



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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MEMORANDUM

DATE: August 7, 2018

TO: Family Division Judges
Probate Judges
Circuit Court Administrators
Family Division Administrators
Juvenile Registers

FROM: Noah A. Bradow, Court Analyst Manager

RE: Public Act 58 of 2018 and Amendments to the Juvenile Code

Effective June 12, 2018, [Public Act 58 of 2018](#) makes several amendments to the Juvenile Code.¹ These amendments provide a definition of neglect, and affect processes for the court regarding when to order a child returned home, order the collection of a juvenile's biometric data, and amend several of the statutory grounds for termination of parental rights.

I. Definition of Neglect

[MCL 712A.2](#) has been amended to include a definition of neglect as that term is used by the Child Abuse and Neglect Prevention Act.² Although PA 58 incorporated the definition of term by reference, the definition of neglect was actually amended by [Public Act 60 of 2018](#) and is now defined as the following:

“Neglect” means harm to a child’s health or welfare by a person responsible for the child’s health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

¹ [MCL 712A.1 thru 712A.32](#).

² [MCL 722.602\(1\)\(d\)](#).

Note that this amended definition now requires the court to consider a parent's financial ability or available resources when determining whether they neglected their child(ren). This is a change from previous statutory language that did not reference a parent's intent or ability.

II. Ordering a Child Returned Home

Before PA 58, the court was required to return a child home at the permanency planning hearing unless doing so would present a substantial risk of harm. Now, the court must also order the child returned home at the dispositional³ and a dispositional review⁴ hearing unless doing so would present a substantial risk of harm.

If a child is returned home at the dispositional hearing, the court should prepare the SCAO-approved form, [JC 17a – Order of Disposition, Child In Home \(Child Protective Proceedings\)](#). The form does not currently contain an option for the court to make a finding that returning the child home does not present a substantial risk of harm. Therefore, until the form is modified, we recommend the court include this finding in the item number 13 “Other” section of the form. If the child is not returned at the dispositional hearing, the court should use the [JC 17 – Order of Disposition \(Child Protective Proceedings\)](#). Item number 15 on the JC 17 allows the court to make a finding that custody of the child with the parents presents a substantial risk of harm to the juvenile.

Following dispositional review hearings, the court should prepare the [JC 19 – Order After Dispositional Review/Permanency Planning Hearing \(Child Protective Proceedings\)](#). Item number 10 allows the court to make the finding that return of the child(ren) to their parents would or would not present a substantial risk of harm.

III. Collection of Biometric Data

Before the court enters an order of disposition in a juvenile delinquency case, or a judgement of sentence in a designated juvenile case, it must ensure a juvenile has been fingerprinted, if required.⁵ PA 58 amends MCL 712A.18 to require the collection of “biometric data,” which includes fingerprints, as well as palm print images, digital images recorded during the arrest or booking process, and descriptive data associated with identifying marks, scars, amputations, and tattoos.⁶ This amendment modifies the language of MCL 712A.18 to mirror the language used in MCL 28.243, which already imposes a requirement to collect biometric data.

³ [MCL 712A.18\(1\)](#) now requires return of the child to their parent if it would not cause a “substantial risk of harm to the juvenile or society.”

⁴ [MCL 712A.19\(8\)](#) now requires return of the child to their parent if it would not cause a “substantial risk of harm to the child.”

⁵ [MCL 712A.18\(10\)](#); [MCR 3.943\(E\)\(4\)](#)

⁶ [MCL 28.241a\(b\)](#)

IV. Reasonable Efforts to Reunify and Grounds for Termination of Parental Rights

In 2016, the Court of Appeals decided [In re Gach, 315 Mich App 83 \(2016\)](#). In that case, the court addressed the constitutionality of MCL 712A.19b(3)(l), which allowed a parent's prior termination of parental rights to serve as the sole basis to terminate a parent's rights to their child(ren). The court held that, because this provision did not require a showing that the parent had failed to remedy the conditions that led to the previous termination, it created an irrebuttable presumption of unfitness and was, therefore, unconstitutional.⁷ Some of the amendments made by PA 58 are aimed at correcting this constitutional deficiency.

a. Reasonable Efforts to Reunify

As a general rule, reasonable efforts to reunify a family must be made in all circumstances.⁸ However, there are a limited number of exceptions where the court may find that reasonable efforts to reunify a family are not required, which include where a parent has had their rights to a child's sibling involuntarily terminated. PA 58 amends MCL 712A.19a(2)(c) to require not only that a parent's rights were previously terminated, but also that the parent has failed to rectify the conditions that led to that termination.

b. Grounds for Termination of Parental Rights

The following amendments were made to the statutory grounds for termination of parental rights:

i. MCL 712A.19b(3)(g) – “Proper Care and Custody”

This subsection is amended to reflect the incorporation of the financial-ability consideration contained in the new definition of neglect discussed above. The inclusion of the phrase “in the court's discretion” indicates the determination of financial ability is a factual determination for the court.

ii. MCL 712A.19b(3)(k) – “Aggravated Circumstances”

This subsection is amended to indicate that not only was the child or a sibling of a child in the current case subjected to specific abuse, but there must also be a “reasonable likelihood that the child will be harmed if returned to the care of the parent.”

iii. MCL 712A.19b(3)(l) – “Prior Termination”

This subsection was deleted in response to the *Gach* decision finding this subsection unconstitutional.

⁷ [In re Gach, 315 Mich App 83, 100 \(2016\)](#).

⁸ [MCL 712A.19a\(2\)](#).

iv. MCL 712A.19b(3)(m) – “Prior Involuntary Termination with Aggravated Circumstances”

This subsection is relettered to subsection (L). The subsection is also amended to require not just that a parent had a prior involuntary termination of parental rights that included aggravated circumstances, but that a parent has also failed to rectify the conditions that led to the prior termination of rights.

v. MCL 712A.19b(3)(n) – “Criminal Conviction”

This subsection is relettered to (m).

If you have any questions regarding this memo, please contact me at 517-373-2451 or TrialCourtServices@courts.mi.gov.