeking the test for child support issues, or a paternity test has already been funded through other sources such as the Office of Child Support or the Friend of the Court. *(Refer to DHS L-letter 08-164.)*

- 18. Until foster care services assumes responsibility, make arrangements for frequent parenting time (visitation) between the parent(s) and the child. If the court orders a psychological evaluation or counseling, or both, make the appropriate arrangements to determine the appropriateness and conditions of parenting time.**
- 19. When a case is transferred to foster care, the following should be communicated if an absent parent has not yet been located:**
  - The specific efforts made to locate the absent parent
  - Any efforts that are pending at the time of transfer
  - Any efforts that should continue
- 20. Ensure that documentation necessary for timely transfer of the case to foster care has been completed.**
- 21. Ensure that any medical information, including allergies, medications, identity of primary care physician, and date of last medical visit accompany the child with the child's updated Medical Passport.**
- 22. 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.**

## COURT

1. **The court should be familiar with the concepts as described in the GENERAL EXPECTATIONS section in Chapter One.**
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 to the tribe or band [see especially *In re IEM*, 233 Mich App 438 (1999)] and follow the procedures set forth in the Michigan Court Rules and the Indian Child Welfare Act.** (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act and the State Court Administrative Office's [ICWA Court Resource Guide](#).)
3. **Determine what efforts were made 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.

Consult the State Court Administrative Office's [Absent Parent Protocol](#).

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, or 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 should be required to comply with court orders because of a relationship with the parent and child. 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

*Note: 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 to protect 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, 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, such as 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.
- The child can remain in the same school system, or if placement is not within the same district, is it reasonable to have the child transported to the original school by having the school access McKinney Vento funds. Transportation costs can also be included as part of maintenance payments to the child's foster parents.

**10. The court may order placement of the child in foster care if the court finds all of the following conditions:**

- Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being
- No provision of services or other arrangements except removal of the child is reasonably available to adequately safeguard the child from the risk
- Continuing the child's residence in the home is contrary to the child's welfare
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child
- Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare

**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. 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. These findings 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 722.638](#). See also, [MCL 712A.19a\(2\)](#); 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.
- d) The parent is required by court order to register under the sex offender registry act.

- 10. Ask the parent, guardian, or legal custodian whether there are relatives of the child who are able to provide care or assistance in other aspects of the case service plan.**
- 11. If a child is placed in foster care, make sure that arrangements have been made to provide the foster parent with the following documents:**
  - 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, 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.
  - Requiring each of the child's medical providers to release the child's medical records.
- 13. If protective custody is ordered, inform the parties that:**
  - The agency must prepare an initial service plan within 30 days of the placement;
  - A Family Team Meeting will be offered to the family to engage the family in preparing the initial service plan. 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:
    - The background of the child and 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;
    - A projection of the expected length of stay in foster care; and
    - 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 one 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
  - Methamphetamine 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 to testify 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, a person other than the prosecutor initiates a child protective proceeding by filing a petition, 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 in accordance with [MCR 3.914\(A\)](#). *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 DHS legal representative 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. If the Attorney General's office or a private attorney appears on behalf of DHS, they have a traditional client/attorney relationship, unlike the local prosecutor's office and DHS.*

## ***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 preliminary hearing, meet with or observe the child to assess the child's 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:**
  - Child's participation in the development of the case service plan.
  - Compliance with the case service plan.
  - Permanent removal of the alleged perpetrator from children's residence.
  - Permanent restraint of the alleged perpetrator from coming into contact with (or within close proximity to) the child.

*Note: 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:
    - the harm that has already occurred; and,
    - 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 appropriately tailored to remedy the problem(s)?
  - 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 the parents were involved in the development of the case service plan and whether the 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. Be sure to obtain permission from legal counsel before you talk to any other represented party in the case while conducting your independent investigation.**
  9. **Understand your role as the child's lawyer-guardian ad litem. Consider the child's ability to understand when you explain your role to the child. See SCAO [Guardian Ad Litem Protocol](#).**
  10. **Make a determination of the child's best interests independent of the child's expressed wishes. Share your determination and the child's expressed wishes with the court in a manner consistent with the Michigan Rules of Professional Conduct. If these conflict, does an additional attorney need to be appointed to represent the child? Have you discussed the conflict with the child and explained the option of requesting an attorney to specifically represent the child's express wishes?**
  11. **If further information is needed to ascertain and advocate for the child's best interests, 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, or Psychologist.**
  12. **Consistent with the [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. Be sure to obtain permission before speaking to represented parties.**
  14. **Arrange to meet with the child after the out-of-home placement is established to make an independent evaluation of whether the placement is appropriate.**
  15. **Determine whether a CASA or a GAL should be appointed. Advocate such an appointment when appropriate. Communicate with the GAL or CASA.**
  16. **Obtain and review the initial service plan as soon as it is available. Where appropriate, file a motion to modify the initial service plan.**
  17. **Attend foster care review board (FCRB) hearings if held for your client, or return the FCRB questionnaire provided in a timely manner.**

### ***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:
    - The harm that has already occurred; and
    - 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 other parent (with permission, if separate counsel)**
  - Ask the parent about their view of the problems that brought the family to this point.
  - Elicit the parents' 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 voluntary cooperation with services prior to the adjudication if advisable. (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. Come to court with prepared orders if you are requesting specific services and deadlines for provision of services. Make court orders as specific as possible.**



- 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 a motion to modify the initial service plan.**
- 12. Communicate with the L-GAL or CASA if appointed.**

## FOSTER CARE SERVICES

**The foster care worker is not involved in the case until after the preliminary hearing. Post-preliminary hearing responsibilities for foster care worker include the following:**

- 1. Prepare initial service plan within 30 days and begin implementation. A Family Team Meeting (FTM) should be offered to the family in order to get the family's input in developing the case service plan. The case service plan should be guided by efforts to place the child in the most family-like setting available in as close proximity to a parent's home as is consistent with the best interests 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.
  - Whether or not the child is an Indian child and enrolled in, or eligible for enrollment in, a federally recognized tribe. If so, has notice been provided to the tribe or an inquiry sent to the Bureau of Indian Affairs? (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act and the State Court Administrative Office's [ICWA Court Resource Guide](#).)
  - 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 that is based on the developmental stage of the child, unless it would be harmful to the child even if supervised.
  - A plan to ensure continuity of the child's education in the same school, which may include supports offered to the school through the [McKinney Vento Act](#).
  - A projection of the expected length of stay in foster care and efforts to be made to return the child home.
  - An identification of family needs, specific goals, and projected time frames for meeting the goals.
  - A plan to ensure that the child's cultural ties are continued.
- 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 one or more of the following:**
  - Failure to thrive
  - Munchausen Syndrome by Proxy
  - Shaken Baby Syndrome
  - Bone fracture resulting from abuse or neglect
  - Drug exposure
  - Methamphetamine exposure
- 3. If one of the parents has not been located by the time the case was received from Child Protective Services, continue to make diligent efforts to locate the absent parent, including any of the following as appropriate:**
  - Interview the child's custodial parent, relatives, and friends to obtain as much information as possible about the absent parent.
  - Ask the child about his or her absent parent where developmentally and age appropriate.
  - Check telephone books, internet, FOC, and other available resources.
  - Conduct an inquiry in the DHS Service Workers Support System (SWSS), Client Information Management System (CIMS), Bridges, Infoview, and other available data bases.
  - Search [Department of Corrections](#) records.

- Determine whether mother was married at the time child(ren) were born.
- Check with the Friend of the Court 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 all efforts and contacts in the case record.
- If the above efforts are not successful, then request a search for the absent parent through the DHS Office of Child Support.

Consult the State Court Administrative Office's [Absent Parent Protocol in Appendix E](#).

**NOTE ON PATERNITY TESTING:** CPS and Foster Care staff have access to paternity testing services. An agreement was established with Paternity Genetic Testing Services. For families receiving Title IV-D services, all costs for these tests will be borne by DHS Central Office, unless the client has already received a test, the parent is seeking the test for child support issues, or a paternity test has already been funded through other sources such as the Office of Child Support or the Friend of the Court. (*Refer to DHS L-letter 08-164.*)

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. Inquire if relatives are willing to help support the family by providing transportation to services or by supervising parenting time, even if they are unwilling to serve as a placement for the child.**
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 of the alleged perpetrator from child's residence.
  - Permanent restraint of the alleged perpetrator from coming into contact with (or within close proximity to) the child.

*Note: 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. Consider whether reasonable efforts been made to place a child in a most stable, family-like setting when either considering or reviewing the placement of a child.**
  - What kinds of placement services does the child need?
  - What kinds of support do the foster parents or other temporary caregivers need?
  - Is the child placed in his/her school district? In his/her county of residence? If placement is not within the same district, is it reasonable to have the child transported to the original school accessing the McKinney Vento Act funds?
  - 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?**
- 10. Make the initial service plan available to parties and attorneys.**
- 11. Send copies of the initial service plan to the court.**
- 12. Make arrangements for frequent parenting time 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, counseling, or both to determine the appropriateness and conditions of parenting time.**
- 13. If a child is placed in foster care then within 10 days provide the foster parent 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 L-GAL, 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 child's best interests.**
- 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 on a regular basis.** 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 their 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. CASAs do not investigate the allegations in the petition.

## 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, placement, release

[MCL 712A.17](#) Hearings; jury; bond; legal counsel for DHS; 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 department 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.

**NOTE:** The Michigan Court Rules were revised in 2010 by rescinding MCR 3.980 (Child Custody Proceeding Concerning American Indian Child) and adding new procedures for cases under the Indian Child Welfare Act throughout the MCR Chapter 3.900 court rules.

## **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, a proceeding held in some jurisdictions, has three objectives. First, the pretrial hearing provides an opportunity to narrow the issues for trial, or to resolve the case without a trial. Secondly, it is used to establish deadlines for conducting discovery, to exchange witness lists, and to file motions. Lastly, it allows the court and the parties to agree on a trial date. The law provides that more than one pretrial hearing may be held if necessary.

The pretrial can be a productive hearing because its timing allows the parties to become 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) lawyers and the child's lawyer-guardian ad litem (L-GAL) will have had the opportunity to conduct their investigations, 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 to resolve the case without a trial. In addition, mediation can facilitate an early and cooperative start of the case service plan, help determine placement, and establish parenting time.



## **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 allegations be 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 which allegations contained in your petition are essential and which, if any, allegations you would be willing to drop from consideration. You should be aware that any evidence regarding those "dropped issues" must be legally admissible in order to be presented at a later TPR hearing.**
2. **Be prepared to amend the petition to include further information obtained in the investigation. This may include adding additional allegations or deleting allegations as the circumstances of the investigation warrant.<sup>1</sup>**
3. **Bring the names, addresses, and phone numbers of witnesses (e.g., doctors, Families First worker) to the hearing to testify to information they have about the case. You should provide this information to the attorney representing DHS prior to the pre-trial hearing.**
4. **Does the child have Native American heritage? If yes, has the tribe been identified and received notice of all proceedings? Have *active efforts* been provided to prevent the breakup of an Indian family? (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act)<sup>2</sup>**
5. **If the whereabouts of one of the parents is unknown, be prepared to report on the efforts made to locate the absent parent and to sign an affidavit stating the specific activities completed if an alternative service request is necessary. Ask for an order allowing alternative service.**
6. **Be prepared to offer input into the contents of the treatment plan, including whether non-parents should be included, any cultural considerations, and activities designed to nurture the healthy racial/ethnic identity development of the youth.**

---

<sup>1</sup> Best practice would be for DHS to file an amended petition before the pretrial hearing if there are additional issues that arise after the initial filing.

<sup>2</sup> *In re Gordon* the Michigan Supreme Court held that: (1) sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement; (2) a parent of an Indian child cannot waive the separate and independent ICWA rights of an Indian child's tribe, and the trial court must maintain a documentary record; and (3) the proper remedy for an ICWA-notice violation is to conditionally reverse the trial court and remand for resolution of the ICWA-notice issue. *In re Gordon*, 491 Mich 81; \_\_\_NW2d\_\_\_ (2012).

- 7. Be prepared to answer questions about placement and parenting time if those issues were not addressed at the preliminary hearing. It is typical for attorneys to make requests for the children to be returned home with services. Be prepared to make a recommendation and defend it with appropriate legal and factual citations.**
- 8. In either considering or reviewing the placement of a child, have reasonable efforts been made to place the child in the most stable, family-like setting possible?**
  - What kinds of placement services does the child need?
  - What kind of supports do the foster parents or other temporary caregivers need?
  - Is the child placed within their school district? In their county of residence?
  - Has the child's placement been disrupted? Why?
- 9. Bring your schedule to court with you so additional hearings or trial can be scheduled at the pretrial.**
- 10. In developing or revising the case service plan:**
  - **Make sure that the parents are involved and that the plan addresses the specific needs identified in the petition.**
  - **Consult the foster parent regarding the needs of the child.**
  - **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?
- 13. If a new worker is assigned to the case, what has the new worker done to become familiar with the case?**

**NOTE:** A child's safe return home or implementation of a permanency plan within 12 months of removal from his or her home shall not be extended or delayed for reasons such as a change in worker or transfer of staff at the supervising agency. [MCL 722.954b\(1\)](#).

## 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. **Inquiry on the record about whether the child has Native American heritage, thus requiring the application of the federal Indian Child Welfare Act?** (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 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.
    - Accepting an affidavit and request for alternative service for the trial date.
4. **Prior to accepting a plea, the court must, either orally or in writing, advise the respondent of the following:**
  - 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
  - That if a plea is accepted the petitioner will not have to prove the allegations by a preponderance of the evidence
5. **The court must also inform the respondent that by entering 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.**
6. **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.**
7. **If a petition for termination of parental rights has been filed by the Agency, determine whether parenting time should be suspended.**

**8. Other issues that may be addressed at pretrial include the following:**

- Establish time frames for completing discovery, exchanging witness lists, and filing motions.
- 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 that must be provided pending the trial.
- If the parent(s) refuse to sign releases of information, issue orders for any of the child's medical or school records.
- Set trial date.

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

## ATTORNEYS

### CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)

1. **The agency's legal counsel should help Protective Services prepare for trial. The attorney should:**
  - Provide legal counsel as requested by Child Protective Services.
  - Be available to answer any Protective Services staff questions.
  - Interview witnesses, including those suggested by Protective Services.
  - Determine whether other witnesses should be involved.
  - Determine whether the federal Indian Child Welfare Act may apply to this case.
  - Determine whether a tender years motion should be filed before the trial. [MCR 3.972\(C\)\(2\)](#).
  - The agency's legal counsel should do everything necessary to become familiar with the case, and to assist Protective Services in their trial preparation.
2. **Generally, the court can require the prosecuting attorney to review the petition for legal sufficiency and to appear at any child protective proceeding.** [MCR 3.914\(A\)](#).
3. **The prosecutor's role is to serve as a legal consultant to the agency, if under contract with the agency and at the agency's request. 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.** [MCR 3.914\(C\)\(1\) and \(C\)\(2\)](#). See also [MCL 712A.17\(4\)-\(5\)](#).
4. **The prosecutor has standing to initiate abuse and neglect proceedings independent of the agency.**

**NOTE:** While you will not be able to amend the DHS's petition over its objection, you may file your own petition.<sup>3</sup>

---

<sup>3</sup> *In re Hill*, 206 Mich App 689 (1994) and *In re Jagers*, 224 Mich App 359 (1997). While prosecutors and the agency's positions typically align, the prosecutor represents the People of the State of Michigan and not an individual party. See also, e.g., MCL 712A.11; MCL 712A.17(5); MCL 712A.19b(1). Prosecutors handling child welfare cases will also find the following cases helpful: *People v Pfaffle*, 246 Mich App 282 (2001); *People v Morgan*, 86 Mich App 226 (1978); *People v Cona*, 180 Mich App 641 (1914).

## **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, conduct a client interview in a developmentally appropriate manner and ascertain the client's wishes.
    - Determine what evidence supports the allegations in the petition as well as what contrary evidence may exist.
    - Interview the parents after obtaining permission from their legal counsel.
    - 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.
    - Raise concerns if the child may be of Native American heritage thus requiring the application of the federal Indian Child Welfare Act. (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act)
    - File appropriate pleadings if in the child's best interest. For instance, if it is not in the child's best interest to wait for DHS to file a TPR petition, then the L-GAL should consider doing so.
  - 2. Determine the child's best interests independent of the child's expressed wishes.**
    - Assign appropriate weight to the child's expressed wishes given the child's developmental ability, competence, and maturity when evaluating the child's best interests.
    - 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 child the same undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as to an adult client. 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.
- 3. Ensure that all important allegations are included in the petition. Be prepared to:**
    - Object to the court's acceptance of a plea.
    - File an independent petition if necessary allegations are not part of the petition.
  - 4. If there are relatives proposed as caretakers, you should review the review any documents or interview people necessary to determine whether your client's best interests would be served by such a placement.**
    - Are there any cultural issues and/or the child's development of a healthy racial/ethnic identity that need to be considered?
  - 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.**

- 6. Review the parenting time schedule to ensure that it is beneficial to your client. Does your client require additional time with the parent(s)? Be prepared to make this request and provide reasoning to support your request.**
- 7. Review the sibling visits to ensure they are beneficial to your client.**
- 8. Review the education stability plan to ensure that your client does not fall behind in his/her studies due to foster care placement. Can arrangements be made to keep the child in the same school at least through the end of the school year?**



## 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. Discuss the case in detail with the respondent(s) before the pretrial. Conduct an independent investigation of the case to ensure:**
    - A thorough understanding of each allegation in the petition
    - The respondent(s) response to each allegation
    - Determine whether the federal Indian Child Welfare Act may apply to this case which provides additional protections for the parents to keep the Indian family intact (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act)
  - 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\(A\)](#). If discovery is not provided at pretrial, be sure that the court sets a later specific date when all discovery should be provided to you.**
  - 3. Determine whether witnesses should be subpoenaed on behalf of the respondent(s).**
  - 4. Determine whether the parent's goal with the child(ren) is reunification, 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 recommending a plea, 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 that 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 questions that the judge is likely to ask before accepting a plea.
- NOTE:** [MCR 3.971\(A\)](#) provides that the court may accept a plea of either admission or no contest.
- 6. Determine whether a plea of no-contest is appropriate in cases where there is a possibility of criminal charges based on the allegations in the petition.**
  - 7. In cases involving potential placement in foster care:**
    - Review whether there are relatives willing and able to care for the children.
    - If relative caretakers are available, ensure that your clients have names, addresses, and phone numbers to provide to the caseworkers.

## 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. **Has possible Native American heritage of the child been explored?** (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act)
3. **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. Are there any cultural issues and/or the child's development of a healthy racial/ethnic identity that need to be considered?**
4. **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 already made to locate the absent parent.**
5. **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.**
6. **Bring with you or know your schedule so that a trial or other hearings can be scheduled.**
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 support 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. **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?
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.

## **COURT APPOINTED SPECIAL ADVOCATE (CASA)**

Not every county has access to CASA services. 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, the CASA has no direct responsibilities pertaining to the adjudication. However, the pretrial may be an appropriate time to have Release of Information forms signed by relevant persons.

### **1. CASA's core activities are:**

- 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.

### **2. CASAs 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.**

### **3. CASAs also 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.

### **4. The CASA must consult with the child's Lawyer Guardian Ad Litem.** 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 their 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. CASAs do not investigate the allegations in the petition.

## 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 states that [MCR 2.401](#) is the rule that prescribes procedures for pretrial hearings.

**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 Items 721, 722.](#)

# **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, a thorough set of facts must 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 L-GAL may make a recommendation to the fact finder 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. If the Indian Child Welfare Act applies, have the proper notices been sent and active efforts provided? (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act and the SCAO [ICWA Resource Guide](#).)
6. Does the respondent, in open court, make a knowing, understanding, voluntary, accurate plea to the facts alleged in the petition?
7. If the respondent 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?
8. 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](#)?
9. If the petition has been amended, have the petitioner and the L-GAL been notified of a plea offer and been given the opportunity to object before the respondent’s plea is accepted?
10. 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? The case service plan must be available for all parties to continue to disposition immediately.

## **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. In addition, 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 permanence for children is 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

### 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 within 63 days if the child is in out-of-home placement or within 6 months if the child is not in placement. ([MCR 3.972\(A\)](#))
- Proper parties are present
- Proper notice has been served if the respondent is not present
- Respondents are advised of their rights and enter a voluntary and accurate plea of admission or of no contest to the petition allegations
- Petitioner and L-GAL 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 been located, determine what efforts were made to locate the absent parent and what subsequent steps should be taken.**
  - Question the parent or family members who are 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 of 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. The court must be able to review the case service plan prior to making dispositional orders. [MCL 712A.18f\(4\)](#)**
5. **If the facts do not warrant jurisdiction, 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 28 days if the child is in placement. ([MCR 3.973\(C\)](#))**
7. **Determine whether parenting time should be suspended.**
8. **Ask the L-GAL whether he or she has met with the child prior to the hearing. This is required at every hearing.**

## ATTORNEYS

### ***CHILD WELFARE AGENCY ATTORNEY***

- 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 DHS) 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 DHS legal representative 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 DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf or if there is a difference of opinion.***

## ***LAWYER-GUARDIAN AD LITEM***

- 1. The L-GAL should communicate with the petitioner and respondent(s) attorney(s) to ascertain whether the adjudication is contested or uncontested by the respondent(s).**
  - The approach to the adjudication hearing will differ depending on 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 L-GAL 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 L-GAL should promote a cooperative resolution of the case by focusing on the parties' common interests.
- 2. The child's L-GAL must make a determination of the child's best interests independent of the child's expressed wishes. Consistent with the attorney-client privilege, the L-GAL must inform the court of the child's wishes and preferences, but the L-GAL must advocate for the child's best interests, as the L-GAL perceives them. Upon receiving information that the child's wishes differ from what the L-GAL determines to be in the child's best interests, the court may appoint an attorney for the child to advocate for the child's expressed wishes pursuant to [MCL 712A.17d\(2\)](#).**
- 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.**
  - Be sure to obtain permission from legal counsel before talking to the parents, if they are represented by counsel. The L-GAL should inform a parent that the L-GAL can report anything the parent says to the court.
- 4. Continue to meet with the child to assess his/her needs with regard to the representation and issues in the case.**
- 5. Allow another attorney to substitute for the L-GAL 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 L-GAL 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 client and the petitioner.**
- 5. If the respondent is 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. [MCR 3.911](#).**
- 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.**

## **COURT APPOINTED SPECIAL ADVOCATE (CASA)**

If a CASA was assigned prior to the adjudicatory hearing, the CASA's role includes the following activities:

- Gathering information
- Advising the child's L-GAL as requested
- Providing support to the child if in attendance

Should there be a finding of abuse or neglect or a plea to allegations contained in the petition, the CASA should prepare a dispositional report based on the investigations that the CASA has done since the preliminary hearing. The report should include dispositional recommendations that the CASA deems to be in the child's best interests given the facts of the case.

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 broad understanding of the family dynamics

### **The CASA will maintain these core activities:**

- 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 L-GAL, 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 interests 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 upon order of the court:**

- 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 L-GAL.**

## 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 [712a.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

[MCL 712A.18f\(4\)](#): Dispositional Hearings

### MICHIGAN COURT RULES

[MCR 3.903\(A\)\(27\)](#): "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 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 department when requested by DHS.

[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 3.973](#) **Dispositional Hearing**: Contains time, procedural, and evidentiary requirements.

## **MICHIGAN DEPARTMENT OF HUMAN SERVICES**

[Children's Protective Services Manual Policy Items \(PSM\)712-716](#)  
[Native American Affairs Manual](#)

# **DISPOSITIONAL HEARING**

## **PURPOSE**

A dispositional hearing is conducted so that the court can determine the appropriate means to address the problems that brought the family under the court's jurisdiction. When the child is placed in foster care, this hearing must occur within 28 days of adjudication.

The Juvenile Code requires that the case service plan be developed, made available to the court and all parties, and 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 led 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 the child comes 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.

Further 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 court's jurisdiction. The case service plan also identifies any medical, emotional, or behavioral needs of the child and should incorporate services to meet those needs. The case service plan should also discuss why the proposed placement is appropriate and, if siblings are not placed together, it should identify a plan for sibling contact. Additionally the case service plan 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 service plan is extremely important. The plan must provide clear objectives that are feasible and relevant to the conditions that led to adjudication.



## KEY QUESTIONS

1. **What are the risks of harm to the child?**
  - What would be the likely harm if the child was not removed from or returned to 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
3. **Does the case involve child abuse? Is there evidence that there are conditions or services available to preserve the child's safety?**
4. **What efforts were made 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?
  - 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?
5. **Has the possibility of the child being an Indian Child under the federal Indian Child Welfare Act been properly investigated?**
  - If the child is an Indian Child, have *active efforts* been provided, the tribe noticed, and the placement preferences of the law, or the tribe if a different order of preferences, followed? (For a comprehensive overview of the Indian Child Welfare Act, see the Key Issues Section on the Indian Child Welfare Act)
6. **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?**
7. **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?

- 8. What schedule of services will be provided to the parent(s), non-parent adults, child, and foster parent(s) to facilitate either the child's return home or the permanent placement of the child? What services were provided to meet any special needs of the child?**
- 9. 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?**
- 10. 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 the Dispositional Hearing must be given in writing or on the record at least 7 days prior to the hearing. [MCR 3.920\(D\)\(1\)](#).

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\(D\)](#). [MCR 3.973\(B\)](#).

If either an attending or primary care physician has diagnosed abuse or neglect involving 1 or more of the following, ensure the physician is notified of the time and place of the proceeding and is offered the opportunity to testify 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; and,
  - To rectify the conditions that caused the child's emergency removal; or,
  - The reason why efforts were not 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 safety plan? 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
4. **If the whereabouts of one of the parents has not been determined, continue to make reasonable efforts as appropriate and be prepared to report on the progress made to date. Those efforts should include the following:**
  - Interview the mother and children as to who may be the father
  - Determine whether the mother was married at the time child(ren) were born
  - Check with the Friend of the Court to determine whether paternity has already been established and whether anyone is paying support
  - If paternity has been established by an acknowledgment of parentage, request a copy and include in the case file
  - Document all contacts in the case record
  - If the above efforts are not successful, request a search for the absent parent through the DHS Office of Child Support

**NOTE ON PATERNITY TESTING:** CPS and Foster Care staff have access to paternity testing services. An agreement was established with Paternity Genetic Testing Services. For families receiving Title IV-D services, all costs for these tests will be borne by DHS Central Office, unless the client has already received a test, the parent is seeking the test for child support issues, or a paternity test has already been funded through other sources such as the Office of Child Support or the Friend of the Court. (*Refer to DHS L-letter 08-164.*)

5. **If it remains unknown whether the child is an Indian Child for purposes of the federal Indian Child Welfare Act, continue to make reasonable efforts to identify tribal heritage as appropriate and be prepared to report on the progress made to date.** (See the SCAO [ICWA Court Resource Guide](#))
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 the child in the most stable, family-like setting possible?**

- 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?

**8. 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:** A child's safe return home or implementation of a permanency plan within 12 months of removal from his or her home shall not be extended or delayed for reasons such as a change in worker or transfer of staff at the supervising agency. [MCL 722.954b\(1\)](#).

**9. The case service plan must be offered into evidence. Psychological assessments, treatment update reports, etc., may also be offered into evidence.**

**10. 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)

**11. 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

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

**14. 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 one 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, continue to make the following 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 the mother was married at the time child(ren) were born.
  - Check with the Friend of the Court to determine whether paternity has already been established and whether anyone is paying support.
  - If paternity has been established by an acknowledgment of parentage, request a copy and include in the case file.
  - Document all contacts in the case record.
  - If the above efforts are not successful, then request a search for the absent parent through the DHS Office of Child Support.
- 2. If it remains unknown whether the child is an Indian Child for purposes of the federal Indian Child Welfare Act, continue to make reasonable efforts to identify tribal heritage as appropriate and be prepared to report on the progress made to date. (See the SCAO [ICWA Court Resource Guide](#))**
- 3. The case service plan must provide for the following:**
  - 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
  - Providing arrangements, at least weekly, for parenting time between the parent(s) and the child unless the court has determined that such parenting time is harmful to the child
  - Maintaining educational stability where consistent with the child's best interests and special needs
- 4. Where serious abuse has occurred and reunification is not the goal, the case service plan should specify an alternative permanent plan.**
- 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 safety plan? 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.
- 6. 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.
  - Whether the placement is in the child's school district or county and if transportation arrangements to aid the child in maintaining educational stability are necessary.
  - 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.
  - 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.
- 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. When 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?
- 9. If a parent is incarcerated, what efforts have been made to include the parent in the service plan?**
- In all cases in which the department must make reasonable efforts to reunify a family, the foster care worker must attempt to engage incarcerated parents in developing a case service plan. This requirement applies regardless of the length of the parent's incarceration. Document in the Social Work Contacts section all efforts to engage incarcerated parents in service planning.
- 10. If a new worker is assigned to the case, what has been done to become familiar with the case?**
- NOTE: DHS A child's safe return home or implementation of a permanency plan within 12 months of removal from his or her home shall not be extended or delayed for reasons such as a change in worker or transfer of staff at the supervising agency. [MCL 722.954b\(1\)](#).**
- 11. Update and revise the case service plan at 90-day intervals if a child continues in out-of-home placement.**
- 12. 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.
- 13. 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 proven unsuccessful." [25 USC § 1912\(d\)](#).**



## COURT

### 1. Enter an order of disposition that considers:

- The case service plan.<sup>1</sup>
- Any other evidence relevant to the disposition.
- **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\(F\)\(3\)\(b\)](#).
  - Whether no reasonable efforts were necessary to preserve the family.
  - 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 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 locate the absent parent.
  - A putative father hearing.

### 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

### 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.

### 5. In cases where either an attending or primary care physician has diagnosed abuse or neglect as 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

---

<sup>1</sup> Note that DHS must make reasonable efforts to include an incarcerated parent in the case service plan and the court cannot terminate parental rights based on incarceration alone where the incarcerated parent has not been allowed to participate in proceedings in a manner consistent with MCR 2.004. *In re Mason*, 486 Mich 142 (2010).

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

- 6. 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 proven unsuccessful.” [25 USC §1912\(d\)](#). An Indian child cannot be placed out of home 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\(e\)](#). (See the SCAO [ICWA Court Resource Guide](#))**
- 7. If a petition for termination of parental rights has been filed, determine whether parenting time should be suspended.**
- 8. 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**

- Advise agency workers as to what legal options are available.
- 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 DHS may retain legal representation of its choice when the prosecutor does not appear on its behalf or if there is a difference of opinion.*

## ***LAWYER-GUARDIAN AD LITEM***

### **Before the Hearing**

1. Obtain and review the case service plan.
2. Engage in dialogue regarding the case service plan in advance of the hearing 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.
4. Negotiate to seek elimination of elements of the case service plan that fail to promote the child's best interests.
5. Review agency case file.
6. Consistent with the [Michigan Rules of Professional Conduct](#), consult with the child's parent(s), foster care providers, guardians, and caseworkers.
7. Determine a position on the child's placement and prepare accordingly.
8. 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.
9. Determine if it is in the child's best interests to attend the hearing.
10. 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 you see them.
11. 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. 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 the case services plan, including facilitating parenting time.
4. Make a determination as to whether the parent is complying with and benefiting from the services offered.
5. Make sure agency is maintaining the child's educational stability.
6. Advocate for anything that may be necessary to help facilitate the child's education.<sup>2</sup>

---

<sup>2</sup> Attorneys for children should be familiar with state special education laws. See, Addressing the Educational Needs of Kids in Foster Care at <http://courts.michigan.gov/scao/resources/bestpractice/AddressingEducationalNeeds.pdf>.

## ***RESPONDENT'S ATTORNEY***

### **Before the Hearing**

1. Review case service plan and determine the existence of barriers to completing the plan (e.g., no transportation, competing goals of different service providers, etc.)
2. Gather additional information about your client's family in order to determine what familial support is available to help the parent comply with services.
3. Discuss the proposed case service plan with relevant parties well in advance so that the dispositional hearing may proceed without continuances.
4. Assess with client whether the service plan is feasible and sustainable. If it is not, be prepared to advocate for alternatives to the proposed services.
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 that 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**

5. Counsel respondent(s) about the consequences of failing to comply with the case service plan.
6. Review the respondent-agency agreement for consistency with case service plan and court orders.
7. Verify agency compliance with treatment plan, including facilitating respondent parenting time.
8. Maintain frequent communication with your client to develop an understanding of how your client is progressing.

## **COURT APPOINTED SPECIAL ADVOCATE (CASA)**

### **1. The CASA will maintain these core activities:**

- 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

### **2. When CASAs are assigned at this stage they:**

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

## 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

### **MICHIGAN DEPARTMENT OF HUMAN SERVICES**

[Children's Protective Services Manual Policy Items 712-716](#)

[Children's Foster Care Services Manual Items 721, 722.](#)

[Native American Affairs Manual](#)



# **90-DAY DISPOSITIONAL REVIEW HEARING**

## **PURPOSE**

A dispositional review hearing is conducted to permit court review of the progress made to comply with the order of disposition and case service plan, and to evaluate the continued need for the child to remain in foster care. [Section 19\(3\) of the Juvenile Code](#) requires periodic review hearings for a child placed in foster care. The first review hearing must occur within 182 days from the child's removal from home. Additional review hearings must be held every 91 days thereafter for the first year, then every 182 days thereafter for as long as the child is under the jurisdiction of the court. However, if the child is placed with a relative, and the placement is intended to be permanent, the court is only required to hold review hearings every 182 days to satisfy statutory requirements. Frequent case review activity places a strong emphasis on alleviating risks to a child and reunifying the child and parent(s) in a timely manner. Upon motion by any party or in the court's discretion, the court may review the case sooner than required or return a child to the parental home with timely notice 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 making efforts to finalize an alternative permanency plan, such as guardianship or adoption, concurrently with efforts to reunify the child with the family.

The court must review the case and make three basic determinations at these periodic review hearings. The first is the extent of compliance with the case service 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

*Note: A non-parent adult is a person 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? If not, why not?** (Assess the appropriateness and coordination of the services delivered.)
4. **Has parenting time between the child and parent(s) occurred frequently? How often are visits occurring? Where are the visits occurring? Has the agency made efforts to provide the parent with planned, purposeful, and progressive visitation? If visits are not occurring frequently, 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 provide 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 with siblings? What type of contact does the child have with siblings and how often?**
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 3.921\(B\)\(2\)](#), 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, and the attorneys for each 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 pursuant to [§18f\(7\) 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 case 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 unknown, continue to make and document efforts to locate the absent parent. These efforts should include any or all of the following as appropriate:**
  - Interview the child's custodial parent, relatives, and friends to obtain as much information as possible about the absent parent.
  - Ask the child about his or her absent parent if it is appropriate after consideration of the child's age and development.
  - Check telephone books, internet, Friend of the Court (FOC), and other available directories.
  - Conduct an inquiry in the DHS Service Workers Support System (SWSS), Client Information Management System (CIMS), Bridges, Infoview, and other available data bases.
  - Search Department of Corrections records.
  - Determine whether the mother was married at the time child(ren) were born.
  - Check with the Friend of the Court to determine whether paternity has already been established and whether anyone is paying support.
  - If paternity has been established by an acknowledgment of parentage, request a copy and include it in the case file.
  - Document all efforts and contacts in the case record.
  - If the above efforts are not successful, then request a search for the absent parent through the DHS Office of Child Support.

Consult the State Court Administrative Office's [Absent Parent Protocol](#).

**NOTE ON PATERNITY TESTING:** CPS and Foster Care staff have access to paternity testing services. An agreement was established with Paternity Genetic Testing Services. For families receiving Title IV-D services, all costs for these tests will be borne by DHS Central Office, unless the client has already received a test, the parent is seeking the test for child support issues, or a paternity test has already been funded through other sources such as the Office of Child Support or the Friend of the Court. (*Refer to DHS L-letter 08-164.*)

3. **If it remains unknown whether the child is an Indian Child for purposes of the federal Indian Child Welfare Act, continue to make reasonable efforts to identify tribal heritage as appropriate and be prepared to report on the progress made to date.** (See the SCAO [ICWA Court Resource Guide](#))
4. **Make the updated service plan available to the court and to all parties to the proceeding.**
5. **Offer the updated service plan into evidence.**
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 the 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

*Note: A non-parent adult is a person 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 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 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?

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

**Note: A child's safe return home or implementation of a permanency plan within 12 months of removal from his or her home shall not be extended or delayed for reasons such as a change in worker or transfer of staff at the supervising agency. [MCL 722.954b\(1\)](#).**

**10. Document each of the following in the 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 any special needs services being provided to the child 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) have 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 reason
- 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

- Recommendation and rationale for the child's permanency plan to return home
- If the permanent plan is to not return the child home, 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 foster care workers may exercise that authority, they must give 7 days advance notice to each party. Any party may object and request a hearing before a child is returned home.

**11. 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 one or more of the following:**

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

**12. 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 proven unsuccessful." [25 USC § 1912\(d\)](#).**

**13. Where appropriate, implement concurrent planning.**

## COURT

1. **If a child is placed in out-of-home care, conduct a dispositional review hearing within 182 days after the child's removal from home, 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. Note that if the child is in a permanent placement with a relative, the hearings are only required every 182 days.**
  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. [MCR 3.921\(C\)](#).<sup>1</sup>
  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
- Note: A non-parent adult is a person 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 [See [MCR 3.975\(F\)](#) and [MCL 712A.19\(6\)](#)]:**
    - Compliance with the case service plan;
    - Services provided or offered the child and parent(s);
    - Whether the parent(s) have 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;

---

<sup>1</sup> If the putative father of a child with no legal father has been properly noticed and has not established paternity, or if the identity of the child's father is unknown, the court should make a finding pursuant to MCR 3.921(C) that the child has no legal father as defined by MCR 3.903(A)(7). See, Absent Parent Protocol.

- 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).
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,
  - A change in the child's placement, if appropriate,
  - 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. **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 proven 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\(e\)](#). (See the SCAO [ICWA Court Resource Guide](#))**
10. **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.**
11. **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.
12. **In cases where either an attending or primary care physician has diagnosed abuse or neglect as 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 is being considered in a case where a physician has made such a determination, ensure that the physician is notified of the time and place of the proceeding and is offered the opportunity to testify regarding the case service plan.

- 13. If a petition for termination of parental rights has been filed by the agency, parenting time may be suspended 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. [MCL 712a.19b\(4\)](#).**

## ATTORNEYS

### ***CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)***

#### **Before the Hearing**

- 1. Assist the agency in properly presenting its 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.**

#### **After the Hearing**

- 1. Ensure compliance with *reasonable efforts* or *active efforts* requirements.**

**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***

### **Before the Hearing**

- 1. Monitor implementation of case service 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 the 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 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 review hearing based on the child's best interests.**
- 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 or active 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 service 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.

**NOTE:** In jurisdictions that have a Foster Care Review Board (FCRB) and/or a Court Appointed Special Advocates program (CASA), L-GALs and other parties' 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 on the case being reviewed 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.

## ***RESPONDENT'S ATTORNEY***

### **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 or active 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. Maintain contact with client.
2. Continue to counsel your client to encourage participation in the case service plan.
3. Make phone calls regarding services if necessary.
4. Prepare for additional hearings or trial.

## **COURT APPOINTED SPECIAL ADVOCATE (CASA)**

### **Before the Hearing**

- 1. Educate foster parent(s) regarding the process**
- 2. Advise the child and foster parent(s) of the specific issues related to the upcoming hearing**
- 3. Review file and notes, write report based on information gathered, and include recommended actions**
- 4. Maintain these core activities:**
  - Have contact with the child every 7-10 days
  - Review and monitor court orders and the case service plan
  - Maintain contact with those who have current information about the child
  - Keep accurate notes and records on the case
  - Communicate information to the child's attorney, foster care worker, and the court, as required

### **At the Hearing**

- 1. Accompany the child to provide support**
- 2. Provide information and consultation to the child's lawyer-guardian ad litem as needed**
- 3. Advise all parties on issues pertaining to the child**
- 4. Be prepared to testify, if requested**

### **After the Hearing**

- 1. Review new parent-agency agreement for consistency with case service plan and court orders**
- 2. Follow up to ensure 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 DEPARTMENT OF HUMAN SERVICES**

[Children's Foster Care Services Manual 721](#)

[Children's Foster Care Services Manual 722](#)



# PERMANENCY PLANNING HEARING

## PURPOSE

[Section 19a\(1\)](#) of the Juvenile Code requires the court to conduct a permanency planning hearing not more than **12 months after the child was removed from his/her home**, where the child remains in foster care and the parent's rights to the child have not been terminated. 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\(D\)\(1\)](#).

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 only allowable permanency planning goals are the permanency goals recognized by the federal government. These goals are (in descending order of preference):

- Reunification
- Adoption
- Guardianship
- Permanent placement with a fit and willing relative
- Placement in another planned permanent living arrangement

The court holds all parties accountable for finding a permanent placement for the child in a reasonable amount of time. The 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. 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 should also include all the required elements of a permanency planning hearing. Because review hearings are held at least once every 152 days, this will assure that the court also complies with the requirement to hold a permanency planning hearing at least once every 12 months.

In cases involving a determination that aggravated circumstances are present, the court must hold a permanency planning hearing within 28 days after determining that the aggravated circumstances render it unnecessary to make reasonable efforts to prevent the child's removal or reunite the family. Reasonable efforts are not required in aggravated circumstances cases.

At the hearing, the court will hear from the parties and the child, if appropriate, to determine whether the child can be returned home. If the court has determined that it cannot return the child home, it must evaluate whether there are compelling reasons not to order termination of parental rights. If the child has been in foster care for 15 of the most recent 22 months, the court must order the caseworker to initiate termination proceedings unless a statutory exception exists. These exceptions will be discussed more thoroughly below.

## 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) substantially complied 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 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?
9. What is the status of the original threats of danger and any newly emerged threats?
10. Have parent/child visits been frequent, consistent, and unsupervised?

## **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 specifically state that the hearing will be a permanency planning hearing. The notice must also state that the hearing may result in subsequent 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, 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 12 months after the child was removed.** [MCL 712A.19a](#). A permanency planning hearing is based on the premise that failure to decide on a long-term plan for the child quickly 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) were born.
  - Check with the Friend of the Court - Child Support Unit to determine whether paternity has 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 all contacts and attempted contacts 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 for the permanency planning hearing, ensure the child's relationship with siblings is addressed appropriately.**
    - Is the child placed with siblings? If not, why not?
    - What additional resources might help to provide the child with more frequent sibling visitation?
    - 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 child's placement, 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?
- If the child's placement caused a change in schools, have the all-pertinent records been transferred?
- 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?**

- Review case file.
- Speak with attorneys, parents, and child.
- Talk to previous worker if possible.
- Review the permanency goal and facts supporting the goal.

**NOTE:** Current law precludes delays in cases based solely 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. 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) have 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, or continued placement in foster care on a long-term basis. [MCR 3.976\(E\)](#).
- If a child's permanency goal will remain reunification for longer than 12 months, the foster care worker must include a narrative justifying the continuation of the goal in the service plan, as well as additional services to aide in reunification efforts
- If the permanency goal of reunification will be longer than 15 months, the worker must document compelling reasons to believe the child can be returned to the home within a specified and reasonable time period
- If the child's permanency goal is not reunification, adoption, guardianship, or permanent placement with a fit and willing relative, the worker must provide an explanation of why each of these goals is not in the child's best interests. For example:
  - The child is age 14 or over and refuses to agree to finalize any of these permanency goals.
  - The parent has an illness and cannot return home, but parent and child have a strong bond.

**7. If the agency believes termination of parental rights is not in the child's best interests, the worker must include compelling reasons in the case services plan prior to the permanency planning hearing.**

**Compelling reasons not to terminate parental rights include:**

- The agency has not provided services included in the service plans.
- Grounds for termination do not exist.
- The child is in a secure relative placement.
- There are international legal obligations or foreign policy reasons precluding termination.

- If the decision is based on a reason not listed above, the worker must clearly document the individual circumstances of the child.

**8. If the child is going to be reunified, the foster care worker should do the following:**

- Determine the parent or guardian's capacity to provide for the child's safety and well-being.
- Document remedial services that were provided to the parent, other adults in the home, and the child to minimize potential for further abuse or neglect
- In order to complete reunification the barrier reduction must be either partial or substantial
- Gradually increase parenting time, including overnight and weekend visits. Make a plan for the increased parenting time, detailing how it will work
- Monitor results of increased parenting time
- Negotiate post-placement services with parents following child's return home. Note that those services are not to continue beyond ninety days without documented supervisory approval and/or through a Family Division of Circuit Court order
- Develop community support system. Post-placement resources should include prevention services, educational services, day care, employment services, recreational services, etc.

**9. 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

1. **Conduct a permanency planning hearing not more than 12 months after removal of the child.**
2. **If the Foster Care Review Board has reviewed the case and issued recommendations, the court shall ensure that the parties have an opportunity to review those recommendations and file objections before the court enters a new dispositional order. The Court must file the FCRB panel's recommendations in the confidential part of the case file, and may incorporate any or all of the recommendations into the order entered following the hearing. [MCR 3.976\(D\)\(3\)](#).**
2. **Determine whether the agency has made reasonable efforts to finalize the permanency plan. Obtain the views of the child regarding the permanency plan in an age appropriate manner. 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 locate 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 does not demonstrate that termination is clearly not in the child's best interests, specify a deadline for filing the petition, not to exceed 28 days from the order.**
8. **The court is not required to order the agency to initiate proceedings to terminate parental rights if one or more of the following apply:**
- Child is being cared for by relatives.<sup>1</sup>
  - The case service plan documents a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interests of the child. A compelling reason not to file a petition to terminate parental rights includes, but is not limited to, any of the following:
    - Adoption is not the appropriate permanency goal for the child.
    - No grounds to file a petition to terminate parental rights exist.
    - The child is an unaccompanied refugee minor as defined in 45 CFR 400.111.
    - There are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.
    - The state has not provided the family, during the period set in the case services plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts to reunify the family are required. See, [MCR 3.976\(3\)\(a\)-\(b\)\(i\)-\(iv\)](#).
9. **If the Department demonstrates that termination of parental rights is clearly not in child's best interests and the court determines that the child cannot be safely returned to the parent, guardian, or legal custodian, the court may:**
- Continue the placement of the child in foster care for a limited period while the agency continues to make reasonable efforts to finalize the court approved permanency plan.
  - Place the child with fit and willing relatives.

If there are compelling reasons shown, the court may place the child in an alternative planned permanent living arrangement (APPLA). See, [DHS Policy](#).

APPLA(E) is for children over age 16 whose permanency plan does not include a goal of leaving foster care and transitioning into the home of a permanent family.

- For APPLA(E), the plan should provide:
  - Information about the adult who will assist and support the child;
  - For each existing relationship, the child has with an adult, a description how the adults and children have participated in the child's life;
  - A description of how the relationships will be maintained;
  - The services and supports developed for the child; and,
  - The child's detailed independent living plan.
- Alternatively, the court may appoint a juvenile guardian for the child pursuant to [MCL 712A.19a](#) and [MCR 3.979](#).

---

<sup>1</sup> See, *In re Olive/Metts Minors*, \_\_ Mich App \_\_ (2012) (Reasoning that a child's placement with relatives weighs against termination under MCL 71A.19a(6)(a)).



**Note:** Independent living or emancipation are not considered appropriate permanency plans; rather, an appropriate plan must identify an adult who will maintain a long-term relationship with the child.

- 10. 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\(d\)](#).**
- 11. 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.**
- 12. 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.**
- 13. Consider whether appointment of a juvenile guardian should be ordered. [MCL 712A.19a\(7\)-\(15\)](#) (parental rights not terminated) and [MCL 712A.19c\(2\)-\(14\)](#) (applicable when parental rights have been terminated). The appropriate standard for appointing a guardian is whether the appointment is in the child’s best interests.**
  - After appointing a guardian, the court must terminate the underlying protective proceeding after conducting a review hearing. [MCL 712A.19a\(10\)](#). The timing of the review hearing is within the discretion of the court
  - For post-termination guardianships, the court must either obtain the consent of the MCI superintendent, or determine that the superintendent’s decision to withhold consent was arbitrary and capricious. [MCL 712A.19a\(6\)](#)
  - If the Juvenile Code guardianship is terminated, custody of the child shall be restored to the Department of Human Services
  - If the parental rights have previously been terminated and the guardianship is ended pursuant to [MCL 712A.19c\(13\)](#), the child reverts to the pre-guardianship status of being an MCI ward

**Note:** When a pre-termination guardianship is revoked, the court should re-evaluate the need for further proceedings.

## ATTORNEYS

### ***CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)***

1. 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.
3. Consult with the foster care providers, guardians, caseworkers, and, consistent with the Michigan Rules of Professional Conduct, the parent(s).
4. 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.
5. 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.
6. 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.

## ***COURT APPOINTED SPECIAL ADVOCATE (CASA)***

### **Before the Hearing**

- 1. Review notes and materials related to the case.**
- 2. Review the 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 returned home.**

### **At the Hearing**

**CASAs attend and are prepared to testify.**

## 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 Manual 721](#)

[Children's Foster Care Services Manual 722](#)

[Native American Affairs Manual](#)

# TERMINATION OF PARENTAL RIGHTS

## PURPOSE

The Juvenile Code requires a court hearing, upon petition of the prosecuting attorney, child, agency, guardian, custodian, concerned person (as defined in the [Juvenile Code §19b\(6\)](#)), 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. A request to terminate parental rights may be contained in an initial, amended, or supplemental petition filed at any time during the course of a protective proceeding.

Termination of parental rights can be requested at the **initial disposition hearing** when the case involves an "aggravated circumstance". In these circumstances, the agency is not required to make *reasonable efforts* to reunify the family.

Additionally, 2012 amendments to the Juvenile Code provide that the court may, but is not required to, order *reasonable efforts* where a parent is required by court order to register under the Sex Offenders Registration Act.

At the termination of parental rights hearing, the petitioners present evidence supporting the statutory grounds for termination. The statutory grounds for termination of parental rights are provided in [MCL 712A.19b\(3\)](#). The L-GAL and parents' attorneys also present evidence supporting their positions. At the close of evidence, the court must weigh the evidence and determine whether to terminate parental rights. In order to terminate parental rights, the petitioners must establish that a statutory ground for termination of parental rights is established by clear and convincing evidence. If the court finds that the petitioner meets this burden, the court must then make an affirmative finding that termination of parental rights is in the child's best interest. [MCL 712A.19b\(5\)](#). If the court cannot make both of these findings, it cannot order termination of parental rights. The roles of each party at a termination of parental rights hearing are discussed below.

## 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 (termination of parental rights at the initial disposition hearing)? [MCL 722.638](#).
2. Has the court acquired jurisdiction over the child through adjudication?
3. Has the court, at the conclusion of a permanency planning hearing, ordered the agency to file a petition for termination of parental rights?
4. Is this a supplemental petition requesting termination of parental rights prior to a permanency planning hearing based on either of the following: Offense(s) that led the court to take jurisdiction, or circumstances new or different from the offense(s) that lead the court to take jurisdiction?

Note: If the circumstances are new and different from those that led to jurisdiction, these circumstances must be established at a hearing and supported by admissible evidence.

5. Has the child been in foster care as a result of a child protective proceeding for 15 of the last 22 months? If so, is there a compelling reason to **not** file a petition for termination? [MCL 712A.19a\(6\)](#)
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 a 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?
7. Can one or more of the grounds for termination of parental rights listed in [MCL 712A.19\(B\)\(3\)\(a\)-\(n\)](#) be established by clear and convincing evidence?
8. Is termination of parental rights to the child in the child's best interests? [MCL 712A.19b\(5\)](#).



## 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\(B\)\(2\)\(b\)](#). Non-respondent parents must be notified of the hearing as required by [MCR 3.920\(D\)](#). Refer to the Notice of Hearing portion of the Key Issues section. In accordance with procedural due process, notice of the termination hearing must be provided to the non-custodial parent. *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009).

## **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 jurisdiction and termination of parental rights 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. If you believe the court should continue parenting time, be prepared to explain why.**

## *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). Notably, if the parent is indigent and has requested counsel, the court should appoint counsel well before the termination hearing. 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).
2. **If DHS files a new petition involving a child whose parent(s) have previously lost their parental rights to a sibling of the child (even where the previous termination was voluntary), DHS and the court must give special treatment to the new petition.** The law requires that DHS include a request for termination of parental rights in the new petition if the sibling's earlier termination proceeding proved any of the following: 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; voluntary manslaughter; or aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter. [MCL 722.638\(1\)\(b\)\(i-ii\)](#).
2. **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.
3. **Identify the parties present. If any of the parties is absent, determine whether the party received proper notice.** If so, the hearing may proceed. If the party is in the custody of the Michigan Department of Corrections, the court should allow the party to participate in the hearing by telephone, pursuant to MCR 2.004. Although this court rule only applies to prisoners within Michigan's Department of Corrections, it is good practice to allow participation by phone to those incarcerated in out-of-state facilities whenever possible. Children should be permitted to participate in court proceedings where appropriate. The court may "excuse but not restrict children from attending the hearing." [MCL 712A.12](#).
4. **Determine whether the evidence establishes any of the statutory bases for termination of parental rights.** In considering this issue, determine whether reasonable efforts were made to reunify the family. Did petitioner provide sufficient evidence to establish statutory grounds for termination of parental rights? Alternatively, would satisfaction of the statutory grounds require speculation?
5. **In analyzing whether the conditions that led to jurisdiction continue to exist, focus on evidence that the parent benefitted from services.** Note that Michigan Rules of Evidence do not apply at the termination hearing, except those regarding privileges. [MCR 3.977\(H\)\(2\)](#). However, if termination of parental rights is requested at the initial disposition or in a supplemental petition on the basis of different grounds than those in the initial petition, the grounds for termination must be established by legally admissible evidence.
6. **When considering whether reasonable efforts to reunify the parent and child were made consider whether the services offered directly related to the conditions identified as presenting a risk of harm to the child.** Did the agency offer opportunities for meaningful visitation, such as parental participation in pediatric appointments or community activities where safe and appropriate? Were the services adequate to address the initial barriers to reunification? Adequacy of services or reasonable efforts can be tied to the sufficiency of evidence. Note that new legislation in 2012 provides the court with discretion of whether or not it must offer

reunification services to a parent who is required by court order to register under the [Sex Offenders Registration Act](#). [MCL 712A.19a\(2\)\(d\)](#).

7. **Determine whether termination of parental rights to the child is in the child's best interests.** [MCL 712A.19b\(5\)](#). In considering a child's best interest, consider things in addition to whether the statutory grounds have been satisfied. The child's best interests are comprised of a totality of information related to the child's well-being, stability, and permanence, including:
  - A parent's history
  - Unfavorable psychological evaluations
  - The child's age
  - Inappropriate parenting techniques
  - Continued involvement in domestic violence
  - The strength of the parent-child bond
  - Parenting time history
  - The parent's engaging in questionable relationships
  - The parent's compliance with treatment plans
  - The possibility of adoption
  - The child's need for permanence
  - The length of time the child may be required to wait for the parent to rectify deficits, given the child's age and particular needs
8. **Will the child be able to maintain some kind of family or community connection post-termination?**
9. **Is the child bonded to the biological parent in such a way that termination of parental rights will be more harmful than helpful to the child?**
10. **If the current petition for termination of parental rights is based on a prior termination or voluntary release, what conditions have improved since the prior termination or release?** Is there evidence that the parent's protective capacity or ability to provide has improved?
11. **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. [Absent Parent Protocol](#).
12. **If the judge or referee does not issue a decision on the record following the hearing, he or she must issue an order or opinion within 28 days of receiving final proofs, but no later than 70 days after commencement of the initial hearing on the petition.** [MCR 3.977\(I\)](#).
13. **Findings of fact and conclusions of law are required whether the court's decision is to terminate parental rights or to deny the petitioner's request to terminate parental rights.** [MCR 3.977\(I\)\(2\)-\(3\)](#).
14. **Enter findings and order including a determination whether *reasonable efforts* have been made to rectify the conditions that caused the child to be removed from the child's home.**
15. **Advise parent(s) of their appellate rights, either orally or in writing.** [MCR 3.977\(J\)](#).

- 16. 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.**
- 17. Advise the parent(s) of their right to file a denial of release of identifying information and a revocation of a denial of release.**
- 18. 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\(f\)](#).** The court must also make a finding that “active efforts” were made to provide rehabilitative and remedial services to prevent breakup of the Indian family. Those efforts must be proven by clear and convincing evidence. *In re Lee*, 483 Mich 300; 770 NW2d 853(2009).

## ATTORNEYS

### ***CHILD WELFARE AGENCY ATTORNEY (PROSECUTING ATTORNEY, ATTORNEY GENERAL)***

1. Review petition for legal sufficiency.
2. Ensure the petition contains any statutory grounds for termination that are supported by the facts of the case. Those facts should be fully articulated alongside the relevant legal citation. Prior to hearing, prepare the child witness. Collaborate with the child's attorney and make sure to have the caseworker present to support the child emotionally.
3. Ensure that all witnesses necessary to support the allegations are subpoenaed.
4. Ensure mother and father are provided proper legal notice.
5. Present evidence as necessary to meet the burden of establishing grounds for termination of parental rights by clear and convincing evidence.
6. Be prepared to respond to counter-arguments including arguments that termination is premature due to a lack of reasonable efforts; that the grounds for termination of parental rights are not established by clear and convincing evidence, and that termination of parental rights is not in the child's best interests.

*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 you see them.
2. 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.
3. 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.
4. Ensure the petition contains statutory citations for the specific grounds for termination. The petition should articulate the factual basis supporting each relevant ground for termination of parental rights.
5. Determine if alternate legal options would serve the child's best interests.
6. 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 because 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. Visit with the child and explain the court orders.
3. Participate in post-termination review hearings, per [MCL 712A.17d\(1\)\(h\)](#)

## ***ATTORNEY FOR THE PARENTS***

### **Before the Hearing**

1. Meet with client(s) and go over the termination petition in detail.
2. Work with the client to develop a list of witnesses to testify about the issues or arguments in response to allegations in the petitions. This list may include people who worked with the client, character witnesses, or other service providers.
3. Interview witnesses that you intend to call on the parent's behalf. Remember to obtain releases where necessary for witnesses who may testify regarding medical or other confidential information.
4. If a witness is another party to the case, such as the child, you will need to discuss the possibility of interviewing the child with the child's attorney.
5. Develop a theory of the case.
6. Counsel parent(s) regarding voluntary release of parental rights, where appropriate. If the client is considering voluntarily releasing parental rights, make sure to advise the client of all the rights they are giving up. Although some of these rights are provided in the Adoption Code [MCL 710.29](#), the appellate rights affected by a release of parental rights in the context of a case under the Juvenile Code differ. You should explain how to appeal from an order terminating parental rights as well as the process for objecting to a release of parental under rights pursuant to the Adoption Code.
7. Interview witnesses to be called by the state or child's attorney.
8. Request appointment of guardian ad litem to ascertain the parent's best interests where the parent's mental competence is in doubt.
9. Seek discovery of all appropriate materials under [MCR 3.922\(A\)](#).
10. Investigate all permanent placements.
11. Prepare any pre-trial motions necessary to obtain expert witnesses

### **During the Hearing**

1. Present evidence to refute the petition's claim of parental unfitness. Even if there is some evidence supporting statutory grounds for termination of parental rights, argue that it does not rise to the level of clear and convincing evidence. This is a very high evidentiary standard, second only to the reasonable doubt standard applicable to criminal cases. 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 and that termination is in the child's best interests. [MCR 3.977](#)
2. Establish that termination of parental rights is not in the child's best interests.
3. Make recommendations regarding the court's continuing jurisdiction and placement of the child.
4. Look for legally permanent alternatives, such as juvenile guardianships.



### **After the Hearing**

- 1. Inform the respondent(s) of their right to appellate review of the court's order terminating parental rights. If the respondent parent is indigent, they are entitled to appointed counsel on appeal. The court must also furnish the transcripts if the parent is unable to pay. Rights and responsibilities of the court and parties are provided in [MCR 3.993\(A\)\(2\)](#) and [3.977\(J\)](#).**

### ***COURT APPOINTED SPECIAL ADVOCATE (CASA)***

For cases featuring CASA services, the CASA should have maintained regular contact with the child and the child's caregivers since the permanency planning hearing.

#### **Before the Hearing**

- 1. Prepare and submit a report that supports their 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 of parental rights.**
- 3. Prepare to testify in support of any recommendations they make related to the termination of parental rights and its impact on the child.**

## AGGRAVATED CIRCUMSTANCES

Termination of parental rights can be requested at the **initial disposition hearing** when the case involves one or more of the following aggravated circumstances.

- a. The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has 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.
- b. The department determines that there is risk of harm to the child and either of the following is true:
  - i. The parent's rights to another child were terminated as a result of proceedings under section [MCL 712A.2\(b\)](#), or a similar law of another state.
  - ii. The parent's rights to another child were voluntarily terminated following the initiation of proceedings under [MCL 712A.2\(b\)](#), or a similar law of another state and the proceeding involved abuse that included 1 or more of the following:
    - A. Abandonment of a young child.
    - B. Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
    - C. Battering, torture, or other severe physical abuse.
    - D. Loss or serious impairment of an organ or limb.
    - E. Life-threatening injury.
    - F. Murder or attempted murder.
    - G. Voluntary manslaughter.
    - H. Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter

### ***STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS***

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 the estates and protected individuals code, [MCL 700.5205](#), and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in the estates and protected individuals code, [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, [MCL 700.1101](#) to [700.8206](#), and the parent has substantially failed, without good cause, to comply with a court-structured plan described in the estates and protected individuals code, [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, [MCL 700.1101](#) to [700.8206](#), 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.
  - ix. Sexual abuse as that term is defined in the child protection law, [MCL 722.622](#).
- 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 and the proceeding involved abuse that 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.
  - ix. Sexual abuse as that term is defined in the child protection law, [MCL 722.622](#).
  
- 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 [MCL 750.316](#), [750.317](#), [750.520b](#), [750.520c](#), [750.520d](#), [750.520e](#), and [750.520g](#).
  - ii. A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under [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).

## 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 when a termination petition is filed.

### **MICHIGAN DEPARTMENT OF HUMAN SERVICES**

[\*\*Children's Protective Services Manual Policy Items 712-716\*\*](#)

[\*\*Children's Foster Care Services Manual Policy 721\*\*](#)

[\*\*Children's Foster Care Services Manual Policy 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(s).
- Insert language of petition as authorized by the court.

## **Adjudicatory Hearing**

- Date of hearing.
- Summarize nature of proceedings, i.e., contested or 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 the treatment plan.
- Explain your recommendation for the child's placement.
- Describe parent(s) response to treatment plan.
- Include any observations or opinions of other child welfare professionals (psychologist, therapists, sexual abuse treatment staff, etc.)
- Note whether the 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 that has a bearing on the welfare of the children, including visits, progress of parent(s) in treatment plan, etc.

## **Review Hearing**

- Date of hearing.
- Summarize parent(s) progress on treatment plan.
- Include any personal observations and opinions expressed by others involved in the 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, and what efforts had been taken to identify and/or locate.

**In General**

- Keep events in chronological order.
- If significant contacts can be incorporated in the reports itself there is no need to prepare a “log of significant contacts.”
- Be fair and objective in your analysis of the parenting deficiencies.
- Do not 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 interest of the child.

# POST-TERMINATION REVIEW HEARING

## PURPOSE

A Post-Termination Review Hearing is conducted to permit the court to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement. The court must conduct a post-termination review hearing for 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 the child is in a permanent placement with either a relative or a foster family pursuant to a permanent foster family agreement, the court must conduct a review hearing every 182 days. If the child is in placement for longer than one year, the court must conduct a review hearing every 182 days, measured from the most recent review hearing. These hearings continue as long as the child is subject to the jurisdiction, control, or supervision of the court or [Michigan Children's Institute \(MCI\)](#).

The court must make findings on whether *reasonable efforts* have been made to establish a permanent placement for the child. The court may enter orders as necessary to meet the child's needs.

The court has the responsibility for overseeing efforts to achieve an adoptive placement or other established permanency goal that is consistent with state and federal law. Permanency goals include reunification (if termination has not been ordered), 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 resolving the barriers, and, when necessary, consider alternatives for a child's permanent placement. According to [MCL 712A.19c\(3\)](#), if the court plans to appoint a guardian for the child, the appointment cannot be made without the written consent of the MCI Superintendent.

## KEY QUESTIONS

1. If adoption is the permanency goal, 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 any court orders necessary to achieve permanence?

## NOTICE OF HEARING

Written notice of hearing must be mailed at least seven days in advance to the agency, the child's lawyer-guardian ad litem, and the child if 11 years or older. In addition, 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 or older; the Department of Human Services; the parents of the child, unless rights have been 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; and 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 court-approved 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 child is placed for purposes of adoption.**
- 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 assessment 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 [DHS 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 to adoption, and projected date of adoption for foster care workers. Include the reports with the updated service plan. Share reports with the child's lawyer-guardian ad litem.**
- 7. Provide 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 non identifying 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:**
  - Review and discuss the information provided to the prospective adoptive parent(s).
  - 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. If the petitioner and the adoptee reside out of state, the petition may be filed in the court that terminated parental rights. If there is more than one applicant to adopt a child, the petition for adoption must be filed in the court that terminated parental rights.**

- 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. Write a disruption/replacement report.**
- 13. Attend the finalization hearing.**

## 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. **Determine if there are any barriers to an adoption petition and placement.**
4. **Determine what specific actions are needed to overcome the identified barriers.**
5. **Determine whether the case is under appeal. If legal risk adoption is pursued, ensure that the parties understand the risks.**
6. **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 MCI Superintendent if appointment of a guardian is the permanency plan for the child.**
9. **Determine the appropriateness of the child's current placement.**

**Note:** If the child is a state ward, the court may not order a change in placement. The MCI superintendent is responsible for decisions regarding state wards' placement and care. The child's commitment to MCI post-termination of parental rights is irrevocable. If the child is an MCI ward and the court thinks the child's current placement is inappropriate, the court can recommend that the child's LGAL confer with the MCI Superintendent.

10. **For children with the permanency goal of adoption and there is an identified adoptive family determine, on the record, whether the adoption caseworker has followed the laws and procedures noted in the DHS Adoption Services Manual that outline specific responsibilities and timelines. (See, [DHS Adoption Services Manual](#))**
11. **For children with the goal of adoption and there is no identified adoptive family, determine the following:**
  - What efforts have been made since the last hearing to identify potential adoptive families?
  - Has the child been listed on the Michigan Adoption Resource Exchange (MARE)?
  - Is the child listed on any other internet sites?
  - How many potential adoptive families have expressed interest in the child, and what is the status of the agency's investigation of those families?



12. Keep tabs on the whether the biological parent has appealed the order terminating parental rights or whether a competing party to an adoption has contested the MCI's decision to deny consent to adopt. In either case, the court cannot finalize an adoption while the appeal is pending or during the appeal period.
13. The court can terminate jurisdiction over the child/abuse neglect case as soon as the child is placed for adoption, although best practice is to wait until the adoption is finalized. [MCR 3.978\(D\)](#).
14. The MCI Superintendent's jurisdiction over a child committed to the MCI terminates when the child turns 19, but the superintendent or DHS may discharge the child sooner. The MCI superintendent may discharge the child for purposes of adoption, marriage (if the child is under age 18), or emancipation. See MCL 400.203(1); DHS Foster Care Manual CFF 722-15.
15. If the child is still in foster care at age 18, the child may agree to participate in voluntary foster care until the age of 21 if certain requirements are met. For more information on the Young Adult Voluntary Foster Care Act, please see the Key Issues Section.

## **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), and prospective adoptive parent.
  - Make sure the child's needs and interests are appropriately documented in the child adoption assessment.
  - 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. See [Michigan Adoption code](#).
  - Advocate for an appropriate permanency plan.
- 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. Be prepared to represent the child's best interests and/or wishes as they relate to these permanency options.**
- 9. Assure that the file contains the written consent of the MCI Superintendent if a Juvenile Guardian is appointed by the court.**

## **COURT APPOINTED SPECIAL ADVOCATE (CASA)**

- 1. Involvement of the CASA is based upon:**
  - The decision of the court, and
  - The needs of the child and the case.
- 2. The CASA maintains communication/contact with the child and other pertinent individuals until a permanent placement is found. After that, contacts will usually occur on a less frequent basis.**
- 3. 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.
- 4. Activities are dependent upon the age of the child and their relationship to the CASA.**
- 5. The CASA or a representative attends post-termination reviews to update the court on the progress toward permanency and provides advocacy to that end.**
- 6. At the conclusion of the case, the CASA makes arrangements and has a final meeting with the child.**

## 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 722.956](#): Adoption facilitator; duties; cost

[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](#) to review the progress toward permanent placement of the child.

Section (C) requires the court to 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. This section also 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 3.920](#) requires that proof of service for a juvenile guardian be kept in the confidential case file.

# KEY ISSUES

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

### REASONABLE EFFORTS

The Adoption and Safe Families Act of 1997 (ASFA) clarified the “*reasonable efforts*” requirements established in the Adoption Assistance and Child Welfare Act of 1980, 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 must be the paramount concern in determining what is “reasonable.” [42 USC 671\(a\)\(15\)\(A\)](#). 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.<sup>1</sup>

[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.<sup>2</sup> [42 USC 671\(a\)\(15\)\(E\)](#). ASFA also provides 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 against the child or a sibling of the child, 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:

---

<sup>1</sup> Note that the Michigan Supreme Court in *In re JL*, 483 Mich 30, 770 NW2d 853 (2009) held the Adoption and Safe Families Act does not relieve DHS from the Indian Child Welfare Act (ICWA) requirements. When a petition for termination is based on a prior termination, the petitioner cannot fulfill ICWA requirements merely by showing that services were provided in the prior case. Under ICWA, DHS cannot simply discontinue services once a petition to terminate parental rights predicated on a prior termination has been filed.

<sup>2</sup> Note that the Michigan Court Rules set a higher standard by requiring that a permanency hearing occur within 28 days after a judicial determination that aggravated circumstances exist. MCR 3.976(B)(1).

- 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\(b\)](#) 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\(b\)](#) or a similar law of another state.

[MCL 722.638\(1\)-\(2\).](#)

### **TIME FRAMES**

Several important changes were also made to child protective proceeding time requirements. A “permanency hearing” is now required 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, the 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\(5\)\(E\)](#).

### **NOTICE REQUIREMENTS**

ASFA requires that foster parents, preadoptive parents, and relative caretakers be given notice and an opportunity to be heard at reviews or hearings in child protective proceedings. They may not be made parties to the proceeding *solely* on the basis of this requirement. [42 USC 675\(5\)\(G\)](#).

### **ICWA**

While reviewing the various federal laws and their requirements, one must remain cognizant that Congress intended the Indian Child Welfare Act to provide the highest standards of protection to Indian families and children. Therefore, if a federal law diminishes the protections afforded under the ICWA, the ICWA provisions prevail. Please refer to fn 1 in this section and the separate section on ICWA.

# SUMMARY OF REQUIREMENTS UNDER THE FOSTERING CONNECTIONS to SUCCESS and INCREASING ADOPTIONS ACT of 2008

**Background.** The President signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) (Public Law 110-351) into law on October 7, 2008. The Fostering Connections Act promotes permanent families for children in foster care by increasing support for relative guardianships and adoptions, increasing educational stability, improving health care outcomes and requiring improved transition planning for foster youth aging out of the child welfare system.<sup>3</sup>

**The major provisions of the Fostering Connections Act provide for:**

- **Increasing Permanent Placements with Relatives.** State child welfare agencies must exercise due diligence to identify and notify all adult relatives of a child's removal from his/her home within 30 days of the removal. The agency must also inform relatives of their options to become a placement resource for the child.
- **Licensing Waivers for Relatives and Report to Congress** (Effective October 7, 2008). The law explicitly permits the Title IV-E agency to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home. In addition, the federal Department of Health and Human Services must submit a Report to Congress, two years after enactment, on children placed in relative foster family homes and the use of licensing waivers. See, HHS Report to Congress available at <http://www.acf.hhs.gov/programs/cb/pubs/statesuse/statesuse.pdf>
- **Title IV-E Plan Requirements for Sibling Placement** (Effective October 7, 2008). Title IV-E agencies are required to make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those who cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

**Guardianship Assistance Payments (GAP) Program.** There is an option for State and Tribal Title IV-E agencies to provide kinship guardianship assistance payments for foster children living with relative caregivers who are committed to caring for them as a permanent family resource when they leave foster care. Additionally, individuals with whom kinship guardianship assistance payments are being made are now categorically eligible for Medicaid.

**Educational Stability Requirements.** States must create education stability plans for all children in foster care. These plans must include assurances that: 1. Foster care placements are considered based on the proximity to the school the child is enrolled in at the time of placement and the appropriateness of a child's educational setting; 2. The child will remain in the school s/he was attending at the time of placement, unless this is determined not to be in his/her best interests. The ability to attend the same school applies even when the child is placed outside of that school's boundaries; and 3. When it is not in

---

<sup>3</sup> A [draft compilation of the revised Social Security Act](http://www.michigan.gov/documents/cwitf/FCSAIAActLongSummary091608_258229_7.pdf) can be found on the Children's Bureau website. A more detailed summary of the Fostering Connections Act provisions from the Children's Defense Fund's Center for Law and Social Policy can be accessed at the Michigan Department of Human Services website at: [http://www.michigan.gov/documents/cwitf/FCSAIAActLongSummary091608\\_258229\\_7.pdf](http://www.michigan.gov/documents/cwitf/FCSAIAActLongSummary091608_258229_7.pdf)

the child's best interests to remain in the same school, the child is immediately enrolled in a new school with all education records to follow.

**Transition Plan for Emancipating Youth** (Effective October 7, 2008). During the 90-day period before a child's emancipation, the child's caseworker must develop a personalized transition plan that is directed by the child.

**De-linking a Child's Adoption Assistance Eligibility from AFDC Eligibility Requirements.** (Effective October 1, 2009, subject to phase-in). New criteria are established to delink Adoption Assistance eligibility from the 1996 AFDC eligibility requirements, phased in over time. In FY 2010 beginning with children aged 16 years and older, eligibility for Adoption Assistance will be delinked from AFDC, and every fiscal year after that the delinking age drops two years.

**Extension and Expansion of the Adoption Incentives Program** (Effective October 7, 2008). The Adoption Incentive Program is extended through FY 2013, doubles incentive payment amounts for special needs and older child adoptions and creates a "highest ever" foster child adoption rate payment.

**Title IV-B Plan Health Oversight and Coordination Plan Requirements** (Effective October 7, 2008). The Title IV-B agency (DHS in Michigan) is now required to provide ongoing oversight and coordination of health care services, including mental health and dental services, for children in foster care, including coordination with the state Medicaid agency (the Department of Community Health in Michigan).

**Training.** The states are able to claim federal reimbursement for short-term training provided to relative guardians, child abuse and neglect court staff, attorneys, and private child welfare agency staff providing services to Title IV-E eligible children and CASAs.

**Adoption Tax Credit** (Effective October 7, 2008). The law adds a new plan requirement for Title IV-E agencies to inform prospective adoptive parents of the adoption tax credit.

**Tribal Option to Operate a Title IV-E Program** (Effective October 1, 2009). Federally-recognized Tribes can apply to receive Title IV-E funds directly for foster care, adoption assistance and, at Tribal option, kinship guardianship assistance.

**Tribal Option to Directly Operate the Chafee Foster Care Independent Living Program (CFCIP) and Education and Training Voucher (ETV) Program** (Effective October 1, 2009). Federally recognized Tribes have an option, with an approved Title IV-E plan or a Title IV-E Tribal/State agreement, to receive allotments from the state's CFCIP and ETV programs to fund the provision of services to Tribal youth directly from the HHS.



## **SUMMARY OF NEW REQUIREMENTS UNDER THE CHILD ABUSE PREVENTION and TREATMENT ACT (CAPTA) REAUTHORIZATION ACT OF 2010**

The federal Child Abuse Prevention and Treatment Act (CAPTA) provides funding to states in support of prevention, assessment, investigation, and treatment activities. CAPTA is an important source of funding for child welfare agencies and dependency court programs. The law was reauthorized on December 20, 2010 when Public Law 111-320 was signed into law. The new act, entitled “The CAPTA Reauthorization Act of 2010,” has been the catalyst for bringing the Michigan Juvenile Code into compliance with the federal requirements.

The CAPTA requires states that receive its grant funding to not require reunification of a child with a parent if the court finds that a parent is criminally responsible for or abetted another child’s death. Reunification is also not required when a parent is found to have committed a felonious assault causing a serious bodily injury to his/her child. The CAPTA Reauthorization Act of 2010 adds two provisions. First, no reunification is required if a parent commits sexual abuse against the child or another child of the parent. Second, no reunification is required if the parent must register with a sex offender registry under the 2006 Adam Walsh Child Protection and Safety Act. Consequently, the Michigan Legislature passed Public Law 115 of 2012, which amended the Juvenile Code by adding the following provisions:

1. If a court finds a parent is court ordered to register under the Sex Offenders Registration Act (SORA), the Department of Human Services may, but is not required to, make reasonable efforts to reunify the child with the parent. The court may order the department to make reasonable efforts. ([MCL 712A.13a](#)).
- Lawyer Guardians Ad Litem must have training in early childhood development, child, and adolescent development. ([MCL 712A.17d](#)).
- A child’s case service plan must include conditions that would limit or preclude placement or parenting time with a parent who is required by court order to register under the SORA. ([MCL 712A.18f](#)).
- Reasonable efforts to reunify the child and family are not required if the parent is court ordered to register under SORA. ([MCL 712A.19a](#)).
- The court may terminate the parental rights of a parent that abused the child or sibling of the child and the abuse included sexual abuse [MCL 712A.19b\(k\)\(ix\)](#).

The court may terminate the parental rights of a parent if that parent’s rights to another child were voluntarily terminated and involved sexual abuse. [MCL 712A.19b\(m\)\(ix\)](#)

# INDIAN CHILD WELFARE ACT

Prepared by Michigan Indian Legal Services  
814 S. Garfield Avenue, Suite A, Traverse City, MI (231) 947-1012

## Application of Act

### 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. 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, and follow the procedures set forth in [MCR 3.920\(C\)](#).

If the child’s tribe is not able to be identified and the court has reason to know the child may be eligible for membership in a federally recognized tribe, an inquiry and notice of the proceedings must be sent to the Bureau of Indian Affairs Midwest Regional Office:

Director, Midwest Regional Office  
Bureau of Indian Affairs  
5600 American Boulevard West  
Suite 500  
Bloomington, MN 55437-1464  
Phone: (612) 713-4400

The BIA is required to publish an annual list in the Federal Register which includes the name and address where notice should be sent for each tribe.<sup>4</sup>

### 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 upon an award, in a divorce proceeding, of custody to one of the parents or placements based upon an act which, if committed by an adult, would be deemed a crime. Status offenses committed under the Juvenile Code would fall under the Act. It is important to note that the ICWA definition of “child custody proceeding” has a much broader scope than that in Michigan law.

(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;

---

<sup>4</sup> See e.g., <http://narf.org/icwa/contacts/biaicwa.pdf>.

(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.

## **Rights of the Child’s Tribe**

**Tribe has exclusive jurisdiction if child is domiciled on the Tribe’s reservation or is a ward of the Tribal Court.** [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 [MCR3.807\(B\)](#), [3.905](#).

**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 3.920\(C\)](#).

**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 3.905\(C\)\(1\)-\(4\)](#).

**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.

See also [MCR 3.905\(D\)](#).

**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 3.965\(B\)\(12\)](#).

**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.

**Rights of parents and Indian custodians of Indian child in involuntary proceedings**

**Appointment of counsel.** [25 USC § 1912\(b\)](#) Appointment of counsel.

(This right already exists under Michigan law for parents in child protective proceedings.) Courts should appoint counsel in ICWA guardianship matters and can later determine if the State of Michigan or the United States is liable for the cost..<sup>5</sup>

In any case in which the court determines indigence, 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].

---

<sup>5</sup> *Empson-Laviolette v Crago*, 280 Mich App 620, 760 NW2d 793 (2008).

**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.

**The parents must be afforded active efforts to provide 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.

**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.”
2. [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.
3. See also [MCR 3.967\(A\)](#) and [\(D\)](#), [3.977\(G\)](#).
4. To terminate rights of parent of Indian child must prove “beyond a reasonable doubt, including the testimony of qualified expert witnesses”
5. [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.

**Biological parents can petition for the child should an adoption be voided.**

[25 USC 1916\(a\)](#). Petition; best interests of child

Notwithstanding state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section [1912](#) of this Title, that such return of custody is not in the best interests of the child.

## **Rights of parent of Indian child in voluntary proceedings**

**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.

**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.<sup>6</sup>

**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.

**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.

## **Placement priorities.** 25 USC § 1915 **Placement of Indian Children**

(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.

---

<sup>6</sup> This section of the ICWA was addressed by the Michigan Court of Appeals in *Empson-Laviolette v. Crago*, 2008 Mich App 620, 760 NW2d 793 (2008), where the Michigan Court of Appeals held that the parent of an Indian child could withdraw consent to a temporary guardianship, even after the lower court had awarded sole custody to the guardians.

(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.

(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.

(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 3.965\(B\)\(12\)](#).

#### **Return of custody. [25 USC 1916 \(b\)](#) Removal from foster care home; placement procedure**

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

#### **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.



### **Improper Removal of a Child. 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.

### **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.

### **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*

25 CFR Part 13

25 CFR Part 23

*Legislative History:* <http://narf.org/icwa/federal/lh.htm>

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**

### **Michigan Supreme Court**

*In re 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.)

*In re JL*, 483 Mich 30, 770 NW2d 853 (2009). (The Adoption and Safe Families Act does not relieve DHS from ICWA's requirements. The clear and convincing standard applies to ICWA 1912(d). ICWA requires that active efforts be affirmative as opposed to passive and must be more than the "reasonable efforts" required by state law. The Court declined to adopt a futility test. When a petition for termination is based on a prior termination, the petitioner cannot fulfill ICWA requirements merely by showing that services were provided in the prior case. Under ICWA, DHS cannot simply discontinue services once a petition to terminate parental rights predicated on a prior termination has been filed. Termination on the basis of the doctrine of "anticipatory neglect" or presumption of unfitness is inconsistent with ICWA. However, lower courts may take into account past conduct in conjunction with current evidence. ICWA required services do not have to be current or for the benefit of the subject child; however, services provided too long ago to be relevant to current circumstances can raise reasonable doubt and defeat termination. Past efforts for other children must be shown to be relevant.)

*In re Gordon*, \_\_\_ Mich \_\_; \_\_\_ NW2d \_\_ (filed May 4, 2012). (Sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement. The parent of an Indian child cannot waive the separate and independent ICWA rights of an Indian child's tribe and that the trial court must maintain a documentary record including, at a minimum, (1) the original or a copy of each actual notice personally served or sent via registered mail pursuant to 25 USC 1912(a), and (2) the original or a legible copy of the return receipt or other proof of service showing delivery of the notice. The proper remedy for an ICWA-notice violation is to conditionally reverse the trial court and remand for resolution of the ICWA-notice issue.)

*In re Morris*, 491 Mich. 81; \_\_\_ NW2d \_\_ (filed May 4, 2012). (Reversed on the basis of the Court of Appeals use of the conditional-affirmance remedy under ICWA. The use of conditional-reversal and remand to the trial court for resolution of the ICWA notice issue is the proper remedy for ICWA-notice issues.)

### **Michigan Court of Appeals**

*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 Krefl*, 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 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.)

*Gray v Pann*, 203 Mich App 461, 513 NW2d 154 (1994). (The trial court properly dismissed the case where the tribe intervened in a custody action filed by child's grandmother. Both the grandmother and the child were tribal members. Whether the tribal court properly asserted jurisdiction over the child were matters to be litigated by the tribal court and the tribal court had exclusive jurisdiction over matter.)

*In re 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.)

*In re I.E.M.* 233 Mich App 438; 592 NW2d 751 (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. Conditional affirmance of a termination of parental rights as a remedy overruled by *In re Morris*.)

*In re Fried*, 266 Mich App 535, 702 NW2d 192 (2005). (ICWA does not apply to proceedings involving non-federally recognized tribes.)

*Empson-Laviolette v. Crago*, 266 Mich App 535, 760 NW 2d 793 (2008). (Guardianship proceedings involved "foster care placement" of child, bringing proceedings within the scope of ICWA and the voluntary nature of those proceedings did not remove them from the scope of ICWA. The mother was entitled under ICWA to withdraw her consent to guardianship and to have her child returned to her custody. ICWA preempted stay otherwise mandated by state statute upon filing of child custody action.)

## **OTHER RESOURCE MATERIALS**

### **Michigan Specific**

[Michigan Indian Legal Services](#)

[\*The Indian Child Welfare Act of 1978: A Court Resource Guide\*](#), ICWA Special Committee, Michigan State Court Administrative Office (2011).

[The Michigan Department of Human Services, Office of Native American Affairs at](http://www.michigan.gov/dhs/0,4562,7-124-5452_7124_7209---,00.html)

**National**

[\*A Practical Guide to the Indian Child Welfare Act\*, The Native American Rights Fund \(2007\)](#)

[The National Council of Juvenile and Family Court Judges, Tribal Resources](#)

## THE CASE SERVICE PLAN

Casework services are directed toward rectifying the conditions which resulted in a child's removal from his/her home. Casework service requires the engagement of the family in development of the case service plan<sup>7</sup>. This engagement must include an open conversation between all parents/guardians and the foster care worker.

Parental participation in service plan development is required. Parental engagement is an invaluable tool for achieving early return home of children from foster care. The Service Agreement section of the service plan must state specifically what the parents will need to do to achieve reunification, and what the agency will do in support of parental objectives. The service agreement **must** be:

- Specific to the individual needs of the family and child(ren)
- Inclusive of the family's viewpoint
- Written in a manner easily understood by all parties

If the parents are not involved in developing, or refuse to sign, the case services plan, the foster care worker must document the reasons why the parent is not involved or refuses to sign and identify and document additional actions needed to secure the parent's participation in service planning and compliance with the case plan.

**The Parent - Agency Treatment Plan (PATP) and Service Agreement<sup>8</sup>** is incorporated in the case service plan and provides information on services and the specific goals for the parent(s)/legal guardian(s), child(ren), foster parents/caregivers, and foster care worker. It is the second section of the Children's Foster Care Initial Service Plan (ISP) and in all Updated Service Plan(s) (USP). There are three main sections to the PATP:<sup>9</sup>

- Child information
- Service referral table
- Specific goals and objectives

The parent agency treatment plans are required in all cases open for foster care services. The parent-agency treatment plan and service agreement is initially completed with the Initial Service Plan and updated with each USP. The parent-agency treatment plan and service agreement should blend required formal services with family-centered decisions. The Parent-Agency Treatment Plan and Service Agreement section of the service plan must include:

- What the parent(s) and non-parent adult, if applicable, must do to achieve reunification including involvement in medical and dental appointments, attendance at school conferences and regular parenting time
- What the supervising agency must do to support parental objectives
- Activities necessary to achieve goals and desired outcomes that are within the family's capacity to understand and carry out for the reunification process
- The roles and responsibilities of members of the extended family

---

<sup>7</sup> DHS Children's Foster Care Manual 722-6 (4-1-2012) *available at* <http://www.mfia.state.mi.us/olmweb/ex/fom/fom.pdf>

<sup>8</sup> DHS Children's Foster Care Manual FOM 722-8C (4-1-2011) *available at*

<http://www.mfia.state.mi.us/olmweb/ex/fom/fom.pdf>

<sup>9</sup> "Case service plan means" the plan developed by an agency and prepared under 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. MCL 712A.12a(1)(d).

- The frequency of parenting time for parents and children; requirements for expansion of parenting time; sibling visits; and visits by the worker with the child's parent

Parents and youth age 14 and older must sign the PATP. If a parent or youth is unavailable or refuses to sign the PATP, the foster care worker must identify and document additional action needed to secure the parent's and/or youth's participation in service planning and compliance with the PATP. As the goals are achieved, modified, or expanded, the updated PATP will reflect this process. Parents and youth age 14 and older must participate in the development of each updated treatment plan, allowing an opportunity to evaluate their progress towards completing goals.

The individual activities required by the foster parent/caregiver to meet the specific individual needs of the child placed in their home are included in the PATP. The foster parent/caregiver must be included in the PATP process. The foster parent/caregiver's signature is required and indicates that the foster parent/caregiver acknowledges and agrees to the activities required to meet the needs of the child in their care. Additionally, the PATP details the services and activities provided by the foster care worker to assist the foster parent/caregiver in caring for the child.

After a PATP is created through parent/agency collaboration, the caseworker provides the parent with a copy of the agreement. The caseworker should review the agreement with the parent to verify that the parent understands the requirements for reunification of the family.

#### **Release of Confidential Foster Care Information**

Confidential foster care case information or records may **only** be released **after** proper redaction of confidential information, such as **CPS reporting person, mental health, substance abuse, medical, law enforcement, educational, Social Security numbers, etc.** Prior to obtaining foster parent/caregiver signature and prior to distribution of the PATP to any caregiver, the foster care worker must redact all confidential information. See [FOM 722-8c](#).

# JUVENILE GUARDIANSHIPS

## Juvenile Guardianship

A juvenile guardianship is a permanency option that provides the child with a secure attachment to an appropriate caregiver. The Michigan legislature created juvenile guardianships in 2008 and authorized guardianship assistance payments for guardians who meet certain eligibility requirements<sup>10</sup>. Juvenile guardianships may be considered at a pre-termination permanency planning hearing or at a post-termination review hearing.

A pre-termination juvenile guardianship is an appropriate consideration in a case where the court determines that the child should not be returned home, and the court does not require the agency to file a termination of parental rights petition. [MCL 712a.19a\(7\)\(a\)-\(c\)](#). A post-termination juvenile guardianship is an appropriate consideration if adoption is ruled out as a permanency option and the MCI consents to the juvenile guardianship. See below for specific procedures to follow regarding post-termination juvenile guardianships.

Prior to appointing a juvenile guardian, DHS must investigate the guardian and the residents of the guardian's home and file a report for the court's review. The court must order DHS to perform a criminal history check and central registry clearance within seven days and a home study report must be filed within 30 days. A new home study report is not required where a home study was performed within the last 365 days and that home study has been submitted to the court. If the child has not already been placed with the proposed juvenile guardian, the child remains in foster care until the above steps are completed. [MCR 3.979\(A\)\(2\)](#).

In order to approve the appointment of a juvenile guardian, the court must find that the juvenile guardianship is in the child's best interests. Specifically, within seven days of receiving the information above the court either schedules a hearing on the appointment of the juvenile guardian, or signs an Order Appointing Guardian, form [SCAO JC 91](#). If there is more than one child, the court should complete a separate order for each child.

A juvenile guardianship is created using a "JG" case code, separate from the NA file. After the appointment of a juvenile guardian, the court must schedule one final dispositional review hearing. The juvenile guardian must complete and file an Acceptance of Appointment, form [SCAO JC 92](#), and the court will subsequently issue Letters of Authority, form [SCAO JC 93](#). The court terminates jurisdiction of the NA file after the appointment and completion of the review hearing. A juvenile guardian has all of the powers and duties of an EPIC guardian. Any restrictions on powers of the juvenile guardian must be included in the letters of authority. Annual guardianship reviews are required and additional reviews may be ordered as the court considers necessary.

A juvenile guardianship continues until the child is emancipated or until it is revoked. The court may hold a hearing to determine whether a guardianship should be revoked on its own motion, on petition from DHS, or on a petition from the child's L-GAL. The court must hold a hearing on the petition to revoke a juvenile guardianship within 28 days from the date the petition is filed. To prepare for the revocation hearing, the court must order DHS to investigate and file a report within seven days before the revocation hearing. DHS may use SCAO [JC 99](#). [MCR 3.979\(F\)\(3\)](#) prescribes the contents of the report.

---

<sup>10</sup> The guardianship assistance eligibility requirements are provided in MCL 722.874. See [http://www.legislature.mi.gov/\(S\(2dwng4elwgpaez0iv2ae13v\)\)/mileg.aspx?page=getObject&objectName=mcl-722-874](http://www.legislature.mi.gov/(S(2dwng4elwgpaez0iv2ae13v))/mileg.aspx?page=getObject&objectName=mcl-722-874). Application procedures are provided at <http://www.mfia.state.mi.us/olmweb/ex/gdm/715.pdf>.

After the hearing on the petition to revoke the juvenile guardianship, the court may order the juvenile guardianship to continue or revoke the guardianship and place the child with DHS for care and supervision, reinstate the NA case, and close the juvenile guardianship case. [MCR 3.979\(F\)\(5\)](#).

The juvenile guardian can file a petition for permission to terminate the guardianship and may include a request for a successor. [MCL 712A.19a\(14\)](#) and [712a.19c\(12\)](#). After receiving an investigative report from DHS, the court conducts a hearing. The court shall continue the guardianship if it finds that it is in the child's best interest to do so. If the court finds that termination of the guardianship is in the child's best interests and there is no successor, the court shall proceed in the same manner as a petition to revoke a juvenile guardianship. If the court finds that termination of the guardianship is in the child's best interests and there is a successor, the court shall terminate the juvenile guardian's appointment and proceed to investigate and appoint the successor in the same manner prescribed in [MCR 3.979\(F\)\(6\)\(b\)](#).

### **Post-Termination Juvenile Guardianship where Child is an MCI ward**

If the child is an MCI ward, the court must receive the MCI Superintendent's consent of the juvenile guardianship. The consent must be filed within 28 days after the post-termination review hearing, unless the court grants an extension for good cause. The MCI Superintendent must consult with the child's LGAL when considering whether to issue consent to a juvenile guardianship. [MCL 712A.19c\(3\)](#).

If the MCI Superintendent withholds consent, the prospective juvenile guardian may file a motion which lists the steps taken to obtain the required consent, and the results, if any, along with a list of the specific reasons why the person believes the decision to withhold consent was arbitrary and capricious. [MCL 712A.19c\(4\)\(a\)-\(b\)](#); [MCR 3.979\(A\)\(3\)\(a\)](#). The motion must be filed within 56 days of the decision to deny consent. If a motion is filed, the court must set a hearing date and provide notice to the MCI Superintendent, the foster parents, the child, and the child's LGAL. If after the hearing, the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court may approve the guardianship without the MCI superintendent's consent. [MCL 712A.19c\(6\)](#); [MCR 3.979\(A\)\(3\)\(c\)](#). The court shall determine the continuing necessity and appropriateness of the child's placement. Alternatively, if the MCI Superintendent grants consent to the juvenile guardianship, the procedure continues from the point of receiving consent the same as it would in a case where the child is not an MCI ward.

## 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. Additionally, establishing paternity doubles the number of potential relative placements available to a child and these family members can be engaged in planning for the child's well-being early in the proceedings.

[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 is 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.<sup>11</sup>

### Initial Testimony

[MCR 3.921\(D\)](#) 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

---

<sup>11</sup> Note that 2012 PA 159 established procedures for revocation of paternity. The act provides mothers, prosecutors, or acknowledged, alleged, fathers with certain limited rights to revoke and/or determine paternity if done so before the child's third birthday. The act also allows a court to: Revoke an acknowledgment of parentage; set aside an order of filiation or a paternity order; determine that a child was born out of wedlock, or make a determination of paternity and enter an order of filiation as provided for under section 7 of the Paternity Act, MCL 722.717. If the court has jurisdiction pursuant to the Juvenile Code (MCL 712A.1 - 712A.32) and a termination of parental rights petition has been filed, the court cannot take action under the Revocation of Paternity Act without first making a determination that it is in the child's best interests to do so.



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.

The Notice to Putative Father [SCAO form 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 warning that “Your failure to appear at this hearing **COULD RESULT IN THE PERMANENT TERMINATION OF YOUR PARENTAL RIGHTS.**”

### **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 parental status according to [MCR 3.903\(A\)\(7\)](#).

### **Waiver of Rights**

A very important aspect of the [MCR 3.921\(D\)](#) 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.

## Young Adult Voluntary Foster Care in Michigan

The Young Adult Voluntary Foster Care Act (YAVFC) authorizes the Department of Human Services to provide foster care services, adoption subsidy support, and guardianship assistance for eligible youth until they reach age 21.<sup>12</sup>

The YAVFC Act establishes programs within DHS that will allow eligible youth between ages 18 and 21 (whose child abuse/neglect (NA) court file has been closed) to sign a voluntary agreement that will enable them to receive services until age 21. The YAVFC Act does not replace other existing law and policy allowing foster care to continue for foster youth until age 20. The YAVFC will allow Michigan to take advantage of Title IV-E federal funding that became available in the federal Fostering Connections to Success and Increasing Adoption Act of 2008. The purpose of the federal and state legislation is to improve outcomes for youth by providing extended support for those who otherwise would age out of the foster care system. There are three components of the program:

- Voluntary Foster Care
- Extended Juvenile Guardianship Assistance
- Extended Adoption Subsidy

### Young Adult Voluntary Foster Care ([MCL 400.645-663](#))

Participation in the YAVFC program requires the youth to enter into a voluntary agreement with DHS under which the youth agrees to comply with certain eligibility requirements, as defined in statute.<sup>13</sup> To be eligible, the youth must be: (1) actively completing high school or a program leading to a general equivalency diploma (GED); (2) enrolled at least part-time in a college, university, vocational program, or trade school; (3) employed either full- or part-time, or participating in a program that promotes employment (minimum 80 hours per month); or (4) unable to participate in any of the required activities due to a medical condition.

The voluntary agreement will include the statutory eligibility requirements, as well as any additional obligations that DHS requires the youth to satisfy to maintain eligibility throughout the duration of the agreement. If the youth meets the eligibility requirements and maintains compliance, the youth may enter or reenter the YAVFC program at any time between the dismissal of the original NA court case and the age of 21. The voluntary agreement may not be signed until the youth reaches 18 years old and the court has terminated jurisdiction of the NA court case. Delinquency youth are not eligible for YAVFC unless they are dual wards.

### Extension of Juvenile Guardianship Assistance ([MCL 400.665-669](#))

This is the second of the three new programs authorized by the YAVFC and the other new laws.

Guardians of youth who transitioned from foster care to the guardianship assistance program between the ages of 16 and 18 may apply to DHS for a “Young Adult Guardianship Extension” (YAGE) in which the guardianship financial subsidy may continue until the youth’s 21st birthday. Both the youth and the guardian must sign a voluntary agreement with DHS under which the youth and guardian pledge compliance with the same eligibility requirements as those listed for voluntary foster care (completing high school or a GED, enrolled in college/university/trade school program, employed at least part-time, or

---

<sup>12</sup> 2011 PA 225-230.

unable to participate in a required activity due to a medical condition). DHS determines the youth's initial and subsequent eligibility for extended guardianship assistance.

The extended guardianship assistance payments will be funded primarily with federal Title IV-E foster care funds. Funding for the YAGE program will not affect the County Child Care Fund.

Unlike a voluntary foster care case, an extension of juvenile guardianship assistance requires formal judicial oversight throughout the remainder of the case. After the youth enters the YAGE program, courts are required to review the juvenile guardianship extension annually at a court hearing. Note that prior to the youth turning 18, the court is required only to *review* the juvenile guardianship (e.g., could be conducted by a paper review). Until age 18, there is no specific *hearing* requirement.

### **Extension of Adoption Subsidy ([MCL 400.671](#))**

This is the third of the new programs authorized by YAVFC and the related new laws.

This program does not require any court involvement or oversight. The law allows DHS to extend adoption subsidy assistance for an adoptee who was adopted between the ages of 16 and 18, and who meets the eligibility requirements (i.e., completing high school or a GED, enrolled in college/university/trade school program, employed at least part-time, or unable to participate in a required activity due to a medical condition).

## NOTICE REQUIREMENTS and SERVICE OF PROCESS THROUGHOUT A CHILD WELFARE CASE

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. Through the preliminary inquiry or hearing process the judge or referee must determine that a complaint or petition properly alleges a child protective matter. *In re Kurzawa*, 95 Mich App 346 (1980), is an example of a lack of subject matter jurisdiction. That 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 must be met. Notice/service issues, once perfected, form a relatively minor portion of a child protective case. However, if not properly perfected, 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 that:

“The [DHS], 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).

*Adair* held that a family court had proceeded without jurisdiction as to parent(s) because 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 law enforcement 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\(D\)\(2\)\(b\)](#).

The court rules cited above will be amended to mirror new legislation codified by 2012 PA 168. The Act modifies the emergency removal process by authorizing an officer to take a child into protective custody without a court order if the child is at a *substantial risk of harm or in surroundings that present an imminent risk of harm*. If the officer takes the child into custody, the officer or DHS must immediately seek a court order for placement of the child pending a preliminary hearing if the child is not immediately released. The judge or referee can issue a written ex parte order, electronically or otherwise, authorizing the DHS to take a child into protective custody and place the child pending a preliminary hearing. The new legislation also provides the conditions in which the court can order the child to be placed in foster care. (For further information, see Temporary Custody Checklist in the Preliminary Hearing Chapter.)

If the court is closed when removal is requested, the DHS would send a petition or affidavit of facts, electronically or otherwise, to a designated referee or judge. The designated jurist could order placement by transmitting the order in writing, electronically or otherwise, to the appropriate DHS and then file the order with the court the next day. Before issuing an ex parte order for temporary custody pending a preliminary hearing, the court must find all of the following:

- There was reasonable cause to believe that the child was at substantial risk of harm or was in surroundings that presented an imminent risk of harm, and the child’s immediate removal from those surroundings was necessary to protect the child’s health and safety
- The circumstances warranted issuing an ex parte order pending the preliminary hearing
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child
- No remedy other than protective custody was reasonably available to protect the child
- Continuing to reside in the home was contrary to the child’s welfare

The ex parte order must be supported by written findings of fact. At that time, the court can place the child in foster care if the court finds:

- Custody of the child presented a substantial risk of harm to the child’s life, physical health, or mental well-being
- No provision of services or other arrangement except removal of the child was reasonably available to safeguard the child adequately from that risk
- Continuing the child’s residence in the home was contrary to the child’s welfare
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child
- Conditions of child custody away from the parent were adequate to safeguard the child’s health and welfare.

The jurist at the preliminary hearing must 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.

## ADJUDICATION

A summons ([SCAO 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 seven (7) 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 that personal service **may not be easily or readily effected by available means.** A Motion for Alternate Service ([SCAO form JC 46](#)) and an Order for Alternate Service ([SCAO 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 use 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\(B\)\(5\)\(a\)](#).

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 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 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) 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) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state,
- (h) in accordance with the notice provisions of [MCR 3.905](#), if the child is an Indian child:
  - (i) the child’s tribe and, if the tribe is unknown, the Secretary of the Interior, and
  - (ii) the child’s parents or Indian custodian, and if unknown, the Secretary of the Interior, and
- (i) 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\(F\)](#), requires that the waiver shall be in writing. SCAO [Form JC 23](#), Waiver of Notice of 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. [MCR 3.920\(H\)](#).

### **NOTICE TO PRIOR COURT**

[MCR 3.205\(2\)\(a-b\)](#), the rule on Prior and Subsequent Orders and Judgments Affecting Minors, provides for alternative type of notice than the notice described above. 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 to the clerk or register, or appropriate official of the prior court. It is common that 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). Also, [MCR 3.205\(A\)](#) 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.”

### **INDIAN CHILD WELFARE ACT**

The federal Indian Child Welfare Act, 25 USC § 1901 et seq. (ICWA), imposes specific notice requirements for a state child protective proceeding involving an Indian child. Child welfare professionals should familiarize themselves with the ICWA’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. The ICWA gives the Indian child’s tribe 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 ICWA states that 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. *See also* [MCR 3.920\(C\)](#). When the Michigan law and court rules provide for a longer notice period than the ICWA, the greater protections afforded under Michigan law and rules apply.

## **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\(B\)\(2\)](#) 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(s) 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) if the child is an Indian child, the child's tribe,
- (k) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state,
- (l) if the child is an Indian child and the parents, guardian, legal custodian, or tribe are unknown, to the Secretary of the Interior, and
- (m) any other person the court may direct to be notified.

## **SUPPLEMENTAL OR AMENDED PETITION - 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 3.920\(F\)](#).

### 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\(D\)\(3\)](#).

Type of Hearing	Type of Service - Time Limit
Termination of Parental Rights	Summons, personal service 14 days prior Certified mail 21 days inside Michigan Certified mail 28 days outside Michigan Publication in newspaper 21 days prior

### OTHER PARTIES ENTITLED TO NOTICE

In addition to the parent(s) summoned to or notified of the termination 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 parents of the child, and the attorney for the respondent parent, 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 attorneys for each party,
- (h) the prosecuting attorney if the prosecuting attorney appeared in the case,
- (i) the child, if 11 years old or older,
- (j) any tribal leader if there is an Indian tribe affiliation,
- (k) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state,
- (l) if the child is an Indian child and the parents, guardian, legal custodial, or tribe are unknown, to the Secretary of Interior, and,
- (m) any other person the court may direct to be notified.

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\(D\)\(3\)\(b\)](#)

## 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\(f\)](#) and [\(j\)](#), of a child who is under the jurisdiction of the court are governed by [MCR 3.977\(F\)](#).

(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\(f\)](#) and [\(j\)](#), 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 is 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. [MCR 3.978\(B\)](#) specifies that the foster parents (if any) and any preadoptive parents or relative providing care to the child must be provided with notice and an opportunity to be heard at each hearing. Logically, notice would also go to the agency, child’s lawyer guardian ad litem, and the child if age 11 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, 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 legislation, particularly the Adoption Assistance and Child Welfare Act of 1980, and more recently the Adoption and Safe Families Act of 1997, which requires 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 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 a random sample of cases which 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, representative of their local community. 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 an open foster care case. A review may be requested by contacting the local FCRB office. 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 the care and safety of the child, and services to the family, and the efforts and progress being made toward achieving the permanency goal.

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 related to child safety, well being and progress toward permanency and makes *advisory* recommendations regarding these areas of review.

These reports are provided to the family division of the circuit court to assist them in monitoring the care and supervision of the children by the supervising agency. The court may use the board's

recommendations 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.

The report is sent to the DHS and their contracted agencies to assist them in their efforts to achieve positive outcomes for children in their care. The report is also provided to the involved attorneys, parents and foster parents.

### **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 child from the foster parent's home.

Foster parents (and relative caregivers) may contact the review board 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.
- The child is being moved from a non-ICWA compliant placement to an ICWA compliant placement.

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 process 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 written report to the Governor, the legislature, and the State Court Administrative Office. As the only state entity observing the operations of the courts and child placing agencies, the FCRB is in the unique and necessary position of being able to evaluate the systems ability 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 is able to identify *systemic* barriers and issues that interfere with the achievement of positive outcomes for child and families. Proposed recommendations to address those systemic 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**

The Foster Care Review Board Program, through its use of third party citizen review of cases of children in foster care is a cost efficient and effective means of external quality assurance for our state foster care system. In its efforts to monitor and report on individual case processes, compliance with federal funding requirements and systemic needs and concerns, the program opens the foster care system to community awareness, 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 is 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, the 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](mailto:Childombud@michigan.gov) Website: [www.michigan.gov/oco](http://www.michigan.gov/oco)

## **COURT APPOINTED SPECIAL ADVOCATES (CASA)**

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 orders 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 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, wanted to be certain 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 2012 there were over 950 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. The standards 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 organization such as a child abuse council or other type of agency with similar philosophies. Local communities determine the program structure that can 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 CASA's 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 CASA, Inc. is a network of local program directors who serve as a support network for one another as well as in an advisory capacity to promote CASA and child advocacy issues in Michigan.

Michigan CASA Inc.'s support to local programs includes statewide conferences for CASA volunteers, staff and other interested professionals; "train the trainer" seminars for CASA directors; and legislative advocacy efforts.

For more information on CASA, visit the [Michigan CASA webpage](#)

## ROLES AND RESPONSIBILITIES OF A CASA

The individual appointed by the court to serve as the child's CASA has 10 interrelated duties. The CASA must:

- 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.
- 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.
- Seek cooperative solutions to the child's situation within the scope of the child's interest and welfare.
- 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.
- Appear at all hearings to represent the child's interests, providing testimony or ensuring that appropriate witnesses are called and examined.
- Explain the court proceedings and the role of CASA to the child, when appropriate, in language and terms that the child can understand.
- Ask that clear and specific orders are entered for the evaluation, assessment, services, placement, and treatment of the child and the child's family.
- Monitor implementation of service plans and dispositional orders to determine whether services ordered by the court are 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.
- Inform the court promptly if services are not made available to the child and/or family, if the family fails to take advantage of such services, or if services are not achieving their purpose, and bring to the court's attention any violation of orders, new developments, or changes in the child's circumstances.
- 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:

- **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 being able to speak the child's native tongue or having an interpreter assigned.
- **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 courts other proceedings such as divorce, criminal and all juvenile proceedings.

- **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.
- **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. The CASA role during the initial stages 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 provided to prevent foster care placement; and to assess what services are necessary to meet the child's needs and to reunify the family.
- **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.
- **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 from DHS, law enforcement, court, schools, public health and medical providers, substance abuse treatment providers, and information regarding 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 and local rules of ethics allow.
- **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.
- **Accountability:** Individuals serving in the role of CASA must be held accountable for their performance by participating in regular performance evaluations.

# MiTEAM PRACTICE MODEL

DHS is implementing a family focused case practice model that incorporates best practices in child protection work. The MiTEAM model will serve to improve engagement practices and establish a unified approach that helps families, children, youth, and caregivers by:

- Providing for consistency in practice.
- Clarifying roles and expectations for staff.
- Informing policy, training, and quality assurance.
- Explaining how child welfare intervention and services are delivered to children and families.
- Focusing reform efforts by using accepted principles of good social work practice.
- Encouraging family driven solutions.

Family engagement serves as the hub of this model because strengthening Michigan's family engagement practice is critical to meet federal outcomes in the areas of safety, permanency, and well-being of children and families. When families, children, youth, and caregivers are engaged in case planning, they are more motivated to make long lasting, sustainable change that improves functioning in all areas.

MiTEAM Child Welfare Case Practice Model (MiTEAM Model) is Michigan's guide for how DHS staff, children, families, stakeholders, and community partners work together to achieve outcomes that focus on safety, permanency, and well-being of children and their families. MiTEAM Model aligns with the agency's mission, values, and principles and incorporates the following key competencies: Teaming, Engagement, Assessment, and Mentoring. A brief summary of these competencies is provided below.

**Teaming:** Teaming is a collective effort that necessitates a team approach. The ability to assemble, become a participant of, or lead a group or groups that provide needed support, services and resources to children or families and that help resolve critical child and family welfare related issues.

**Engagement:** The ability to successfully establish a relationship with children, parents, and individuals, to work together to help meet the needs of the child or family and resolve child welfare related issues.

**Assessment:** The ability to acquire information about significant events and underlying causes that trigger a child and family's need for child welfare related services. This discovery process helps children and families identify issues that affect the safety, permanency, or well-being of the child, helps children and families recognize and promote strengths they can use to resolve issues, determines the child or family's ability to complete tasks or achieve goals, and ascertains a family's willingness to seek and utilize resources that will support them as they try and resolve their issues.

**Mentoring:** The ability to guide and empower others. Mentoring is a developmental partnership through which one person shares knowledge, skills, information and perspective to foster and empower the personal and professional growth of someone else. The power of mentoring creates a one-of-a-kind opportunity for collaboration, goal achievement and problem-solving. Mentoring is vital to demonstrate and reinforce desired skills that promote positive outcomes for children, families and practice.

For further information about [MiTEAM](#), reference the link.

# SCAO FORMS INDEX

Form #	Form Name	Last Revised
<a href="#">JC 01</a>	Complaint (Request for Action, Delinquency Proceedings)	3/10
<a href="#">JC 02</a>	Complaint (Request for Action, Child Protective Proceedings)	3/10
<a href="#">JC 03</a>	Order Appointing Attorney/Guardian Ad Litem/Lawyer-Guardian Ad Litem	9/03
<a href="#">JC 04a</a>	Petition (Delinquency Proceedings)	3/10
<a href="#">JC 04b</a>	Petition (Child Protective Proceedings)	9/11
<a href="#">JC 05a</a>	Order to Apprehend and Detain (Delinquency Proceedings/Minor Personal Protection)	9/10
<a href="#">JC 05b</a>	Order to Take Child(ren) into Protective Custody (Child Protective Proceedings)	9/10
<a href="#">JC 06</a>	Waiver of Attorney or Request for Appointment of Attorney	11/05
<a href="#">JC 07</a>	Appearance of Attorney/Guardian Ad Litem/Lawyer-Guardian Litem	6/03
<a href="#">JC 11a</a>	Order After Preliminary Hearing (Child Protective Proceedings)	9/11
<a href="#">JC 11b</a>	Order After Pretrial Hearing (Child Protective Proceedings)	9/11
<a href="#">JC 12a</a>	Proof of Service/Non Service	9/06
<a href="#">JC 12b</a>	Proof of Service/Non Service	9/06
<a href="#">JC 15</a>	Motion and Authorization/Denial	6/03
<a href="#">JC 17</a>	Order of Disposition (Child Protective Proceedings)	9/10
<a href="#">JC 17a</a>	Order of Disposition, Child in Home (Child Protective Proceedings)	9/06
<a href="#">JC 19</a>	Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)	9/11
<a href="#">JC 21</a>	Summons: Order to Appear (Child Protective Proceeding)	9/09
<a href="#">JC 23</a>	Waiver of Summons/Notice of Hearing	11/05
<a href="#">JC 29</a>	Order to Transfer Jurisdiction	9/11
<a href="#">JC 32</a>	Publication of Hearing	9/07
<a href="#">JC 34</a>	Financial Statement	6/03
<a href="#">JC 36</a>	Request and Order to Terminate Court Jurisdiction	9/06
<a href="#">JC 37</a>	Request for Financial Information	9/07
<a href="#">JC 38</a>	Order for Reimbursement	6/03
<a href="#">JC 39</a>	Order for Assignment of Wages	6/03
<a href="#">JC 40</a>	Order for Contempt of Court	9/09

# SCAO FORMS INDEX

Form #	Form Name	Last Revised
<a href="#">JC 41</a>	Motion and Order to Close Proceedings to Public	11/05
<a href="#">JC 42</a>	Request and Order for Review of Referee Recommendations	6/03
<a href="#">JC 44</a>	Advice of Rights After Order Terminating Parental Rights (Juvenile Code)	11/05
<a href="#">JC 45</a>	Notice of Hearing	9/07
<a href="#">JC 46</a>	Motion for Alternate Service	6/03
<a href="#">JC 47</a>	Order for Alternate Service	9/07
<a href="#">JC 48</a>	Notice of Proceedings Concerning an Indian Child	7/11
<a href="#">JC 53</a>	Notice to Putative Father	11/05
<a href="#">JC 58</a>	Order Cancelling Wage Assignment	6/03
<a href="#">JC 60</a>	Notice of Intent to Intercept State Income Tax	6/03
<a href="#">JC 61</a>	Order to Intercept State Income Tax	6/03
<a href="#">JC 62</a>	Order to Cancel State Income Tax Intercept	6/03
<a href="#">JC 63</a>	Order Following Hearing to Terminate Parental Rights (Child Protective Proceedings)	3/10
<a href="#">JC 65</a>	Order Removing Alleged Abuser from Child's Home (Child Protective Proceedings)	9/07
<a href="#">JC 75</a>	Order Following Emergency Removal Hearing (Child Protective Proceedings)	9/11
<a href="#">JC 76</a>	Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)	9/10
<a href="#">JC 79</a>	Publication of Hearing, Notice to Putative Father	6/03
<a href="#">JC 81</a>	Request and Order for Court-Appointed Appellate Counsel	11/05
<a href="#">JC 82</a>	Affidavit of Service Performed by Lawyer-Guardian Ad Litem	9/11
<a href="#">JC 83</a>	Affidavit of Efforts to Locate Absent Parent	8/05
<a href="#">JC 92</a>	Acceptance of Appointment (Juvenile Guardian)	06/09
<a href="#">JC 93</a>	Letters of Juvenile Guardianship	09/10
<a href="#">JC 94</a>	Annual Report of Juvenile Guardian on Condition of Child	06/09
<a href="#">CCFD 20</a>	Order Regarding Voluntary Foster Care Agreement	03/12
<a href="#">CCFD 21</a>	Order Regarding Voluntary Foster Care Agreement	03/12