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State Court Administrative Office
Child Welfare Services Division

Michigan Child Welfare Legal Resource Guide

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Child Welfare Services Division
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***STATUTES AND RULES CITED ARE ACCURATE AS OF DATE OF PUBLICATION.**

***Statutes cited are accurate as of the date of publication. Please visit www.michiganlegislature.org to ensure that all provisions are current before relying on them.**

MICHIGAN CHILD PROTECTION LAW

722.621 Short Title

This act shall be known and may be cited as the "child protection law".

722.622 Definitions

As used in this act:

(a) "Adult foster care location authorized to care for a child" means an adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, in which a child is placed in accordance with section 5 of 1973 PA 116, MCL 722.115.

(b) "Attorney" means, if appointed to represent a child under the provisions referenced in section 10, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(c) "Central registry" means the system maintained at the department that is used to keep a record of all reports filed with the department under this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

(d) "Central registry case" means a child protective services case that the department classifies under sections 8 and 8d as category I or category II. For a child protective services case that was investigated before July 1, 1999, central registry case means an allegation of child abuse or neglect that the department substantiated.

(e) "Child" means a person under 18 years of age.

(f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

(g) "Child care organization" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Child care provider" means an owner, operator, employee, or volunteer of a child care organization or of an adult foster care location authorized to care for a child.

(i) "Child care regulatory agency" means the department of consumer and industry services or a successor state department that is responsible for the licensing or registration of child care organizations or the licensing of adult foster care locations authorized to care for a child.

(j) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(k) "Citizen review panel" means a panel established as required by section 106 of title I of the child abuse prevention and treatment act, Public Law 93-247, 42 U.S.C. 5106a.

(l) "Member of the clergy" means a priest, minister, rabbi, Christian science practitioner, or other religious practitioner, or similar functionary of a church, temple, or recognized religious body, denomination, or organization.

(m) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(n) "CPSI system" means the child protective service information system, which is an internal data system maintained within and by the department, and which is separate from the central registry and not subject to section 7.

(o) "Department" means the family independence agency.

(p) "Director" means the director of the department.

(q) "Expunge" means to physically remove or eliminate and destroy a record or report.

(r) "Lawyer-guardian ad litem" means an attorney appointed under section 10 who has the powers and duties referenced by section 10.

(s) "Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.

(t) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

(i) Has substantial and regular contact with the child.

(ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.

(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(u) "Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:

(i) A licensed or registered child care organization.

(ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(v) "Relevant evidence" means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence.

(w) "Sexual abuse" means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.

(x) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(y) "Specified information" means information in a children's protective services case record related specifically to the department's actions in responding to a complaint of child abuse or neglect. Specified information does not include any of the following:

(i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

(iv) Any information not related to the department's actions in responding to a report of child abuse or neglect.

(z) "Structured decision-making tool" means the department document labeled "DSS-4752 (P3) (3-95)" or a revision of that document that better measures the risk of future harm to a child.

(aa) "Substantiated" means a child protective services case classified as a central registry case.

(bb) "Unsubstantiated" means a child protective services case the department classifies under sections 8 and 8d as category III, category IV, or category V.

722.623 Persons required to report child abuse or neglect; written report; transmitting report and results of investigation to prosecuting attorney, county family independence agency, or law enforcement agency; pregnancy of or venereal disease in child less than 12 years of age.

(1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical

care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department:

(i) Eligibility specialist.

(ii) Family independence manager.

(iii) Family independence specialist.

(iv) Social services specialist.

(v) Social work specialist.

(vi) Social work specialist manager.

(vii) Welfare services specialist.

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county family independence agency of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c or sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.

(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county family independence agency of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.

722.623a Knowledge or suspicion of alcohol, controlled substance, or metabolite of controlled substance in body of newborn infant; report required; exception.

In addition to the reporting requirement in section 3, a person who is required to report suspected child abuse or neglect under section 3(1) and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the department in the same manner as required under section 3. A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

722.624 Persons permitted to report child abuse or neglect.

In addition to those persons required to report child abuse or neglect under section 3, any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency.

722.625 Identity of reporting person; confidentiality; disclosure; immunity; good faith presumed.

Except for records available under section 7(2)(a), (b), and (n), the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done according to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

722.626 Detention of child in temporary protective custody; preliminary hearing; examinations; report; medical evaluation.

(1) If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending

physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12A of Act No. 288 of the Public Acts of 1939, as amended, being section 712A.14 of the Michigan Compiled Laws, or order the child released to the child's parent, guardian, or custodian.

(2) When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies. The physician's written report to the department shall contain summaries of the evaluation, including medical test results.

(3) If a report is made by a person other than a physician, or if the physician's report is not complete, the department may request a court order for a medical evaluation of the child. The department shall have a medical evaluation made without a court order if the child's health is seriously endangered and a court order cannot be obtained.

722.627 **Central registry; availability of confidential records; closed court proceeding not required; notice to individuals; amending or expunging certain reports and records; hearing; evidence; release of reports compiled by law enforcement agency; information obtained by citizen review panel.**

(1) The department shall maintain a statewide, electronic central registry to carry out the intent of this act.

(2) Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department as provided in this act is a confidential record available only to 1 or more of the following:

(a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect.

(b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.

(c) A physician who is treating a child whom the physician reasonably suspects may be abused or neglected.

(d) A person legally authorized to place a child in protective custody when the person is confronted with a child whom the person reasonably suspects may be abused or neglected and the confidential record is necessary to determine whether to place the child in protective custody.

(e) A person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.

(f) A person named in the report or record as a perpetrator or alleged perpetrator of the child abuse or neglect or a victim who is an adult at the time of the request, if the identity of the reporting person is protected as provided in section 5.

(g) A court that determines the information is necessary to decide an issue before the court.

(h) A grand jury that determines the information is necessary to conduct the grand jury's official business.

(i) A person, agency, or organization engaged in a bona fide research or evaluation project. The person, agency, or organization shall not release information identifying a person named in the report or record unless that person's written consent is obtained. The person, agency, or organization shall not conduct a personal interview with a family without the family's prior consent and shall not disclose information that would identify the child or the child's family or other identifying information. The department director may authorize the release of information to a person, agency, or organization described in this subdivision if the release contributes to the purposes of this act and the person, agency, or organization has appropriate controls to maintain the confidentiality of personally identifying information for a person named in a report or record made under this act.

(j) A lawyer-guardian ad litem or other attorney appointed as provided by section 10.

(k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee under 1973 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

(l) Family division of circuit court staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants

and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee.

(m) Subject to section 7a, a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over child protective services matters.

(n) The children's ombudsman appointed under the children's ombudsman act, 1994 PA 204, MCL 722.921 to 722.935.

(o) A child fatality review team established under section 7b and authorized under that section to investigate and review a child death.

(p) A county medical examiner or deputy county medical examiner appointed under 1953 PA 181, MCL 52.201 to 52.216, for the purpose of carrying out his or her duties under that act.

(q) A citizen review panel established by the department. Access under this subdivision is limited to information the department determines is necessary for the panel to carry out its prescribed duties.

(r) A child care regulatory agency.

(s) A foster care review board for the purpose of meeting the requirements of 1984 PA 422, MCL 722.131 to 722.139a.

(3) Subject to subsection (9), a person or entity to whom information described in subsection (2) is disclosed shall make the information available only to a person or entity described in subsection (2). This subsection does not require a court proceeding to be closed that otherwise would be open to the public.

(4) If the department classifies a report of suspected child abuse or neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or neglect. The notice shall set forth the person's right to request expunction of the record and the right to a hearing if the department refuses the request. The notice shall state that the record may be released under section 7d. The notice shall not identify the person reporting the suspected child abuse or neglect.

(5) A person who is the subject of a report or record made under this act may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record made under this act may

request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file is not subject to expunction except as the department authorizes, if considered in the best interest of the child.

(6) If the department refuses a request for amendment or expunction under subsection (5), or fails to act within 30 days after receiving the request, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) If the investigation of a report conducted under this act fails to disclose evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry. If evidence of abuse or neglect exists, the department shall maintain the information in the central registry until the department receives reliable information that the perpetrator of the abuse or neglect is dead.

(8) In releasing information under this act, the department shall not include a report compiled by a police agency or other law enforcement agency related to an ongoing investigation of suspected child abuse or neglect. This subsection does not prevent the department from releasing reports of convictions of crimes related to child abuse or neglect.

(9) A member or staff member of a citizen review panel shall not disclose identifying information about a specific child protection case to an individual, partnership, corporation, association, governmental entity, or other legal entity. A member or staff member of a citizen review panel is a member of a board, council, commission, or statutorily created task force of a governmental agency for the purposes of section 7 of 1964 PA 170, MCL 691.1407. Information obtained by a citizen review panel is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

722.627a Availability of information, reports, and records to legislature; disclosure of or keeping confidential information as misdemeanor.

(1) The department shall make information contained in the central registry and reports and records made pursuant to this act available to a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children subject to all of the following:

(a) The department shall not provide confidential information protected by section 7 to the committee unless the committee members appointed and serving agree by roll call vote that the information is essential for the

protection of Michigan children or for legislative oversight of the protective services program and that the confidential information will only be considered at a closed session of the committee. The affirmative vote required by this subdivision shall be by not less than the super majority required by section 7 of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.267 of the Michigan Compiled Laws, and may serve as the vote required under that section for holding a closed session.

(b) In addition to compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, a closed session held under this section shall comply with all of the following:

(i) Tape recording, camera, or other electronic equipment for documenting the proceedings shall not be permitted in the closed session.

(ii) Attendance at the closed session shall be limited to committee members, other members of the legislature and legislative staff at the discretion of the chairperson, and staff members from the department designated by the director.

(2) A person who discloses or causes to be disclosed confidential information to which the person has gained access at a meeting held under this section is guilty of a misdemeanor. A person who keeps a confidential record or file, or a copy of a confidential record or file, at the conclusion of a closed session held under this section, which record or file is obtained at that meeting, is guilty of a misdemeanor.

722.627b Child fatality review team; membership; review of child fatality; training and orientation; creation of advisory committee; publication of annual report; transmission of report to governor and legislature; disclosure of information; member of review team as member for purposes of § 691.1407.

(1) By January 1, 1999, each county may have in place a standing child fatality review team. Two or more counties may appoint a single child fatality review team for those counties. The membership of a child fatality review team shall consist of at least all of the following:

(a) A county medical examiner or deputy county medical examiner appointed under 1963 PA 181, MCL 52.201 to 52.216.

(b) A representative of a local law enforcement agency.

(c) A representative of the department.

(d) The county prosecuting attorney or a designated assistant county prosecutor.

(e) A representative of the department of community health or a local health department.

(2) A child fatality review team established under subsection (1) shall review each child fatality occurring in the county or counties that established the child fatality review team.

(3) The department shall make available to each child fatality review team established under subsection (1) professional, interagency training and orientation on the review of child fatalities. The department shall make available, as necessary, training on specific types of child fatalities, investigation techniques, and prevention initiatives.

(4) By January 1, 1998, the department shall establish a multiagency, multidisciplinary advisory committee to identify and make recommendations on policy and statutory changes pertaining to child fatalities and to guide statewide prevention, education, and training efforts.

(5) The advisory committee created under subsection (4) consists of the following:

(a) Two representatives of the family independence agency.

(b) Two representatives of the department of community health.

(c) One county medical examiner.

(d) One representative of law enforcement.

(e) One county prosecuting attorney.

(f) The children's ombudsman or his or her designee.

(6) Using the annual compilation of child fatalities reported by the state registrar under part 28 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899, and data received from the child fatality review teams established under subsection (1), the advisory committee established under subsection (4) shall publish an annual report on child fatalities. The advisory committee shall include in the report, at a minimum, all of the following:

(a) The total number of child fatalities and the type or cause of each child fatality.

(b) The number of child fatalities that occurred while the child was in foster care.

(c) The number of cases where the child's death occurred within 5 years after family preservation or family reunification.

(d) Trends in child fatalities.

(7) The advisory committee established under subsection (4) shall break down the information required under subsection (6) by county or by groups of counties as described in subsection (1). The information contained in the report is public information. The advisory committee shall not include identifying information of persons named in the report. The advisory committee shall transmit a copy of the report required under subsection (6) to the governor and to the standing committees of the legislature with jurisdiction over matters pertaining to child protection.

(8) Information obtained by a child fatality review team established under subsection (1) is confidential and may be disclosed by the child fatality review team only to the department, the children's ombudsman, the county prosecutor's office, local law enforcement, or another child fatality review team. The information is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) An individual who is a member of a child fatality review team established under subsection (1) or of the advisory committee established under subsection (4) is a member of a board, council, commission, or statutorily created task force of a governmental agency for the purposes of section 7 of 1964 PA 170, MCL 691.1407.

722.627c Release of information from child protective services records or case in which child has died; decision by director; determination.

(1) Sections 7d to 7i govern the director's decisions to release specified information from child protective services records.

(2) The director shall release specified information in a child abuse or neglect case in which a child who was a part of the case has died.

(3) The director may designate another individual to act for the director under sections 7d to 7i, and a reference to the director under those sections applies to an individual designated by the director.

(4) For the purposes of sections 7d to 7i, a child's best interest shall be determined based on all of the following:

(a) Protection of the child's safety.

(b) Preservation of the child's physical, mental, and emotional health.

(c) Consideration of the child's likelihood of establishing a successful and timely permanent family and community relationship.

(5) Sections 7d to 7i do not subject a report or record that is confidential under this act to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

722.627d Release of information by director; preliminary decision to release or deny information; extension of time period; evidence.

(1) Subject to sections 7c to 7i, at the director's initiative or upon written request, the director may release specified information. If a written request for specified information is submitted to the department, the director shall make a preliminary decision to release or to deny release of the specified information within 14 days after receipt of the request. After notifying the requester, the director may extend that time period for an additional 14 days if the additional time is necessary to research and compile the requested specified information.

(2) The director may release specified information under this section if there is clear and convincing evidence that either of the following is true:

(a) The release of the specified information is in the best interest of the child to whom the specified information relates.

(b) The release of the specified information is not in conflict with the best interest of the child to whom the specified information relates, and 1 or more of the following are true:

(i) The release is in the best interest of a member of the child's family or of an individual who resides in the same home in which the child resides. For the purposes of this subparagraph, the child's family includes the child's parents, legal guardians, grandparents, and siblings.

(ii) The release clarifies actions taken by the department on a specific case.

(iii) The report or record containing the specified information concerns a child who has died or concerns a member of that child's family.

(iv) All or part of the report or record containing the specified information is publicly disclosed in a judicial proceeding.

(v) A child abuse or neglect complaint or investigation to which the report or record containing the specified information relates has been part of the subject matter of a published or broadcast media story.

(vi) The report or record containing the specified information concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling of the child identified in the request.

722.627e Release of information by director; prohibitions.

(1) The director shall not deny a request for specified information under section 7d based upon a desire to shield a lack of or an inappropriate performance by the department.

(2) Regardless of the director's determination that specified information may be released under section 7d, the director shall not release the specified information if 1 or more of the following are true:

(a) The request for release does not include information sufficient to identify the specific case to which the request relates.

(b) An investigation of the report of child abuse or neglect to which the specified information relates is in progress and the report has not been substantiated or unsubstantiated.

(c) A hearing is pending under section 7(6).

(d) There is an ongoing criminal investigation and, as determined by the local prosecuting attorney, release would interfere with the criminal investigation.

(e) The individual who submits the request is serving a sentence of imprisonment in a state, county, or federal correctional facility in this state or in another state.

(f) The child to whom the report or record relates is 18 years of age or older.

722.627f Release of information by director; preliminary decision to release or deny request; notice; final decision; writing; right to appeal.

(1) Not less than 14 days before specified information is released or within 14 days after making a decision to deny a request for release of specified information under section

7d, the director shall give notice as provided in this subsection and section 7g of a preliminary decision to release or to deny a request to release specified information. The notice shall be in writing and shall be made by personal service or by registered or certified mail, return receipt requested and deliverable to the addressee only. The notice shall include at least all of the following:

(a) The basis on which the specified information is being released or the basis for denial of the request for release.

(b) A statement that the decision becomes a final decision unless information that could be the basis for a different decision is submitted to the director in writing within 14 days after the notice is given.

(c) A statement that there is a right to appeal a final decision as provided in section 7h. The notice shall include information regarding where to file the appeal and describing appellate procedures.

(2) If, within 14 days after giving notice, the director does not receive information in writing that could be the basis for a different decision, the director's decision is final.

(3) If the director does receive information as described in subsection (2), the director shall make a final decision to release or deny a request to release the specified information within 7 days after receipt of the information. The director shall give notice of a final decision made under this subsection to each individual required to be notified under section 7g(1) or (2). The notice required by this subsection shall be in writing and shall include at least notification of the right to appeal a final decision as provided in section 7h.

722.627g Release of information by director; individuals to be notified.

(1) If the director decides to release specified information under section 7d, the department shall give each notice required under section 7f to each of the following:

(a) Each individual named in the report as a perpetrator or an alleged perpetrator of the child's abuse or neglect, unless the individual named in the report has been convicted of a crime relating to the abuse or neglect, and no appeal is pending.

(b) Each parent or legal guardian of the child.

(c) Each attorney representing the child who is the subject of the case, or representing an individual listed in subdivision (a) or (b), if the department has notice of that representation.

(d) The child's guardian ad litem.

(2) If the director denies a request for release of information under section 7d, the department shall notify only the requesting person.

(3) If an individual required to be notified under subsection (1)(a) is named as a perpetrator of child abuse or neglect in a report that contains specified information requested to be released, and that individual was not previously notified under section 7(4), the department shall notify that individual as required by section 7(4) not less than 14 days before the specified information is released. If an individual who is required to be notified under this subsection requests expunction of the record within 14 days after the notice is given, the specified information shall not be released under this section until the procedures governing expunction under section 7 are completed. If an individual who is required to be notified under this subsection does not request expunction within 14 days, the procedures for release of specified information under sections 7c to 7i shall be followed, and the individual does not have a right to appeal the decision to release.

722.627h Appeal of director's decision.

(1) Before the release of specified information under section 7d and except as provided in section 7g, an individual required to be notified under section 7g may appeal the director's decision to the circuit court. If an appeal is filed and the department notified before the release, the specified information shall not be released until the decision to release is upheld by the circuit court. If the director denies a request to release specified information under section 7d, within 30 days after notice of the denial, the person whose request is denied may file an appeal of the denial with the circuit court. The court shall uphold a decision to release or to deny release of specified information unless the court finds that the director's decision was an abuse of the director's discretion based upon the criteria for releasing or not releasing specified information prescribed by sections 7c to 7i.

(2) Proceedings on an appeal filed under this section are confidential, and any record of these proceedings shall not be released unless the court upholds a decision to release specified information or reverses the denial of a request for release. The court shall conduct its review so that a person whose request for specified information was denied does not have access to that specified information during the appeal proceedings.

(3) If the court reverses the director's decision to release or to deny release of specified information in an appeal under this section, the court may order the department to pay the appellant's costs and reasonable attorney fees that are related to the appeal.

722.627i Fee; federal assurances and waivers.

(1) The department may charge a fee for a copy of specified information released under section 7d in the same manner that a public body is authorized to charge a fee under section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(2) Sections 7c to 7i shall not be enforced and the family independence agency shall not utilize or implement those provisions unless the family independence agency consults with and receives assurances from the federal government, including any necessary federal waivers, that utilization and implementation of those provisions do not jeopardize this state's receipt of federal money.

722.627j Individual not named in central registry case as perpetrator of child abuse or neglect; documentation; request; automated system; definitions.

(1) Upon written request, the department may provide to an individual documentation stating that the individual is not named in a central registry case as the perpetrator of child abuse or child neglect. The written request required under this section shall include the individual's affirmation that he or she is employed by, volunteers at, is applying for employment in, or is seeking to volunteer in a child care center, child caring institution, or child placing agency.

(2) For the purpose of applying for employment or seeking to volunteer in a child care center, child caring institution, or child placing agency, an individual may share the document provided in subsection (1) with the child care center owner or licensee, or a child caring institution or child placing agency, or an individual authorized by the child care center owner or licensee, the child caring institution, or the child placing agency.

(3) The family independence agency may develop an automated system that will allow an individual applying for child-related employment or seeking to volunteer in a capacity that would allow unsupervised access to a child for whom the individual is not a person responsible for that child's health or welfare to be listed in that system if a screening of the individual finds that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect. The automated system developed under this section shall provide for public access to the list of individuals who have been screened for the purposes of complying with this section. An automated system developed under this section shall have appropriate safeguards and procedures to ensure that information that is confidential under this act, state law, or federal law is not accessible or disclosed through that system.

(4) As used in this section, "child care center", "child caring institution", and "child placing agency" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

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; proceedings by prosecuting attorney; cooperation of school or other institution; information as to disposition of report; exception to reporting requirement; surrender of newborn; training of employees on rights of children and families.**

(1) Within 24 hours after receiving a report made under this act, the department shall refer the report to the prosecuting attorney if the report meets the requirements of section 3(6) or shall commence an investigation of the child suspected of being abused or neglected. Within 24 hours after receiving a report whether from the reporting person or from the department under section 3(6), the local law enforcement agency shall refer the report to the department if the report meets the requirements of section 3(7) or shall commence an investigation of the child suspected of being abused or neglected. If the child suspected of being abused is not in the physical custody of the parent or legal guardian and informing the parent or legal guardian would not endanger the child's health or welfare, the agency or the department shall inform the child's parent or legal guardian of the investigation as soon as the agency or the department discovers the identity of the child's parent or legal guardian.

(2) In the course of its investigation, the department shall determine if the child is abused or neglected. The department shall cooperate with law enforcement officials, courts of competent jurisdiction, and appropriate state agencies providing human services in relation to preventing, identifying, and treating child abuse and neglect; shall provide, enlist, and coordinate the necessary services, directly or through the purchase of services from other agencies and professions; and shall take necessary action to prevent further abuses, to safeguard and enhance the child's welfare, and to preserve family life where possible. In the course of an investigation, at the time that a department investigator contacts an individual about whom a report has been made under this act or contacts an individual responsible for the health or welfare of a child about whom a report has been made under this act, the department investigator shall advise that individual of the department investigator's name, whom the department investigator represents, and the specific complaints or allegations made against the individual. The department shall ensure that its policies, procedures, and administrative rules ensure compliance with the provisions of this act.

(3) In conducting its investigation, the department shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that 1 or more of the following conditions exist:

(a) Abuse or neglect is the suspected cause of a child's death.

(b) The child is the victim of suspected sexual abuse or sexual exploitation.

(c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. For purposes of this subdivision and section 17, "severe physical injury" means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.

(d) Law enforcement intervention is necessary for the protection of the child, a department employee, or another person involved in the investigation.

(e) The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

(4) Law enforcement officials shall cooperate with the department in conducting investigations under subsections (1) and (3) and shall comply with sections 5 and 7. The department and law enforcement officials shall conduct investigations in compliance with the protocols adopted and implemented as required by subsection (6).

(5) Involvement of law enforcement officials under this section does not relieve or prevent the department from proceeding with its investigation or treatment if there is reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare.

(6) In each county, the prosecuting attorney and the department shall develop and establish procedures for involving law enforcement officials as provided in this section. In each county, the prosecuting attorney and the department shall adopt and implement standard child abuse and neglect investigation and interview protocols using as a model the protocols developed by the governor's task force on children's justice as published in FIA Publication 794 (revised 8-98) and FIA Publication 779 (8-98), or an updated version of those publications.

(7) If there is reasonable cause to suspect that a child in the care of or under the control of a public or private agency, institution, or facility is an abused or neglected child, the agency, institution, or facility shall be investigated by an agency administratively independent of the agency, institution, or facility being investigated. If the investigation produces evidence of a violation of section 145c or sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c and 750.520b to 750.520g, the investigating agency shall transmit a copy of the results of the investigation to the prosecuting attorney of the county in which the agency, institution, or facility is located.

(8) A school or other institution shall cooperate with the department during an investigation of a report of child abuse or neglect. Cooperation includes allowing access to the child without parental consent if access is determined by the department

to be necessary to complete the investigation or to prevent abuse or neglect of the child. However, the department shall notify the person responsible for the child's health or welfare about the department's contact with the child at the time or as soon afterward as the person can be reached. The department may delay the notice if the notice would compromise the safety of the child or child's siblings or the integrity of the investigation, but only for the time 1 of those conditions exists.

(9) If the department has contact with a child in a school, all of the following apply:

(a) Before contact with the child, the department investigator shall review with the designated school staff person the department's responsibilities under this act and the investigation procedure.

(b) After contact with the child, the department investigator shall meet with the designated school staff person and the child about the response the department will take as a result of contact with the child. The department may also meet with the designated school staff person without the child present and share additional information the investigator determines may be shared subject to the confidentiality provisions of this act.

(c) Lack of cooperation by the school does not relieve or prevent the department from proceeding with its responsibilities under this act.

(10) A child shall not be subjected to a search at a school that requires the child to remove his or her clothing to expose his buttocks or genitalia or her breasts, buttocks, or genitalia unless the department has obtained an order from a court of competent jurisdiction permitting such a search. If the access occurs within a hospital, the investigation shall be conducted so as not to interfere with the medical treatment of the child or other patients.

(11) The department shall enter each report made under this act that is the subject of a field investigation into the CPSI system. The department shall maintain a report entered on the CPSI system as required by this subsection until the child about whom the investigation is made is 18 years old or until 10 years after the investigation is commenced, whichever is later, or, if the case is classified as a central registry case, until the department receives reliable information that the perpetrator of the abuse or neglect is dead. Unless made public as specified information released under section 7d, a report that is maintained on the CPSI system is confidential and is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) After completing a field investigation and based on its results, the department shall determine in which single category, prescribed by section 8d, to classify the allegation of child abuse or neglect.

(13) Except as provided in subsection (14), upon completion of the investigation by the local law enforcement agency or the department, the law enforcement agency or department may inform the person who made the report as to the disposition of the report.

(14) If the person who made the report is mandated to report under section 3, upon completion of the investigation by the department, the department shall inform the person in writing as to the disposition of the case and shall include in the information at least all of the following:

(a) What determination the department made under subsection (12) and the rationale for that decision.

(b) Whether legal action was commenced and, if so, the nature of that action.

(c) Notification that the information being conveyed is confidential.

(15) Information sent under subsection (14) shall not include personally identifying information for a person named in a report or record made under this act.

(16) Unless section 5 of chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.5, requires a physician to report to the department, the surrender of a newborn in compliance with chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is not reasonable cause to suspect child abuse or neglect and is not subject to the section 3 reporting requirement. This subsection does not apply to circumstances that arise on or after the date that chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is repealed. This subsection applies to a newborn whose birth is described in the born alive infant protection act and who is considered to be a newborn surrendered under the safe delivery of newborns law as provided in section 3 of chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.3.

(17) All department employees involved in investigating child abuse or child neglect cases shall be trained in the legal duties to protect the state and federal constitutional and statutory rights of children and families from the initial contact of an investigation through the time services are provided.

722.628a Execution of notices by prosecuting attorney of individuals bound over to circuit court for certain crimes; notification upon final disposition; confidentiality.

(1) If an individual is bound over to circuit court for any of the following crimes, the prosecuting attorney shall execute the notices as prescribed by subsections (2) to (5):

(a) Criminal sexual conduct in the first, second, or third degree in violation of section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d.

(b) Assault with intent to commit criminal sexual conduct in violation of section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g.

(c) A felonious attempt or a felonious conspiracy to commit criminal sexual conduct.

(d) An assault on a child that is punishable as a felony.

(e) Child abuse in the first, second, or third degree, in violation of section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(f) Involvement in child sexually abusive material or child sexually abusive activity in violation of section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(2) If the individual is an employee of a nonpublic school as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5, the prosecuting attorney shall notify the governing body of the nonpublic school.

(3) If the individual is an employee of a school district or intermediate school district, the prosecuting attorney shall notify the superintendent of the school district or intermediate school district.

(4) If the individual is an employee of the department who provides a service to children and youth as described in section 115 of the social welfare act, 1939 PA 280, MCL 400.115, the prosecuting attorney shall notify the county director of social services or the superintendent of the training school.

(5) If the individual is a child care provider, the prosecuting attorney shall notify the department, the owner or operator of the child care provider's child care organization or adult foster care location authorized to care for a child, and the child care regulatory agency with authority over that child care organization or adult foster care location authorized to care for a child.

(6) Upon final disposition of a criminal matter for which a notice was given under subsections (2) to (5), the prosecuting attorney shall notify each person previously notified under subsections (2) to (5) of that disposition.

(7) A person who is notified or otherwise receives information under this section shall keep the information received confidential except so far as disclosure is necessary to take appropriate action in response to the information.

722.628b Referral of case to prosecuting attorney.

If a central registry case involves a child's death, serious physical injury of a child, or sexual abuse or exploitation of a child, the department shall refer the case to the prosecuting attorney for the county in which the child is located. The prosecuting attorney shall review the investigation of the case to determine if the investigation complied with the protocol adopted as required by section 8.

722.628c Interview with child.

During an investigation of suspected child abuse or neglect, the child reported to have been abused or neglected shall not be interviewed in the presence of an individual suspected to have perpetrated the abuse.

722.628d Categories and departmental response; listing in child abuse or neglect registry; report to legislature.

(1) For the department's determination required by section 8, the categories, and the departmental response required for each category, are the following:

(a) Category V - services not needed. Following a field investigation, the department determines that there is no evidence of child abuse or neglect.

(b) Category IV - community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child. The department shall assist the child's family in voluntarily participating in community-based services commensurate with the risk to the child.

(c) Category III - community services needed. The department determines that there is a preponderance of evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child's family in receiving community-based services commensurate with the risk to the child. If the family does not voluntarily participate in services, or the family voluntarily participates in services, but does not progress toward alleviating the child's risk level, the department shall consider reclassifying the case as category II.

(d) Category II - child protective services required. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a high or intensive risk of future

harm to the child. The department shall open a protective services case and provide the services necessary under this act. The department shall also list the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.

(e) Category I - court petition required. The department determines that there is evidence of child abuse or neglect and 1 or more of the following are true:

(i) A court petition is required under another provision of this act.

(ii) The child is not safe and a petition for removal is needed.

(iii) The department previously classified the case as category II and the child's family does not voluntarily participate in services.

(iv) There is a violation, involving the child, of a crime listed or described in section 8a(1)(b), (c), (d), or (f) or of child abuse in the first or second degree as prescribed by section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(2) In response to a category I classification, the department shall do all of the following:

(a) If a court petition is not required under another provision of this act, submit a petition for authorization by the court under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(b) Open a protective services case and provide the services necessary under this act.

(c) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as "unknown" if the perpetrator has not been identified.

(3) The department is not required to use the structured decision-making tool for a nonparent adult who resides outside the child's home who is the victim or alleged victim of child abuse or neglect or for an owner, operator, volunteer, or employee of a licensed or registered child care organization or a licensed or unlicensed adult foster care family home or adult foster care small group home as those terms are defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(4) If following a field investigation the department determines that there is a preponderance of evidence that an individual listed in subsection (3) was the

perpetrator of child abuse or neglect, the department shall list the perpetrator of the child abuse or neglect on the central registry.

(5) The department shall furnish a written report described in subsection (6) to the appropriate legislative standing committees and the house and senate appropriations subcommittees for the department within 4 months after each of the following time periods:

(a) Beginning October 1, 1999 and ending September 30, 2000.

(b) Beginning October 1, 2000 and ending September 30, 2001.

(c) Beginning October 1, 2001 and ending September 30, 2002.

(6) The department shall include in a report required by subsection (5) at least all of the following information regarding all families that were classified in category III at some time during the time period covered by the report:

(a) The total number of families classified in category III.

(b) The number and percentage classified in category III that voluntarily participated in services and that did not participate in services.

(c) The number for which the department entered more than 1 determination that there was evidence of child abuse or neglect.

(d) The number the department reclassified from category III to category II.

722.629 Multidisciplinary services; biennial report; continuing education programs; dissemination of information.

(1) The department, in discharging its responsibilities under this act, shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams. The department shall prepare a biennial report to the legislature containing information on the activities of the teams created pursuant to this subsection and including recommendations by the teams and the department regarding child abuse and neglect when committed by persons responsible for the child's health or welfare.

(2) The department shall assure a continuing education program for department, probate court, and private agency personnel. The program shall include responsibilities, obligations, and powers under this act and the diagnosis and treatment of child abuse and neglect when committed by persons responsible for the child's health or welfare.

(3) The department shall provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect in this state and the facilities, prevention, and treatment methods available to combat child abuse and neglect when committed by persons responsible for the child's health or welfare.

722.629a Annual report.

The agency within the department that is responsible for administering and providing services under this act shall make an annual comprehensive report to the legislature that includes at least all of the following:

(a) Statistical information including at least all of the following:

(i) Total reports of abuse and neglect investigated under this act and the number that were substantiated and unsubstantiated.

(ii) Characteristics of perpetrators of abuse and neglect and the child victims such as age, sex, relationship, socioeconomic status, race, and ethnicity.

(iii) The occupation or description listed under section 3 in which the individual who made the report fits, or other description if the individual is not within a group required to report under this act.

(iv) Statistics relating to the central registry such as number of individuals and their characteristics.

(v) Statistics relating to the basis for determining that reported cases of abuse or neglect are unsubstantiated.

(b) Policy related to child protective services including, but not limited to, major policy changes and court decisions affecting the administration of this act.

722.630 Lawyer-guardian ad litem.

In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

722.631 Privileged communications.

Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act. This section does not relieve a member of the clergy from reporting suspected child abuse or child neglect under section 3 if that member of the clergy receives information concerning suspected child abuse or child neglect while acting in any other capacity listed under section 3.

722.632 Report to law enforcement officials or probate court.

This act shall not prohibit a person who has reasonable cause to suspect child abuse or neglect from making a report to the appropriate law enforcement officials or probate court.

722.632a Investigations by hospital, school, or other agency.

This act does not preclude or hinder a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees.

722.633 Failure to report suspected child abuse or neglect; damages; violation as misdemeanor; unauthorized dissemination of information as misdemeanor; civil liability; maintaining report or record required to be expunged as misdemeanor; false report of child abuse or neglect.

(1) A person who is required by this act to report an instance of suspected child abuse or neglect and who fails to do so is civilly liable for the damages proximately caused by the failure.

(2) A person who is required by this act to report an instance of suspected child abuse or neglect and who knowingly fails to do so is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(3) Except as provided in section 7, a person who disseminates, or who permits or encourages the dissemination of, information contained in the central registry and in reports and records made as provided in this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both, and is civilly liable for the damages proximately caused by the dissemination.

(4) A person who willfully maintains a report or record required to be expunged under section 7 is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(5) A person who intentionally makes a false report of child abuse or neglect under this act knowing that the report is false is guilty of a crime as follows:

(a) If the child abuse or neglect reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(b) If the child abuse or neglect reported would constitute a felony if the report were true, the person is guilty of a felony punishable by the lesser of the following:

(i) The penalty for the child abuse or neglect falsely reported.

(ii) Imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.

722.634 Religious beliefs.

A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. This section shall not preclude a court from ordering the provision of medical services or nonmedical remedial services recognized by state law to a child where the child's health requires it nor does it abrogate the responsibility of a person required to report child abuse or neglect.

722.638 Submission of petition for authorization under § 712A.2; conditions; request for termination of parental rights; conference.

(1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:

(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 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(2) In a petition submitted as required by subsection (1), if a 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, the family independence agency shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1), the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.

***Statutes cited are accurate as of the date of publication. Please visit www.michiganlegislature.org to ensure that all provisions are current before relying on them.**

MICHIGAN JUVENILE CODE

712A.1 Definitions; proceedings not considered criminal proceedings; construction of chapter.

(1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL 600.113.

(b) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(c) "Court" means the family division of circuit court.

(d) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(e) "MCI" means the Michigan children's institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(f) "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(g) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) Except as otherwise provided, proceedings under this chapter are not criminal proceedings.

(3) This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.

712A.2 Authority and jurisdiction of court.

The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. If the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction as provided in that section. The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant. As used in this sub-subdivision, "specified juvenile violation" means 1 or more of the following:

(A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(B) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this paragraph, "dangerous weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(C) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(E) An attempt to commit a violation described in paragraphs (A) to (D).

(F) Conspiracy to commit a violation described in paragraphs (A) to (D).

(G) Solicitation to commit a violation described in paragraphs (A) to (D).

(H) A lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(I) Another violation arising out of the same transaction as a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(2) The juvenile has deserted his or her home without sufficient cause, and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile's parent, guardian, or custodian have exhausted or refused family counseling.

(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.

(4) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the

school or other learning program, and the court finds on the record that the juvenile, the juvenile's parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, "learning program" means an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition.

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5) and the custody of that juvenile is subject to the prior or continuing order of another court of record of this state, the manner of notice to the other court of record and the authority of the court to proceed is governed by rule of the supreme court.

(c) Jurisdiction over juveniles under 18 years of age, jurisdiction of whom has been waived to the family division of circuit court by a circuit court under a provision in a temporary order for custody of juveniles based upon a complaint for divorce or upon a motion related to a complaint for divorce by the prosecuting attorney, in a divorce judgment dissolving a marriage between the juvenile's parents, or by an amended judgment relative to the juvenile's custody in a divorce.

(d) If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning a juvenile between the ages of 17 and 18 found within the county who is 1 or more of the following:

(1) Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.

(2) Repeatedly associating with criminal, dissolute, or disorderly persons.

(3) Found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.

(4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.

(5) Willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.

If a juvenile is brought before the court in a county other than that in which the juvenile resides, before a hearing and with the consent of the judge of the court in the county of residence, the court may enter an order transferring jurisdiction of the matter to the court of the county of residence. Consent to transfer jurisdiction is not required if the county of residence is a county juvenile agency and satisfactory proof of residence is furnished to the court of the county of residence. The order does not constitute a legal settlement in this state that is required for the purpose of section 55 of the social welfare act, 1939 PA 280, MCL 400.55. The order and a certified copy of the proceedings in the transferring court shall be delivered to the court of the county of residence. A case designated as a case in which the juvenile shall be tried in the same manner as an adult under section 2d of this chapter may be transferred for venue or for juvenile disposition, but shall not be transferred on grounds of residency. If the case is not transferred, the court having jurisdiction of the offense shall try the case.

(e) Authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of a juvenile who does not require formal court jurisdiction but otherwise falls within subdivision (a). These services shall be used only if the juvenile and his or her parents, guardian, or custodian voluntarily accepts them.

(f) If the court operates a detention home for juveniles within the court's jurisdiction under subdivision (a)(1), authority to place a juvenile within that home pending trial if the juvenile is within the circuit court's jurisdiction under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if the circuit court orders the family division of circuit court in the same county to place the juvenile in that home. The family division of circuit court shall comply with that order.

(g) Authority to place a juvenile in a county jail under section 27a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.27a, if the court designates the case under section 2d of this chapter as a case in which the juvenile is to be tried in the same manner as an adult and the court determines there is probable cause to believe that the offense was committed and probable cause to believe the juvenile committed that offense.

(h) Jurisdiction over a proceeding under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, in which a minor less than 18 years of age is the respondent, or a proceeding to enforce a valid foreign protection order issued against a respondent who is a minor less than 18 years of age. A personal protection order shall not be issued against a respondent who is a minor less than 10 years of age. Venue for an initial action under section 2950 or 2950a of the revised

judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, is proper in the county of residence of either the petitioner or respondent. If the respondent does not live in this state, venue for the initial action is proper in the petitioner's county of residence.

712A.2a Continuing jurisdiction beyond maximum age; definitions.

(1) Except as otherwise provided in subsection (2), if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner by court order.

(2) If the court has exercised jurisdiction over a juvenile under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, jurisdiction may be continued under section 18d of this chapter until the juvenile is 21 years of age.

(3) If the court exercised jurisdiction over a child under section 2(h) of this chapter, jurisdiction of the court continues until the order expires but action regarding the personal protection order after the respondent's eighteenth birthday shall not be subject to this chapter.

(4) This section does not apply if the juvenile is sentenced to the jurisdiction of the department of corrections.

(5) As used in this chapter, "child", "juvenile", "minor", or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the court under section 2 of this chapter and over whom the court has continuing jurisdiction pursuant to subsections (1) and (3).

712A.2b Violation of vehicle code or corresponding ordinance; procedure.

When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a provision of an ordinance substantially corresponding to any provision of Act No. 300 of the Public Acts of 1949, the following procedure applies, any other provision of this chapter notwithstanding:

(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by section 728 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.728 of the Michigan Compiled Laws.

(b) The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.

(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter.

(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with section 732 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.732 of the Michigan Compiled Laws.

(e) This section does not limit the court's discretion to restrict the driving privileges of a juvenile as a term or condition of probation.

712A.2c Court order authorizing apprehension of juvenile; contents of order; interference with execution of order; penalty.

The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or facility to which he or she was committed under section 18 of this chapter, has violated probation, has failed to appear for a hearing on a petition charging a violation of section 2 of this chapter, is alleged to have violated a personal protection order issued under section 2(h) of this chapter, or is alleged to have violated a valid foreign protection order. The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. A person who interferes with the lawful attempt to execute an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both.

712A.2d Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; "specified juvenile violation" defined.

(1) In a petition or amended petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for a specified juvenile violation, the

prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court.

(2) In a petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court shall consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(3) If a case is designated under this section, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction unless a probable cause hearing is required under subsection (4).

(4) If the petition in a case designated under this section alleges an offense that if committed by an adult would be a felony or punishable by imprisonment for more than 1 year, the court shall conduct a probable cause hearing not later than 14 days after the case is designated to determine whether there is probable cause to believe the

offense was committed and whether there is probable cause to believe the juvenile committed the offense. This hearing may be combined with the designation hearing under subsection (2) for an offense other than a specified juvenile offense. A probable cause hearing under this section is the equivalent of the preliminary examination in a court of general criminal jurisdiction and satisfies the requirement for that hearing. A probable cause hearing shall be conducted by a judge other than the judge who will try the case if the juvenile is tried in the same manner as an adult.

(5) If the court determines there is probable cause to believe the offense alleged in the petition was committed and probable cause to believe the juvenile committed the offense, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(6) If the court determines that an offense did not occur or there is not probable cause to believe the juvenile committed the offense, the court shall dismiss the petition. If the court determines there is probable cause to believe another offense was committed and there is probable cause to believe the juvenile committed that offense, the court may further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult as provided in subsection (2). If the court designates the case, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(7) If a case is designated under this section, the proceedings are criminal proceedings and shall afford all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere or a verdict of guilty shall result in entry of a judgment of conviction. The conviction shall have the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction.

(8) Following a judgment of conviction, the court shall enter a disposition or impose a sentence authorized under section 18(1)(n) of this chapter.

(9) As used in this section, "specified juvenile violation" means any of the following:

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(b) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this subdivision, "dangerous weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the juvenile escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(e) An attempt to commit a violation described in subdivisions (a) to (d).

(f) Conspiracy to commit a violation described in subdivisions (a) to (d).

(g) Solicitation to commit a violation described in subdivisions (a) to (d).

(h) Any lesser included offense of an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).

(i) Any other offense arising out of the same transaction as an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).

712A.2e Waiver of jurisdiction over civil infractions; agreement.

(1) The court may enter into an agreement with any or all district courts or municipal courts within the court's geographic jurisdiction to waive jurisdiction over any or all

civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction.

(2) For a civil infraction waived under subsection (1) committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. The court has jurisdiction over juveniles who commit any other civil infraction.

712A.3 Criminal charge against person under age 17; transfer of case to family division of circuit court.

(1) If during the pendency of a criminal charge against a person in any other court it is ascertained that the person was under the age of 17 at the time of the commission of the offense, the other court shall transfer the case without delay, together with all the papers, documents, and testimony connected with that case, to the family division of the circuit court of the county in which the other court is situated or in which the person resides.

(2) The court making the transfer shall order the child to be taken promptly to the place of detention designated by the family division of the circuit court or to that court itself or release the juvenile in the custody of some suitable person to appear before the court at a time designated. The court shall then hear and dispose of the case in the same manner as if it had been originally instituted in that court.

712A.3a Prior order of another court affecting child's welfare; notice, filing, service, disclosure.

When any order affecting the welfare of a child is entered under this chapter by the judge of probate in any case where the child is subject to the prior or continuing order of any other court of this state, a notice thereof shall be filed in such other court and a copy of such notice shall be served personally or by registered mail upon the parents, guardian, or persons in loco parentis and upon the prosecuting attorney of the county wherein such other court is located. Such notices shall not disclose any allegations or findings of facts set forth in such petitions or orders, nor the actual person or institution to whom custody is changed. Such facts may be disclosed directly to such prosecuting attorney and shall be disclosed on request of the prosecuting attorney or by order of such other court, but shall be considered as confidential information, the disclosure of which will be subject to the same care as in all juvenile matters.

712A.4 Waiver of jurisdiction when child of 14 or older accused of felony.

(1) If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.

(2) Before conducting a hearing on the motion to waive jurisdiction, the court shall give notice of the hearing in the manner provided by supreme court rule to the juvenile and the prosecuting attorney and, if addresses are known, to the juvenile's parents or guardians. The notice shall state clearly that a waiver of jurisdiction to a court of general criminal jurisdiction has been requested and that, if granted, the juvenile can be prosecuted for the alleged offense as though he or she were an adult.

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required by chapter VI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 766.1 to 766.18 of the Michigan Compiled Laws.

(4) Upon a showing of probable cause under subsection (3), the court shall conduct a hearing to determine if the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction. In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section or section 606 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or the recorder's court of the city of Detroit under this section or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws.

(6) If legal counsel has not been retained or appointed to represent the juvenile, the court shall advise the juvenile and his or her parents, guardian, custodian, or guardian ad litem of the juvenile's right to representation and appoint legal counsel. If the court appoints legal counsel, the judge may assess the cost of providing legal counsel as costs against the juvenile or those responsible for his or her support, or both, if the persons to be assessed are financially able to comply.

(7) Legal counsel shall have access to records or reports provided and received by the judge as a basis for decision in proceedings for waiver of jurisdiction. A continuance shall be granted at legal counsel's request if any report, information, or recommendation not previously available is introduced or developed at the hearing and the interests of justice require a continuance.

(8) The court shall enter a written order either granting or denying the motion to waive jurisdiction and the court shall state on the record or in a written opinion the court's findings of fact and conclusions of law forming the basis for entering the order. If a juvenile is waived, a transcript of the court's findings or a copy of the written opinion shall be sent to the court of general criminal jurisdiction.

(9) If the court does not waive jurisdiction, a transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion shall be sent to the prosecuting attorney, juvenile, or juvenile's attorney upon request.

(10) If the court waives jurisdiction, the juvenile shall be arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding under subsection (3) satisfies the requirements of, and is the equivalent

of, the preliminary examination required by chapter VI of Act No. 175 of the Public Acts of 1927.

(11) As used in this section, "felony" means an offense punishable by imprisonment for more than 1 year or an offense designated by law as a felony.

712A.5 Jurisdiction over juvenile after 18 years of age.

The court does not have jurisdiction over a juvenile after he or she attains the age of 18 years, except as provided in section 2a of this chapter. A commitment of a juvenile to a private or public institution or agency is not valid after the juvenile has reached the age beyond which the court does not have continuing jurisdiction under section 2a of this chapter. Commitments to a private or incorporated institution or agency do not divest the court of jurisdiction unless the juvenile is adopted in a manner provided by law.

712A.6 Jurisdiction; adults.

The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.

712A.6a Hearing; attendance by parent or guardian required; exception; failure to attend.

The parent or guardian of a juvenile who is within the court's jurisdiction under section 2(a)(1) of this chapter shall attend each hearing held under this chapter unless the court excuses the parent or guardian from attendance for good cause. A parent or guardian who fails to attend the juvenile's hearing without good cause may be held in contempt and subject to fines. Failure of a parent or guardian to attend a hearing, however, is not grounds for an adjournment, continuance, or other delay of the proceeding and does not provide a basis for appellate or other relief.

712A.6b Order affecting nonparent adult.

(1) The court may issue an order that affects a nonparent adult and that does 1 or more of the following:

(a) Requires the nonparent adult to participate in the development of a case service plan.

(b) Requires the nonparent adult to comply with a case service plan.

(c) Permanently removes the nonparent adult from the home of the child as provided in section 13a of this chapter.

(d) Permanently restrains the nonparent adult from coming into contact with or within close proximity of the child.

(2) Except as provided in subsection (3), a nonparent adult who violates an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) A nonparent adult who violates an order issued under this section and who has 1 or more prior convictions for violating an order issued under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(4) This section does not prohibit a nonparent adult from being charged with, convicted of, or punished for any other violation of law the nonparent adult commits while violating an order issued under this section.

(5) This section does not prohibit the court from exercising its criminal or civil contempt powers for a violation of an order issued under this section.

(6) This section does not in any manner affect the authority or jurisdiction of the court as provided in section 6.

712A.7 Juvenile division of probate court; register of probate; appointment, duties, salary.

The judge of probate may appoint the register of probate, a deputy probate register, or clerk of his court as register of the juvenile division of the probate court. Such register of the juvenile division shall prepare all petitions for investigation, summons, writs and other necessary papers, and shall perform such duties as required by the judge of probate, and he shall exercise and be competent to do all acts required of the judge of probate, except judicial acts. Such register so appointed shall receive for his services under this chapter, in addition to his regular salary, such sum as the board of supervisors shall fix: Provided, however, That in counties having a population of 100,000, and not more than 350,000 inhabitants, according to the last federal census, the compensation shall be not less than $500.00 annually.

712A.8 County agent; creation of office; duties; assistants.

The office of county agent is created. The county agent is an officer of the court and under the general supervision of the judges of the court and shall serve at their pleasure. The county agent shall organize, direct and develop the juvenile welfare work of the court as authorized by the judge. When requested by the superintendent or director, the county agent shall supervise juveniles released from public institutions or agencies and may perform other juvenile welfare work as requested and with the approval of the judge, including services to school-age juveniles of the various school districts within the county, after consultation and agreement with the county school commissioner and the superintendents of schools in a county. With the judge's approval, the county agent or his or her assistants shall investigate and report on juveniles or families within the county as requested by the family independence agency, the county juvenile agency, or the superintendent of any state institution regarding the welfare of any juvenile. Assistant county agents shall perform the duties assigned to them by the county agent.

712A.9 Probation officers; appointment, compensation, duties; notification to social welfare office.

The judge of probate in each county may appoint 1 or more suitable persons of good character and qualified training or experience, other than the county agent or assistants, to act as probation officer, who shall receive such compensation as the board of supervisors may appropriate for that purpose, and who, at the discretion of the judge, may be authorized and empowered to perform county agent duties.

The judge of probate may also appoint other probation officers who shall receive no compensation from the county treasury for the duties performed under such appointment.

It shall be the duty of the judge of probate to notify the state department of social welfare of the appointment of all paid probation officers made by him under the provisions of this chapter. All probation officers shall hold office during the pleasure of the court and shall report to the said court upon all cases under their care.

712A.9a Probation.

If the court acting under section 18(1)(n) of this chapter imposes a sentence of probation in the same manner as probation could be imposed upon an adult convicted of the same offense for which the juvenile was convicted or enters an order of disposition delaying imposition of sentence and placing the juvenile on probation, the probation supervision and related services shall not be performed by employees of the department of corrections.

712A.10 Designation of probation officer or county agent as referee; duties of referee.

(1) Except as otherwise provided in subsection (2), the judge of probate may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a child is within the provisions of this chapter, if there is no objection by parties in interest. The probation officer or county agent designated to act as referee shall do all of the following:

(a) Take and subscribe the oath of office provided by the constitution.

(b) Administer oaths and examine witnesses.

(c) If a case requires a hearing and the taking of testimony, make a written signed report to the judge of probate containing a summary of the testimony taken and a recommendation for the court's findings and disposition.

(2) If a child is before the court under section 2(a)(1) of this chapter, a probation officer or county agent who is not licensed to practice law in this state shall not be designated to act as a referee in any hearing for the child, except the preliminary inquiry or preliminary hearing. This subsection shall not apply to a probation officer or county agent who has been designated to act as a referee by the probate judge prior to January 1, 1988 and who is acting as a referee as of January 1, 1988.

712A.11 Preliminary inquiry; petition; effect of juvenile attaining seventeenth birthday; fingerprints; amendment of petition or other court record; offer of court services.

(1) Except as provided in subsection (2), if a person gives information to the court that a juvenile is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(2) Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter. If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter and the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(3) The petition described in subsections (1) and (2) shall be verified and may be upon information and belief. The petition shall set forth plainly the facts that bring the juvenile within this chapter and shall contain all of the following information:

(a) The juvenile's name, birth date, and address.

(b) The name and address of the juvenile's parents.

(c) The name and address of the juvenile's legal guardian, if there is one.

(d) The name and address of each person having custody or control of the juvenile.

(e) The name and address of the juvenile's nearest known relative, if no parent or guardian can be found.

(4) If any of the facts required under subsection (3) are not known to the petitioner, the petition shall state that the facts are not known. If the juvenile attains his or her seventeenth birthday after the filing of the petition, the court's jurisdiction shall continue beyond the juvenile's seventeenth birthday and the court may hear and dispose of the petition under this chapter.

(5) When a petition is authorized, the court shall examine the court file to determine if a juvenile has had fingerprints taken as required under section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the juvenile so the juvenile's fingerprints can be taken.

(b) Order the juvenile committed to the custody of the sheriff for the taking of the juvenile's fingerprints.

(6) A petition or other court record may be amended at any stage of the proceedings as the ends of justice require.

(7) If the juvenile diversion act, Act No. 13 of the Public Acts of 1988, being sections 722.821 to 722.831 of the Michigan Compiled Laws, is complied with and the court determines that court services can be used in the prevention of delinquency without formal jurisdiction, the court may offer court services to a juvenile without a petition being authorized as provided in section 2(e) of this chapter.

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

After a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a

physician, dentist, psychologist or psychiatrist, the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: Provided, That the court in its discretion may excuse but not restrict children from attending the hearing. If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

Any interested party who shall voluntarily appear in said proceedings, may, by writing, waive service of process or notice of hearing.

712A.13 Service of summons.

Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

Service of summons, notices or orders required by this chapter may be made by any peace officer or by any other suitable person designated by the judge. The judge may, in his discretion, authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the time of hearing of any case coming within the provisions of this chapter, and such expenses and the expenses of making service as above provided, when approved by the judge, shall be paid by the county treasurer from the general fund of the county.

If any person so summoned, as herein provided, shall fail without reasonable cause to appear before said court, he may be proceeded against for contempt of court and punished accordingly.

712A.13a Definitions; petition; release of juvenile; order removing abusive person from home; placement of child; duty of court to inform parties; criminal record check and central registry clearance; family-like setting; parenting time; review and modification of orders and plans; release of information; information included with order; "abuse" defined.

(1) As used in this section and sections 2, 6b, 13b, 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision.

(b) "Agency case file" means the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.

(c) "Attorney" means, if appointed to represent a child in a proceeding under section 2(b) or (c) of this chapter, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client. For the purpose of a notice required under these sections, attorney includes a child's lawyer-guardian ad litem.

(d) "Case service plan" means the plan developed by an agency and prepared 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.

(e) "Foster care" means care provided to a juvenile in a foster family home, foster family group home, or child caring institution licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a juvenile in a relative's home under a court order.

(f) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(g) "Lawyer-guardian ad litem" means an attorney appointed under section 17c of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 17d of this chapter. The provisions of section 17d of this chapter also apply to a lawyer-guardian ad litem appointed under each of the following:

(i) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

(ii) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.

(iii) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.

(h) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

(i) Has substantial and regular contact with the child.

(ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.

(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(i) "Permanent foster family agreement" means an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the family independence agency, which agreement is among all of the following:

(i) The child.

(ii) If the child is a temporary ward, the child's family.

(iii) The foster family.

(iv) The child placing agency responsible for the child's care in foster care.

(j) "Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.

(2) If a juvenile is alleged to be within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter. If a petition is before the court because the family independence agency is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

(3) Except as provided in subsection (5), if a petition under subsection (2) is authorized, the court may release the juvenile in the custody of either of the juvenile's parents or the juvenile's guardian or custodian under reasonable terms and conditions necessary for either the juvenile's physical health or mental well-being.

(4) The court may order a parent, guardian, custodian, nonparent adult, or other person residing in a child's home to leave the home and, except as the court orders, not to subsequently return to the home if all of the following take place:

(a) A petition alleging abuse of the child by the parent, guardian, custodian, nonparent adult, or other person is authorized under subsection (2).

(b) The court after a hearing finds probable cause to believe the parent, guardian, custodian, nonparent adult, or other person committed the abuse.

(c) The court finds on the record that the presence in the home of the person alleged to have committed the abuse presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(5) If a petition alleges abuse by a person described in subsection (4), regardless of whether the court orders the alleged abuser to leave the child's home under subsection (4), the court shall not leave the child in or return the child to the child's home or place the child with a person not licensed under 1973 PA 116, MCL 722.111 to

722.128, unless the court finds that the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

(6) In determining whether to enter an order under subsection (4), the court may consider whether the parent who is to remain in the juvenile's home is married to the person to be removed or has a legal right to retain possession of the home.

(7) An order entered under subsection (4) may also contain 1 or more of the following terms or conditions:

(a) The court may require the alleged abusive parent to pay appropriate support to maintain a suitable home environment for the juvenile during the duration of the order.

(b) The court may order the alleged abusive person, according to terms the court may set, to surrender to a local law enforcement agency any firearms or other potentially dangerous weapons the alleged abusive person owns, possesses, or uses.

(c) The court may include any reasonable term or condition necessary for the juvenile's physical or mental well-being or necessary to protect the juvenile.

(8) If the court orders placement of the juvenile outside the juvenile's home, the court shall inform the parties of the following:

(a) That the agency has the responsibility to prepare an initial services plan within 30 days of the juvenile's placement.

(b) The general elements of an initial services plan as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128.

(c) That participation in the initial services plan is voluntary without a court order.

(9) Before or within 7 days after a child is placed in a relative's home, the family independence agency shall perform a criminal record check and central registry clearance. If the child is placed in the home of a relative, the court shall order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement.

(10) In determining placement of a juvenile pending trial, the court shall order the juvenile placed in the most family-like setting available consistent with the juvenile's needs.

(11) If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

(12) Upon the motion of any party, the court shall review custody and placement orders and initial services plans pending trial and may modify those orders and plans as the court considers under this section are in the juvenile's best interests.

(13) The court shall include in an order placing a child in foster care an order directing the release of information concerning the child in accordance with this subsection. If a child is placed in foster care, within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with copies of all initial, updated, and revised case service plans and court orders relating to the child and all of the child's medical, mental health, and education reports, including reports compiled before the child was placed with that person.

(14) In an order placing a child in foster care, the court shall include both of the following:

(a) An order that the child's parent, guardian, or custodian provide the supervising agency with the name and address of each of the child's medical providers.

(b) An order that each of the child's medical providers release the child's medical records. The order may specify providers by profession or type of institution.

(15) As used in this section, "abuse" means 1 or more of the following:

(a) Harm or threatened harm by a person to a juvenile's health or welfare that occurs through nonaccidental physical or mental injury.

(b) Engaging in sexual contact or sexual penetration as defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a juvenile.

(c) Sexual exploitation of a juvenile, which includes, but is not limited to, allowing, permitting, or encouraging a juvenile to engage in prostitution or allowing, permitting, encouraging, or engaging in photographing, filming, or depicting a juvenile engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(d) Maltreatment of a juvenile.

712A.13b Change in foster care placement.

(1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

(a) The person providing the foster care requests or agrees to the change.

(b) Even though the person providing the foster care objects to a proposed change in placement, 1 of the following applies:

(i) The court orders the child returned home.

(ii) The change in placement is less than 30 days after the child's initial removal from his or her home.

(iii) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.

(iv) The change in placement is in accordance with other provisions of this section.

(2) Except as provided in subsections (1) and (7), before a change in foster care placement takes effect, the agency shall do all of the following:

(a) Notify the state court administrative office of the proposed change in placement.

(b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.

(3) Upon receipt of an appeal from foster parents under subsection (2) or (7), the foster care review board shall investigate the change in foster care placement within 7 days and shall report its findings and recommendations within 3 days after completion of the investigation to the court or, if the child is under MCI jurisdiction, control, or

supervision, the MCI superintendent, to the foster care parents, to the parents, and to the agency.

(4) If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

(5) If after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. The agency shall not return a child to a placement from which the child was removed under subsection (7) unless the court orders that placement's restoration under subsection (6) or the MCI superintendent approves that placement's restoration under this subsection. The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the board's and agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case. The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to a hearing required by this subsection. Within 14 days after notification under this subsection, the MCI superintendent shall make a decision regarding the child's placement and shall inform each interested party what the decision is.

(6) After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.

(7) If the agency has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, he or she may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.

(8) At the time of or immediately following a child's removal under subsection (7), the agency shall inform the foster parents about the removal and that, if they disagree with the decision, they may appeal within 3 days to a foster care review board in the manner provided in subsection (7). The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

712A.14 **Officers or county agent authorized to take child into custody; notice; detention facility; release of child; preliminary hearing; order; placement of child; foster care home services.**

(1) Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his or her health, morals, or welfare, or for whom there is reasonable cause to believe is violating or has violated a personal protection order issued pursuant to section 2(h) by the court under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is reasonable cause to believe is violating or has violated a valid foreign protection order. If such an officer or county agent takes a child coming within the provisions of this chapter into custody, he or she shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years taken into custody under the provisions of this chapter shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a time fixed therein. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

(2) If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

(3) If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing, which placement may be in any of the following:

(a) In the home of the child's parent, guardian, or custodian.

(b) If a child is within the court's jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (4) and (5), if a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.

(c) In a child care institution or child placing agency licensed by the state department of social services to receive for care children within the jurisdiction of the court.

(d) In a suitable place of detention.

(4) Except as otherwise provided in subsection (5), if a court is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1989. Beginning January 1, 1990, the court shall discontinue providing those services.

(5) If a court located in a county with a population in excess of 650,000 is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1991. Beginning January 1, 1992, the court shall discontinue those services.

712A.15 Detention of child pending hearing; release of child; petition; limitation on custody of child pending hearing; detention in secure facility, cell, or other secure area designed to incarcerate adults; exception.

(1) In the case of a child concerning whom a complaint has been made or a petition has been filed pursuant to this chapter, the court may order the child, pending the hearing, detained in a facility as the court shall designate. The court may release the child, pending the hearing, in the custody of a parent, guardian, or custodian, to be brought before the court at the time designated. As used in this subsection, "petition" includes all of the following:

(a) Petition.

(b) Supplemental petition.

(c) Petition for revocation of probation.

(d) Supplemental petition alleging a violation of a personal protection order.

(2) Custody, pending hearing, is limited to the following children:

(a) Those whose home conditions make immediate removal necessary.

(b) Those who have a record of unexcused failures to appear at juvenile court proceedings.

(c) Those who have run away from home.

(d) Those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order.

(e) Those whose offenses are so serious that release would endanger public safety.

(f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation.

(3) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is not a less restrictive alternative more appropriate to the needs of the child. This subsection does not apply to a child who is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter or a child who is not less than 17 years of age and who is under the jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

(4) A child taken into custody pursuant to section 2(b) of this chapter or subsection (2)(a) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders or in a cell or other secure area of any secure facility designed to incarcerate adults.

(5) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in a cell or other secure area of any secure facility designed to incarcerate adults unless either of the following applies:

(a) A child is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter for an offense which, if committed by an adult, would be a felony.

(b) A child is not less than 17 years of age and is under the jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

712A.16 Detention and care of juvenile.

(1) If a juvenile under the age of 17 years is taken into custody or detained, the juvenile shall not be confined in any police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, except as otherwise provided in section 15(3), (4), and (5) of this chapter, the court may order a juvenile 15 years of age or older whose habits or conduct are considered a menace to other juveniles, or who may not

otherwise be safely detained, placed in a jail or other place of detention for adults, but in a room or ward separate from adults and for not more than 30 days, unless longer detention is necessary for the service of process.

(2) The county board of commissioners in each county or of counties contracting together may provide for the diagnosis, treatment, care, training, and detention of juveniles in a child care home or facility conducted as an agency of the county if the home or facility meets licensing standards established under 1973 PA 116, MCL 722.111 to 722.128. The court or a court-approved agency may arrange for the boarding of juveniles in any of the following:

(a) If a juvenile is within the court's jurisdiction under section 2(a) of this chapter, a suitable foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(b) A child caring institution or child placing agency licensed by the department of consumer and industry services to receive for care juveniles within the court's jurisdiction.

(c) If in a room or ward separate and apart from adult criminals, the county jail for juveniles over 17 years of age within the court's jurisdiction.

(3) If a detention home or facility is established as an agency of the county, the judge may appoint a superintendent and other necessary employees for the home or facility who shall receive compensation as provided by the county board of commissioners of the county. This section does not alter or diminish the legal responsibility of the family independence agency or a county juvenile agency to receive juveniles committed by the court.

(4) If the court under subsection (2) arranges for the board of juveniles temporarily detained in private homes or in a child caring institution or child placing agency, a reasonable sum fixed by the court for their board shall be paid by the county treasurer as provided in section 25 of this chapter.

(5) A court shall not provide foster care home services subject to the court's supervision to juveniles within section 2(b) of this chapter.

(6) A juvenile detention home described in subsection (3) shall be operated under the direction of the county board of commissioners or, in a county that has an elected county executive, under the county executive's direction. However, a different method for directing the operation of a detention home may be agreed to in any county by the chief judge of the circuit court in that county and the county board of commissioners or, in a county that has an elected county executive, the county executive.

712A.17 **Hearing; informality; adjournment; transcript; jury; giving security for appearance of juvenile; appearance by prosecuting attorney; legal consultant or legal representation; admitting foster care review board member to hearing; closing hearing to members of general public; "juvenile witness" defined.**

(1) The court may conduct a hearing other than a criminal hearing in an informal manner. The court shall require stenographic notes or another transcript to be taken of the hearing. The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

(a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.

(b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child's best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

(2) Except as otherwise provided in this subsection, in a hearing other than a criminal trial under this chapter, a person interested in the hearing may demand a jury of 6 individuals, or the court, on its own motion, may order a jury of 6 individuals to try the case. In a proceeding under section 2(h) of this chapter, a jury shall not be demanded or ordered on a supplemental petition alleging a violation of a personal protection order. In a criminal trial, a jury may be demanded as provided by law. The jury shall be summoned and impaneled in accordance with chapter 13 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1300 to 600.1376, and, in the case of a criminal trial, as provided in chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.1 to 768.36.

(3) A parent, guardian, or other custodian of a juvenile held under this chapter has the right to give bond or other security for the appearance of the juvenile at the hearing of the case.

(4) The prosecuting attorney shall appear for the people when requested by the court, and in a proceeding under section 2(a)(1) of this chapter, the prosecuting attorney shall appear if the proceeding requires a hearing and the taking of testimony.

(5) In a proceeding under section 2(b) of this chapter, upon request of the family independence agency or an agent of the family independence agency under contract

with the family independence agency, the prosecuting attorney shall serve as a legal consultant to the family independence agency or its agent at all stages of the proceeding. If in a proceeding under section 2(b) of this chapter the prosecuting attorney does not appear on behalf of the family independence agency or its agent, the family independence agency may contract with an attorney of its choice for legal representation.

(6) A member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, shall be admitted to a hearing under subsection (1).

(7) Upon motion of a party or a victim, the court may close the hearing of a case brought under this chapter to members of the general public during the testimony of a juvenile witness or the victim if the court finds that closing the hearing is necessary to protect the welfare of the juvenile witness or the victim. In determining whether closing the hearing is necessary to protect the welfare of the juvenile witness or the victim, the court shall consider the following:

(a) The age of the juvenile witness or the victim.

(b) The nature of the proceeding.

(c) The desire of the juvenile witness, of the witness's family or guardian, or of the victim to have the testimony taken in a room closed to the public.

(8) As used in subsection (7), "juvenile witness" does not include a juvenile against whom a proceeding is brought under section 2(a)(1) of this chapter.

712A.17a Hearings; record, tape recordings, transcription.

In any case in which a record of the hearing is kept by a recording device, no transcription need be made of the hearing in the absence of a request by an interested party. The tape of the hearing shall be stored as a permanent record of the court.

712A.17b Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.

(1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated

under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and

shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

712A.17c Advising child or respondent of right to attorney; appointment of attorney; waiver; appointment of lawyer-guardian ad litem; costs; service until discharged by court; assistance to court.

(1) In a proceeding under section 2(a) or (d) of this chapter or a proceeding regarding a supplemental petition alleging a violation of a personal protection order under section 2(h) of this chapter, the court shall advise the child that he or she has a right to an attorney at each stage of the proceeding.

(2) In a proceeding under section 2(a) or (d) of this chapter, the court shall appoint an attorney to represent the child if 1 or more of the following apply:

(a) The child's parent refuses or fails to appear and participate in the proceedings.

(b) The child's parent is the complainant or victim.

(c) The child and those responsible for his or her support are financially unable to employ an attorney and the child does not waive his or her right to an attorney.

(d) Those responsible for the child's support refuse or neglect to employ an attorney for the child and the child does not waive his or her right to an attorney.

(e) The court determines that the best interests of the child or the public require appointment.

(3) Except as otherwise provided in this subsection, in a proceeding under section 2(a) or (d) of this chapter, the child may waive his or her right to an attorney. The waiver by a child shall be made in open court, on the record, and shall not be made unless the court finds on the record that the waiver was voluntarily and understandingly made. The child may not waive his or her right to an attorney if the child's parent or guardian ad litem objects or if the appointment is made under subsection (2)(e).

(4) In a proceeding under section 2(b) or (c) of this chapter, the court shall advise the respondent at the respondent's first court appearance of all of the following:

(a) The right to an attorney at each stage of the proceeding.

(b) The right to a court-appointed attorney if the respondent is financially unable to employ an attorney.

(c) If the respondent is not represented by an attorney, the right to request and receive a court-appointed attorney at a later proceeding.

(5) If it appears to the court in a proceeding under section 2(b) or (c) of this chapter that the respondent wants an attorney and is financially unable to retain an attorney, the court shall appoint an attorney to represent the respondent.

(6) Except as otherwise provided in this subsection, in a proceeding under section 2(b) or (c) of this chapter, the respondent may waive his or her right to an attorney. A respondent who is a minor may not waive his or her right to an attorney if the respondent's parent or guardian ad litem objects.

(7) In a proceeding under section 2(b) or (c) of this chapter, the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of the lawyer-guardian ad litem. In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d.

(8) If an attorney or lawyer-guardian ad litem is appointed for a party under this act, after a determination of ability to pay the court may enter an order assessing attorney costs against the party or the person responsible for that party's support, or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. An order assessing attorney costs may be enforced through contempt proceedings.

(9) An attorney or lawyer-guardian ad litem appointed by the court under this section shall serve until discharged by the court. If the child's case was petitioned under section 2(b) of this chapter, the court shall not discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child.

(10) To assist the court in determining a child's best interests, the court may appoint a guardian ad litem for a child involved in a proceeding under this chapter.

712A.17d Lawyer-guardian ad litem; powers and duties.

(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.

(d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:

(i) Before the pretrial hearing.

(ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.

(iii) Before a dispositional review hearing.

(iv) Before a permanency planning hearing.

(v) Before a post-termination review hearing.

(vi) At least once during the pendency of a supplemental petition.

(vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.

(e) The court may allow alternative means of contact with the child if good cause is shown on the record.

(f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(h) To attend all hearings and substitute representation for the child only with court approval.

(i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.

(l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.

712A.18 **Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in MCL 28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order; costs; remission.**

(1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile's parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the juvenile on probation, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in this subdivision, "related" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile. The court may order that the juvenile participate in a juvenile drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. The court also shall order, as a condition of probation or supervision, that the juvenile shall pay the minimum state cost prescribed by section 18m of this chapter.

(c) If a juvenile is within the court's jurisdiction under section 2(a) of this chapter, or under section 2(h) of this chapter for a supplemental petition, place the juvenile in a suitable foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items the court determines are necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the

juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by this subdivision, it may dismiss the petition under this chapter.

(i) Order the juvenile to engage in community service.

(j) If the court finds that a juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29 of this chapter.

(k) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.

(l) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

(i) Placement in a juvenile boot camp will benefit the juvenile.

(ii) The juvenile is physically able to participate in the program.

(iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.

(iv) The juvenile will not be a danger to other juveniles in the boot camp.

(v) There is an opening in a juvenile boot camp program.

(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program.

(m) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under sections 115f to 115m of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, the amount shall not exceed the amount of the support subsidy. The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, or court supervision. Twenty-five percent of all amounts collected under an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected under an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision. The court may also collect from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(3) An order of disposition placing a juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under

this subsection, an amount due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of this chapter and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may require in an order entered under this section that the juvenile, parent, guardian, or custodian reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court, shall create guidelines that the court may use in determining the ability of the juvenile, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines shall take into account both the income and resources of the juvenile, parent, guardian, or custodian.

(7) If the court finds that a juvenile comes under section 30 of this chapter, the court shall order the juvenile or the juvenile's parent to pay restitution as provided in sections 30 and 31 of this chapter and in sections 44 and 45 of the crime victim's rights act, 1985 PA 87, MCL 780.794 and 780.795.

(8) If the court imposes restitution as a condition of probation, the court shall require the juvenile to do either of the following as an additional condition of probation:

(a) Engage in community service or, with the victim's consent, perform services for the victim.

(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

(9) If the court finds that the juvenile is in intentional default of the payment of restitution, a court may, as provided in section 31 of this chapter, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a juvenile who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

(10) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of 1925 PA 289, MCL 28.241a, or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken and forwarded as required by section 3 of 1925 PA 289, MCL 28.243, and as required by the sex offenders registration act, 1994 PA 295,

MCL 28.721 to 28.732. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's fingerprints can be taken and forwarded.

(b) Order the juvenile committed to the sheriff's custody for taking and forwarding the juvenile's fingerprints.

(11) Upon final disposition, conviction, acquittal, or dismissal of an offense within the court's jurisdiction under section 2(a)(1) of this chapter, using forms approved by the state court administrator, the clerk of the court entering the final disposition, conviction, acquittal, or dismissal shall immediately advise the department of state police of that final disposition, conviction, acquittal, or dismissal as required by section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition or sentence imposed.

(12) If the court enters an order of disposition based on an act that is a juvenile offense as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act. If the court enters a judgment of conviction under section 2d of this chapter for an offense that is a felony, serious misdemeanor, or specified misdemeanor as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act.

(13) If the court has entered an order of disposition or a judgment of conviction for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court, the family independence agency, or the county juvenile agency shall register the juvenile or accept the juvenile's registration as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(14) If the court enters an order of disposition placing a juvenile in a juvenile boot camp program, or committing a juvenile to a county juvenile agency for placement in a juvenile boot camp program, and the court receives from the family independence agency a report that the juvenile has failed to perform satisfactorily in the program, that the juvenile does not meet the program's requirements or is medically unable to participate in the program for more than 25 days, that there is no opening in a juvenile boot camp program, or that the county juvenile agency is unable to place the juvenile in a juvenile boot camp program, the court shall release the juvenile from placement or commitment and enter an alternative order of disposition. A juvenile shall not be placed in a juvenile boot camp under an order of disposition more than once, except that a juvenile returned to the court for a medical condition, because there was no opening in a juvenile boot camp program, or because the county juvenile agency was unable to place the juvenile in a juvenile boot camp program

may be placed again in the juvenile boot camp program after the medical condition is corrected, an opening becomes available, or the county juvenile agency is able to place the juvenile.

(15) If the juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a listed offense as defined in section 2(e)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the order of disposition is for a listed offense as defined in section 2(e)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the order of disposition.

(16) The court shall not impose a sentence of imprisonment in the county jail under subsection (1)(m) unless the present county jail facility for the juvenile's imprisonment would meet all requirements under federal law and regulations for housing juveniles. The court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.

(17) In a proceeding under section 2(h) of this chapter, this section only applies to a disposition for a violation of a personal protection order and subsequent proceedings.

(18) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, the court shall order the juvenile to pay costs as provided in section 18m of this chapter.

(19) A juvenile who has been ordered to pay the minimum state cost as provided in section 18m of this chapter as a condition of probation or supervision and who is not in willful default of the payment of the minimum state cost may petition the court at any time for a remission of the payment of any unpaid portion of the minimum state cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum state cost due or modify the method of payment.

712A.18a Placement or commitment of ward of the court to out-of-state institutions.

If desirable or necessary, the court may place a ward of the court in or commit a ward of the court to a private institution or agency incorporated under the laws of another state and approved or licensed by that state's department of social welfare, or the equivalent approving or licensing agency, for the care of children of similar age, sex, and characteristics.

712A.18b Reimbursement order; failure to comply, contempt of court; assignment of wages.

Whenever the court under section 18 of this act enters a reimbursement order and the parent or other adult legally responsible for the care of the child fails or refuses to obey and perform the order, and has been found guilty of contempt of court for such failure or refusal, the court making the order may order an assignment to the county or state of the salary, wages or other income of the person responsible for the care of the child, which assignment shall continue until the support is paid in full. The order of assignment shall be effective 1 week after service upon the employer of a true copy of the order by personal service or by registered or certified mail. Thereafter the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the county or state until notified by the court that the support arrearage is paid in full. An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee. Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected.

712A.18c Retention of jurisdiction of child committed under § 712A.18(1)(e); effective date of subsection (2); annual review; release of child.

(1) If a child is committed under section 18(1)(e) of this chapter for an offense which, if committed by an adult, would be punishable by imprisonment for more than 1 year or an offense expressly designated by law to be a felony, the court shall retain jurisdiction over the child.

(2) If a child is committed under section 18(1)(e) of this chapter and the child was adjudicated as being in the court's jurisdiction under section 2(a) of this chapter, the court shall retain jurisdiction over the child. This subsection shall take effect June 1, 1991.

(3) If the court has retained jurisdiction over a child under this section, the court shall conduct an annual review of the services being provided to the child, the child's placement, and the child's progress in that placement. In conducting this review, the court shall examine the child's annual report prepared pursuant to section 3 of the juvenile facilities act. The court may order changes in the child's placement or treatment plan based on the review.

(4) If the court has retained jurisdiction over a child under this section, the child may be released only with the approval of the court. Except as otherwise provided in section 18d, the child shall be automatically released upon reaching 19 years of age.

712A.18d Juvenile committed under § 712A.18(1)(e); review hearing; burden of proof; determination; notice; legal counsel; costs; commitment reports; section nonapplicable to juvenile convicted of crime under chapter.

(1) If a juvenile is committed under section 18(1)(e) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531 of the Michigan Compiled Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued. In making this determination, the court shall consider all of the following:

(a) The extent and nature of the juvenile's participation in education, counseling, or work programs.

(b) The juvenile's willingness to accept responsibility for prior behavior.

(c) The juvenile's behavior in his or her current placement.

(d) The juvenile's prior record and character and his or her physical and mental maturity.

(e) The juvenile's potential for violent conduct as demonstrated by prior behavior.

(f) The recommendations of the institution, agency, or facility charged with the child's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(2) The juvenile has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety.

(3) Unless adjourned for good cause, a review hearing shall be scheduled and held as near as possible to, but before, the juvenile's nineteenth birthday. If the institution, agency, or facility to which the juvenile was committed believes the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing any time before

the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), any time before the juvenile becomes 21 years of age.

(4) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, the juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(5) The institution, agency, or facility charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, for use by the court at a review hearing held under this section.

(6) This section does not apply to a juvenile convicted under this chapter for committing a crime.

712A.18e **Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and fingerprints; comparing fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; notice to victim; definitions; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of § 750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption from disclosure; divulging, using, or publishing information as misdemeanor.**

(1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of the following:

(a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

(b) An adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially

corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(c) A conviction under section 2d of this chapter. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise provided by law.

(3) An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) An application under this section is invalid unless it contains the following information and is signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication

or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of $25.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application. If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and if the name of the victim is known to the prosecuting attorney, the prosecuting attorney shall give the the victim of that offense written notice of the application and forward a copy of the application to the victim under section 46a of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.796a of the Michigan Compiled Laws. The notice shall be sent by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this section concerning that adjudication and to make a written or oral statement. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

(b) "Serious misdemeanor" means that term as defined in section 61 of Act No. 87 of the Public Acts of 1985, being section 780.811 of the Michigan Compiled Laws.

(c) "Victim" means that term as defined in section 31 of Act No. 87 of the Public Acts of 1985, being section 780.781 of the Michigan Compiled Laws.

(8) Upon the hearing of the application, the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant is considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section does not create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside under this section.

(d) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) Consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) is exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) Except as provided in subsection (13), a person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section is guilty of a misdemeanor.

712A.18f Report; preparation and contents of case service plan; order of disposition; updating and revising case service plan; rules; review by child's physician in case of abuse and neglect.

(1) If, in a proceeding under section 2(b) of this chapter, an agency advises the court against placing a child in the custody of the child's parent, guardian, or custodian, the agency shall report in writing to the court what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home. The report shall include all of the following:

(a) If services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services, that were provided.

(b) If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided.

(c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.

(d) Likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.

(2) Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding.

(3) The case service plan shall provide for placing the child in the most family-like setting available and in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs. The case service plan shall include, but is not limited to, the following:

(a) The type of home or institution in which the child is to be placed and the reasons for the selected placement.

(b) Efforts to be made by the child's parent to enable the child to return to his or her home.

(c) Efforts to be made by the agency to return the child to his or her home.

(d) Schedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement.

(e) Except as otherwise provided in this subdivision, unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a of this chapter or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent, which shall not be less than once every 7 days.

(4) Before the court enters an order of disposition, the court shall consider the case service plan; any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem; and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home. The court may order compliance with all or any part of the case service plan as the court considers necessary.

(5) If a child continues in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128. The agency shall consult with the foster parents when it updates and revises the case service plan, and shall attach a statement summarizing the information received from the foster parents to the updated and revised case service plan. Updated and revised case service plans shall be available to the court and all the parties to the proceeding. Within 10 days after

receipt of a written request, the agency shall provide the person who is providing the foster care with the information itemized in section 13a(13) of this chapter.

(6) To ensure that the case service plan addresses the child's medical needs in relation to abuse and neglect, the family independence agency shall review a child's case with the child's attending physician of record during a hospitalization or with the child's primary care physician, but only if a physician has diagnosed the child's abuse or neglect as involving 1 or more of the following:

(a) Failure to thrive.

(b) Munchausen syndrome by proxy.

(c) Shaken baby syndrome.

(d) A bone fracture that is diagnosed as being the result of abuse or neglect.

(e) Drug exposure.

(7) If a child is placed outside of his or her home and the family independence agency is required to review the child's case with a physician under subsection (6), then in a judicial proceeding to determine if the child is to be returned to his or her home, the court must allow the child's attending physician of record during a hospitalization or the child's primary care physician to testify regarding the case service plan. The court shall notify each physician of the hearing's time and place.

712A.18g Commitment under § 712A.18(1)(e).

(1) In addition to any other disposition under this act, a juvenile other than a juvenile sentenced in the same manner as an adult under section 18(1)(n) of this chapter shall be committed under section 18(1)(e) of this chapter to a detention facility for a specified period of time if all of the following circumstances exist:

(a) The juvenile is under the jurisdiction of the juvenile division of the probate court under section 2(a)(1) of this chapter.

(b) The juvenile is adjudicated as or convicted of violating a criminal municipal ordinance or law of this state or the United States.

(c) The juvenile is found to have used a firearm during the criminal violation.

(2) The period of time specified under subsection (1) shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(3) "Firearm" means that term as defined in section 3t of chapter 1 of the Revised Statutes of 1846, being section 8.3t of the Michigan Compiled Laws.

712A.18h Commitment to department of corrections prohibited; exception.

A juvenile sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections. This section does not apply if the juvenile was convicted of a specified juvenile violation as defined in section 2d of this chapter.

712A.18i Delay in sentencing.

(1) A delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile under section 18(1)(n) of this chapter any time during the delay.

(2) If the court has entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct an annual review of the probation, including but not limited to the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine any annual report prepared under section 3 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.223 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation. The court may order changes in the juvenile's probation based on the review including but not limited to imposition of sentence.

(3) If the court entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence. In making this determination, the court shall consider the following:

(a) The extent and nature of the juvenile's participation in education, counseling, or work programs.

(b) The juvenile's willingness to accept responsibility for prior behavior.

(c) The juvenile's behavior in his or her current placement.

(d) The prior record and character of the juvenile and his or her physical and mental maturity.

(e) The juvenile's potential for violent conduct as demonstrated by prior behavior.

(f) The recommendations of any institution or agency charged with the juvenile's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(4) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction, any time before the juvenile becomes 21 years of age.

(5) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile or impose sentence and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(6) A commitment report prepared as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation may be used by the court at a review hearing held under this section.

(7) The court shall conduct a final review of the juvenile's probation not less than 3 months before the end of the probation period. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (3) and all of the following criteria:

(a) The effect of treatment on the juvenile's rehabilitation.

(b) Whether the juvenile is likely to be dangerous to the public if released.

(c) The best interests of the public welfare and the protection of public security.

(8) Not less than 14 days before a final review hearing under subsection (7) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(9) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(10) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subsection (9), the court may impose sentence or may order any of the following for the juvenile:

(a) A change of placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical education program.

(f) Incarceration in a county jail for not more than 30 days as provided in this chapter. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(11) If a sentence of imprisonment is imposed under this section, the juvenile shall receive credit for the period of time served on probation.

712A.18j Escape by juvenile from facility or residence; notification; "escape" defined.

(1) If a juvenile escapes from a facility or residence in which he or she has been placed for a violation described in section 2(a)(1) of this chapter, other than his or her own home or the home of his or her parent or guardian, the individual at that facility or residence who has responsibility for maintaining custody of the juvenile at the time of the escape shall immediately notify 1 of the following of the escape or cause 1 of the following to be immediately notified of the escape:

(a) If the escape occurs in a city, village, or township that has a police department, the police department of that city, village, or township.

(b) Except as provided in subdivision (a), 1 of the following:

(i) The sheriff department of the county in which the escape occurs.

(ii) The department of state police post having jurisdiction over the area in which the escape occurs.

(2) A police agency that receives notification of an escape under subsection (1) shall enter that notification into the law enforcement information network without undue delay.

(3) As used in this section, "escape" means to leave without lawful authority or to fail to return to custody when required.

712A.18k DNA identification profiling; providing samples for chemical testing; disclosure; definitions.

(1) An individual shall provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and shall provide samples for chemical testing for a determination of his or her secretor status if any of the following apply:

(a) The individual is found responsible for a violation of section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a violation of section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or

335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

(b) The individual is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

(ii) A violation of section 167(1)(c), (f), or (i) of the Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, indecent exposure.

(iv) A violation of section 451 of the Michigan penal code, 1931 PA 328, MCL 750.451, first and second prostitution violations.

(v) A violation of section 454 of the Michigan penal code, 1931 PA 328, MCL 750.454, leasing a house for purposes of prostitution.

(vi) A violation of section 462 of the Michigan penal code, 1931 PA 328, MCL 750.462, female under the age of 17 in a house of prostitution.

(2) Notwithstanding subsection (1), if at the time the individual is convicted of or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the individual that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the individual is not required to provide another sample or pay the fee required under subsection (4).

(3) The samples required to be collected under this section shall be collected by the investigating law enforcement agency and transmitted by the investigating law enforcement agency to the department of state police in the manner prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(4) Until October 1, 2003, the court shall order each individual found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of $60.00. The assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.

(5) An assessment required under subsection (4) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.

(6) After reviewing a verified petition by an individual against whom an assessment is imposed under subsection (4), the court may suspend payment of all or part of the assessment if it determines the individual is unable to pay the assessment.

(7) The court that imposes the assessment prescribed under subsection (4) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments or portions of assessments collected under this section as follows:

(a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

(b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(8) Beginning December 31, 2002, the director of the department of state police shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (4) to all of the following:

(a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.

(b) The house of representatives appropriations subcommittee on state police and military affairs.

(c) The senate appropriations subcommittee on state police.

(9) The family independence agency or a county juvenile agency, investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of an individual convicted of or found responsible for an offense described in subsection (1) shall forward the DNA

identification profile to the department of state police at or before the time the court imposes sentence or enters an order of disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the individual.

(10) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(11) As used in this section:

(a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.

(b) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(c) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the individual is convicted or found responsible. Investigating law enforcement agency does not include a probation officer employed by the department of corrections.

(d) "Sample" means a portion of an individual's blood, saliva, or tissue collected from the individual.

712A.18l Evaluation of juvenile for psychiatric or psychological treatment; court order.

If a juvenile is found to be within the court's jurisdiction under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation of section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, having to do with cruelty to animals, or would be a violation of sections 71 to 80 of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80, having to do with arson, the court shall order that the

juvenile be evaluated to determine the need for psychiatric or psychological treatment. If the court determines that psychiatric or psychological treatment is appropriate for that juvenile, the court may order that treatment. This section does not preclude the court from entering any other order of disposition allowed under this chapter.

712A.18m Payment of costs; minimum amounts; disposition; definitions.

(1) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, and is ordered to pay any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:

(a) $60.00, if the juvenile is found to be within the court's jurisdiction for a felony.

(b) $45.00, if the juvenile is found to be within the court's jurisdiction for a serious misdemeanor or a specified misdemeanor.

(c) $40.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor not described in subdivision (b) or of an ordinance violation.

(2) Of the costs ordered to be paid, the clerk of the court shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost in subsection (1).

(3) If a juvenile who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 29 of this chapter. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum state cost, are waived.

(4) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(5) As used in this section:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) "Minimum state cost" means the applicable minimum cost to be ordered under subsection (1).

(c) "Ordinance violation" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(d) "Serious misdemeanor" means that term as defined in section 61 of the crime victim's rights act, 1985 PA 87, MCL 780.811.

(e) "Specified misdemeanor" means that term as defined in section 1 of 1989 PA 196, MCL 780.901.

712A.19 Termination of cause; supplemental order of disposition; review hearing; notice of review hearing; factors to be reviewed; modification of plan; determination as to placement; order; determination as to review; issuance of order without hearing; access to agency report; agency report and other information as evidence.

(1) Subject to section 20 of this chapter, if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a "supplemental order of disposition". If the agency becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a supplemental petition with the court.

(2) Except as provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(3) Except as otherwise provided in subsection (4), if, in a proceeding under section 2(b) of this chapter, a child is subject to the jurisdiction of the court and removed from his or her home, a review hearing shall be held not more than 182 days after the child's

removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(4) If a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon the motion of any party or at the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

(5) Written notice of a review hearing under subsection (2), (3), or (4) shall be served upon all of the following:

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

(b) The foster parent or custodian of the child.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

(g) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

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

(j) Other persons as the court may direct.

(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care. The court may modify any part of the case service plan including, but not limited to, the following:

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(b) Prescribing additional actions to be taken by the parent, guardian, nonparent adult, or custodian, to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(8) At a review hearing under subsection (2), (3), or (4), the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

(9) If in a proceeding under section 2(b) of this chapter a child is placed in foster care, the court shall determine at the dispositional hearing and each review hearing whether the cause should be reviewed before the next review hearing required by subsection (2), (3), or (4). In making this determination, the court shall consider at least all of the following:

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by subsection (2), (3), or (4).

(10) Unless waived, if not less than 7 days' notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.

(11) An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

712A.19a Permanency planning hearing; conditions; time limitation; reunion of child and family not required; purpose; notice; statement; return of child to parent; noncompliance with case service plan; other conditions as evidence; termination of parental rights to child; alternative placement plans; information considered as evidence.

(1) Subject to subsection (2), if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter, but no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under subsection (2). A permanency planning hearing shall not be canceled or delayed beyond the number of months required by this subsection or days as required under subsection (2), regardless of whether there is a petition for termination of parental rights pending.

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(i) Murder of another child of the parent.

(ii) Voluntary manslaughter of another child of the parent.

(iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(iv) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.

(3) A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court.

(4) Not less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon all of the following:

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

(b) The foster parent or custodian of the child.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

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

(i) Other persons as the court may direct.

(5) If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(6) If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court shall order the agency to initiate proceedings to terminate parental rights to the child not later than 42 days after the permanency planning hearing, unless the court finds that initiating the termination of parental rights to the child is clearly not in the child's best interests.

(7) If the agency demonstrates under subsection (6) that initiating the termination of parental rights to the child is clearly not in the child's best interests, then the court shall order either of the following alternative placement plans:

(a) If the court determines that other permanent placement is not possible, the child's placement in foster care shall continue for a limited period to be stated by the court.

(b) If the court determines that it is in the child's best interests based upon compelling reasons, the child's placement in foster care may continue on a long-term basis.

(8) In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or

guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

712A.19b Termination of parental rights to child; petition; hearing; record; notice; findings; order; "concerned person" defined.

(1) Except as provided in subsection (4), if a child remains in foster care in the temporary custody of the court following a review hearing under section 19(3) of this chapter or a permanency planning hearing under section 19a of this chapter or if a child remains in the custody of a guardian or limited guardian, upon petition of the prosecuting attorney, whether or not the prosecuting attorney is representing or acting as legal consultant to the agency or any other party, or petition of the child, guardian, custodian, concerned person as defined in subsection (6), agency, or children's ombudsman as authorized in section 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927, the court shall hold a hearing to determine if the parental rights to a child should be terminated and, if all parental rights to the child are terminated, the child placed in permanent custody of the court. The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated. The court shall issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition. However, the court's failure to issue an opinion within 70 days does not dismiss the petition.

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

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

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

(c) The child's parents.

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

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

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

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

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

(i) The prosecutor.

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

(a) The child has been deserted under any of the following circumstances:

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

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

(iii) The child's parent voluntarily surrendered the child to an emergency service provider under chapter XII and did not petition the court to regain custody within 28 days after surrendering the child.

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

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

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

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

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

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

(d) The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(e) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:

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

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

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

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

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

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

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

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

(v) Life threatening injury.

(vi) Murder or attempted murder.

(vii) Voluntary manslaughter.

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

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.

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

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

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

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

(4) If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended under this subsection establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

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

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

712A.19c Review hearing of child's placement after termination of parental rights; applicability of section.

(1) Except as provided in section 19(4) and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

(a) The appropriateness of the permanency planning goal for the child.

(b) The appropriateness of the child's placement.

(c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

(2) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency.

712A.20 Temporary or permanent custody.

The court in all cases involving custody shall state in the order for disposition or any supplemental order of disposition whether the child is placed in the temporary or

permanent custody of the court. If the child is placed in the temporary custody of the court, no supplemental order of disposition providing permanent custody, or containing any other order of disposition shall be made except at a hearing pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter or at a rehearing provided by section 19 of this chapter. If the child is placed in the permanent custody of the court, all parental rights are terminated, though such rights may be reinstated by a supplemental order of disposition after rehearing pursuant to section 21.

712A.21 Petition for rehearing; affirming, modifying, or setting aside order; conduct of rehearing; order for supplemental disposition; applicability of section to criminal proceeding; "interested person" construed.

(1) At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this chapter. Upon the rehearing, the court may affirm, modify, or set aside any order reviewed under this section. If parental rights have been terminated by an order entered in the proceedings and custody of the juvenile has been removed from the parents, guardian, or other person, the petition for rehearing shall be filed not later than 20 days after the date of entry of the order terminating parental rights. The petition shall set forth in detail the place, manner, and all other information requested by the court in reference to the proposed future custody of the juvenile. The rehearing shall be conducted in accordance with the provisions of this chapter relating to the conduct of original hearings. The court may enter an order for supplemental disposition while the juvenile remains under the court's jurisdiction.

(2) This section does not apply to a criminal proceeding under this chapter.

(3) As used in subsection (1), "interested person" includes a member of a local foster care review board established under Act No. 422 of the Public Acts of 1984, being sections 722.131 to 722.140 of the Michigan Compiled Laws, to which that juvenile's case has been assigned.

712A.22 Annual report.

The state court administrative office shall publish an annual report evaluating the court regarding its duty under this act to engage in obtaining permanency for children. The report shall include at least information and statistics detailing the court's adherence to each time period prescribed by this act or court rule for the management and disposition of children's cases that are petitioned under section 2(b) of this chapter and, if the court fails to adhere to a time period, the specific reasons for that failure.

712A.23 Use of evidence against juvenile.

Evidence regarding the disposition of a juvenile under this chapter and evidence obtained in a dispositional proceeding under this chapter shall not be used against that juvenile for any purpose in any judicial proceeding except in a subsequent case against that juvenile under this chapter. This section does not apply to a criminal conviction under this chapter.

712A.24 Placement in institutions; summary of information; conveyance of child; progress report.

Whenever the court shall place a child in any public or private institution or agency, it shall transmit with the order of disposition or supplemental order of disposition a summary of its information concerning such child, and such child may be placed in the care of a county agent, probation officer, juvenile matron or some other reliable person designated by the court to be conveyed to the institution, and the same compensation shall be paid by the state for the transportation of said child as is paid to county agents in like cases.

Whenever the court shall place a child in a private or incorporated institution or agency, it shall require a progress report concerning said child which shall be made at least once every 6 months from the date of the order.

712A.25 Payment of expenses.

(1) Except as otherwise provided by law, expenses incurred in carrying out this chapter shall be paid upon the court's order by the county treasurer from the county's general fund.

(2) A county that is a county juvenile agency shall pay expenses for county juvenile agency services incurred in carrying out this chapter from the block grant distributed under section 117a of the social welfare act, 1939 PA 280, MCL 400.117a, and other funds made available for that purpose and is not obligated under subsection (1) to pay for juvenile justice services other than county juvenile agency services as required by section 117a of the social welfare act. As used in this subsection, "county juvenile agency services" and "juvenile justice service" mean those terms as defined in section 117a of the social welfare act.

712A.26 Contempt of court; punishment.

The court shall have the power to punish for contempt of court under chapter 17 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745, any person

who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce this chapter.

712A.27 Quarters, equipment and supplies for use of juvenile division.

Suitable quarters, equipment, and supplies shall be provided by the board of supervisors of each county for the use of the juvenile division of the probate court in said county.

712A.28 Case records; opening records; order in respect to payments by parent; copy; publicizing action taken against parents or adult; administration of court; reports; form; copies; definitions.

(1) Before June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. The records shall be open only by court order to persons having a legitimate interest, except that diversion records shall be open only as provided in the juvenile diversion act.

(2) Beginning June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. Except as otherwise provided in this subsection, records of a case brought before the court shall be open to the general public. Diversion records shall be open only as provided in the juvenile diversion act. Except as otherwise provided in section 49 of the crime victim's rights act, 1985 PA 87, MCL 780.799, if the hearing of a case brought before the court is closed under section 17 of this chapter, the records of that hearing shall be open only by court order to persons having a legitimate interest.

(3) If the court issues an order in respect to payments by a parent under section 18(2) of this chapter, a copy shall be mailed to the department of treasury. Action taken against parents or adults shall not be released for publicity unless the parents or adults are found guilty of contempt of court. The court shall furnish the family independence agency and a county juvenile agency with reports of the administration of the court in a form recommended by the Michigan association of probate and juvenile court judges. Copies of these reports shall, upon request, be made available to other state departments by the family independence agency.

(4) As used in this section:

(a) "Juvenile diversion act" means the juvenile diversion act, 1988 PA 13, MCL 722.821 to 722.831.

(b) "Persons having a legitimate interest" includes a member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a.

712A.29 Allocation and application of money collected; "victim payment" defined.

(1) If a child is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same order of disposition, money collected from that child, or his or her parent or parents, for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50% of the money collected from that child, or his or her parent or parents, shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, and other assessments or payments. If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid, additional money collected shall be applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of other costs.

(c) Payment of fines.

(d) Payment of assessments and other payments.

(4) In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and other costs.

(c) Payment of assessments and other payments.

(5) Money allocated for payment of costs under subsection (3) shall be paid to the county treasurer for deposit in the general fund of the county. Money allocated for payment of fines under subsection (3) shall be paid to the county treasurer to be used for library purposes as provided by law.

(6) One-third of the money allocated for payment of fines and costs under subsection (4) shall be paid to the treasurer of the political subdivision whose ordinance was violated, and 2/3 of that money shall be paid to the county treasurer for deposit in the general fund of the county.

(7) As used in this section, "victim payment" means restitution ordered under sections 30 and 31 and under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, paid to the victim or the victim's estate, but not to a person who reimbursed the victim for his or her loss, or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

712A.30 "Offense" and "victim" defined; order of restitution.

(1) For purposes of this section and section 31:

(a) "Juvenile offense" means a violation by a juvenile of a penal law of this state or a violation by a juvenile of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a juvenile offense. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of the commission of a juvenile offense.

(2) Except as provided in subsection (8), at the dispositional hearing for a juvenile offense, the court shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition or to the victim's estate.

(3) If a juvenile offense results in damage to or loss or destruction of property of a victim of the juvenile offense, or results in the seizure or impoundment of property of a victim of the juvenile offense, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss, or destruction.

(ii) The value of the property on the date of disposition.

(c) Pay the costs of the seizure or impoundment, or both.

(4) If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the juvenile offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the juvenile offense.

(e) Pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the juvenile offense.

(5) If a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

(6) If the victim or victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money.

(7) If the victim is deceased, the court shall order that the restitution be made to the victim's estate.

(8) The court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or any other legal entities that have compensated the victim or victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court

shall also order restitution, for the costs of services provided, to persons or entities that have provided services to the victim as a result of the juvenile offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its actions. If an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited by the state treasurer in the crime victim's rights fund created under section 4 of Act No. 196 of the Public Acts of 1989, being section 780.904 of the Michigan Compiled Laws, or its successor fund.

(9) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the juvenile make restitution under this section within a specified period or in specified installments.

(11) If the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation. The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(12) A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment.

(13) An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

(14) Notwithstanding any other provision of this section, a juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile 's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, "parent" does not include a foster parent.

(16) If the court orders a parent to pay restitution under subsection (15), the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the parent may have. If a parent is required to pay restitution under subsection (15), the court shall provide for payment to be made in specified installments and within a specified period of time.

(17) A parent who has been ordered to pay restitution under subsection (15) may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent.

(18) In each case in which payment of restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the juvenile caseworker or probation officer determines the restitution is not being paid as ordered, the juvenile caseworker or probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(19) If the court determines that an individual who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court

shall provide a copy of the order of restitution to the department of corrections when the court determines that the individual is remanded to the department's jurisdiction.

712A.31 Determining amount of restitution; factors in disposition report; disclosure of matters described in subsection (1); burden of demonstrating amount or type of restitution.

(1) In determining the amount of restitution to order under section 30 of this chapter, the court shall consider the amount of the loss sustained by any victim as a result of the juvenile offense. In determining whether to order the juvenile's supervisory parent to pay restitution under section 30(15) of this chapter, the court shall consider the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter.

(2) The court may order the person preparing a report for the purpose of disposition to obtain information pertaining to the factors set forth in subsection (1). That person shall include the information collected in the disposition report or in a separate report, as the court directs.

(3) The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the juvenile offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter shall be on the supervisory parent.

712A.32 Order to appear for identification; notice of right to attorney; appointment of attorney.

(1) If a complaint or petition is filed with the court against a juvenile for violating a criminal law of this state or of a local unit of government of this state, the court may, at the request of the person or entity submitting the complaint or petition, order the juvenile to appear at a place and time designated by the court for identification by another person. Identification under this section may include identification in a corporeal lineup.

(2) If the court orders identification proceedings under this section, the court shall notify the juvenile and the juvenile's parent, guardian, or custodian that he or she has the right to consult an attorney and to have an attorney present during the identification proceedings. If the juvenile and the juvenile's parent, guardian, or custodian cannot

afford an attorney but request an attorney, the court shall appoint an attorney to represent the juvenile.

***Statutes cited are accurate as of the date of publication. Please visit www.michiganlegislature.org to ensure that all provisions are current before relying on them.**

SELECTED GUARDIANSHIP PROVISIONS

700.1103 Definitions; A to D.

As used in this act:

(a) "Agent" includes, but is not limited to, an attorney-in-fact under a durable or nondurable power of attorney and an individual authorized to make decisions as a patient advocate concerning another's health care.

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(j) "Court" means the probate court or, when applicable, the family division of circuit court.

***

700.1106 Definitions; M to P.

As used in this act:

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(c) "Minor" means an individual who is less than 18 years of age.

(d) "Minor ward" means a minor for whom a guardian is appointed solely because of minority.

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(i) "Parent" includes, but is not limited to, an individual entitled to take, or who would be entitled to take, as a parent under this act by intestate succession from a child who dies without a will and whose relationship is in question. Parent does not include an individual who is only a stepparent, foster parent, or grandparent.

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(m) "Person" means an individual or an organization.

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(o) "Petition" means a written request to the court for an order after notice.

(p) "Proceeding" includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may be denominated a civil action under court rules.

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(t) "Protective proceeding" means a proceeding under the provisions of part 4 of article V.

700.1108 Definitions; U to Z.

As used in this act:

(a) "Ward" means an individual for whom a guardian is appointed.

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700.1201 Purposes; rule of construction.

This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

(a) To simplify and clarify the law concerning . . . minors . . .

***

700.1203 Supplementary general principles of law applicable; construction against implied repeal.

(1) Unless displaced by the particular provisions of this act, general principles of law and equity supplement this act's provisions.

(2) This act is a general act intended as a unified coverage of its subject matter and a part of it shall not be considered impliedly repealed by subsequent legislation if that result can reasonably be avoided.

700.1301 Territorial application.

Except as otherwise provided in this act, this act applies to all of the following:

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(c) An incapacitated individual or minor in this state.

***

700.1302 Exclusive subject matter jurisdiction.

The court has exclusive legal and equitable jurisdiction of all of the following:

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(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

***

700.5101 General definitions.

As used in parts 1 to 4 of this article:

(a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(i) The love, affection, and other emotional ties existing between the parties involved and the child.

(ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.

(iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence, as a family unit, of the existing or proposed custodial home.

(vi) The moral fitness of the parties involved.

(vii) The mental and physical health of the parties involved.

(viii) The child's home, school, and community record.

(ix) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(x) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(xi) Domestic violence regardless of whether the violence is directed against or witnessed by the child.

(xii) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

(b) "Claim" includes, in respect to a protected individual, a liability of the protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the appointment of a conservator, including expenses of administration.

(c) "Conservator" includes, but is not limited to, a limited conservator described in section 5419(1).

(d) "Visitor" means an individual appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

700.5102 Payment or delivery.

(1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed $5,000.00 each year, to any of the following:

(a) The minor if he or she is married.

(b) An individual having the care and custody of the minor with whom the minor resides.

(c) A guardian of the minor.

(d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor's estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor's support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. An

excess amount shall be preserved for the minor's future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is attained. A person who pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

700.5103 Delegation of powers by parent or guardian.

(1) By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption.

(2) If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the thirty-first day after the end of the deployment.

(3) If a guardian for a minor or legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

700.5104 Request or notice; interested person.

(1) An interested person who desires to be notified before an order is made in a guardianship proceeding, including a proceeding subsequent to the appointment of a guardian under section 5312, or in a protective proceeding under section 5401 must file a request for notice with the register of the court in which the proceeding is pending and with the attorney of record of the guardian or conservator or, if none, with the guardian or conservator, if any. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to a proceeding that occurs after the filing. If a guardianship or protective proceeding is not pending at the time a person files a request for notice as authorized by this subsection, the person shall pay a fee for filing the request, which fee shall be in the same amount as, but is separate from, the fee required to commence such a proceeding.

(2) A governmental agency paying benefits to the individual to be protected or before whom an application for benefits is pending is an interested person in a protective proceeding.

700.5105 Kidney donation by minor.

The court has jurisdiction of the matter described in this section. If authorized by order of the court that has jurisdiction of the prospective donor, a person 14 years of age or older may give 1 of his or her 2 kidneys to a father, mother, son, daughter, brother, or sister for a transplantation needed by the intended donee. A guardian, parent, spouse, child, or other next of kin of the prospective donor, other than the intended donee, may file a petition for an order under this section. If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests. The court shall hold a hearing on the petition and cause notice of the hearing to be given. The prospective donor shall be present at the hearing and shall be examined by the petitioner or the court, or both. If the court determines that the prospective donor is sufficiently sound of mind to understand the needs and probable consequences of the gift to both the donor and donee and agrees to the gift, the court may enter an order authorizing the making of the gift.

700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; appointment of nonbanking corporation to act as fiduciary in state.

(1) Subject to the other provisions of this section, the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond shall be as provided in sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation

specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within 3 months after the professional guardian's appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

700.5107 Entry into or removal from LEIN.

(1) Upon entry of an order finding that an individual is legally incapacitated, the court shall immediately order the department of state police to enter the order into the law enforcement information network.

(2) Upon entry of an order finding that an individual is no longer legally incapacitated, the court shall immediately order the department of state police to remove from the law enforcement information network the court order entered into the law enforcement information network under subsection (1) that found that the individual was legally incapacitated.

(3) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

700.5201 Appointment and status of guardians of minor.

A person may become a minor's guardian by parental appointment or court appointment. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.

700.5202 Parental appointment of guardian for minor.

(1) The parent of an unmarried minor may appoint a guardian for the minor by will or by another writing signed by the parent and attested by at least 2 witnesses.

(2) Subject to the right of the minor under section 5203, if both parents are dead or have been adjudged to be legally incapacitated or the surviving parent has no parental rights or has been adjudged to be legally incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(3) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(4) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.

700.5203 Objection by minor of 14 years or older to parental appointment.

A minor 14 years of age or older who is the subject of a parental appointment may prevent an appointment or cause it to terminate by filing with the court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 28 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the parental nominee or another suitable person.

700.5204 Court appointment of guardian of minor; conditions for appointment.

(1) A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor. The court may order the family independence agency or a court employee or agent to conduct an

investigation of the proposed guardianship and file a written report of the investigation.

(2) The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:

(a) The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

(b) The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.

(c) All of the following:

(i) The minor's biological parents have never been married to one another.

(ii) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.

(iii)The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

(3) A minor's limited guardian may petition to be appointed a guardian for that minor, except that the petition shall not be based upon suspension of parental rights by the order that appointed that person the limited guardian for that minor.

(4) A guardian appointed under section 5202 whose appointment is not prevented or nullified under section 5203 has priority over a guardian who may be appointed by the court. The court may proceed with an appointment upon a finding that a guardian appointed in a manner described in section 5202 has failed to accept the appointment within 28 days after the notice of the guardianship proceeding.

(5) For the minor ward's welfare, the court may at any time order the minor ward's parents to pay reasonable support and order reasonable parenting time and contact of the minor ward with his or her parents.

700.5205 Court appointment of limited guardian; requirements.

(1) The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent or parents if all of the following requirements are met:

(a) The parents with custody of the minor consent or, in the case of only 1 parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.

(b) The parent or parents voluntarily consent to the suspension of their parental rights.

(c) The court approves a limited guardianship placement plan agreed to by both of the following parties:

(i) The parents with custody of the minor or, in the case of only 1 parent having custody of the minor, the sole parent who has custody of the minor.

(ii) The person or persons whom the court will appoint as the minor's limited guardian.

(2) A minor's parent or parents who desire to have the court appoint a limited guardian for that minor and the person or persons who desire to be appointed limited guardian for that minor must develop a limited guardianship placement plan. The parties must use a limited guardianship placement plan form prescribed by the state court administrator. A limited guardianship placement plan form must include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights under chapter XIIA of 1939 PA 288, MCL 712A.1 to 712A.32. The proposed limited guardianship placement plan shall be attached to the petition requesting the court to appoint a limited guardian. The limited guardianship placement plan shall include provisions concerning all of the following:

(a) The reason the parent or parents are requesting the court to appoint a limited guardian for the minor.

(b) Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.

(c) The duration of the limited guardianship.

(d) Financial support for the minor.

(e) Any other provisions that the parties agree to include in the plan.

700.5206 Review modification of plan; powers and duties of limited guardian.

(1) The court shall review a proposed limited guardianship placement plan filed with the court under section 5205 and shall do 1 of the following:

(a) Approve the proposed plan.

(b) Disapprove the proposed plan.

(c) On its own motion, modify a proposed plan and approve it as modified, if the parties agree to the modification. The modified plan shall be filed with the court.

(2) A limited guardianship placement plan that has been approved by the court may be modified upon agreement of the parties and approval of the court. A modified limited guardianship placement plan shall be filed with the court.

(3) The voluntary suspension of parental rights under section 5205 does not prevent the parent or parents from filing a petition to terminate the limited guardianship at any time as provided in section 5208. Appointment of a limited guardian under this section is a continuing appointment.

(4) A limited guardian appointed under this section has all of the powers and duties enumerated in section 5215 except that a minor's limited guardian shall not consent to marriage or adoption of the minor ward or to the release of the minor ward for adoption.

700.5207 Review of guardianship of minor.

(1) The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if the minor is under 6 years of age. In conducting the review, the court shall consider all of the following factors:

(a) The parent's and guardian's compliance with either of the following, as applicable:

(i) A limited guardianship placement plan.

(ii) A court-structured plan under subsection (3)(b)(ii)(B) or section 5209(2)(b)(ii).

(b) Whether the guardian has adequately provided for the minor's welfare.

(c) The necessity of continuing the guardianship.

(d) The guardian's willingness and ability to continue to provide for the minor's welfare.

(e) The effect upon the minor's welfare if the guardianship is continued.

(f) Any other factor that the court considers relevant to the minor's welfare.

(2) The court may order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the factors listed in subsection (1).

(3) Upon completion of a guardianship review, the court may do either of the following:

(a) Continue the guardianship.

(b) Schedule and conduct a hearing on the guardianship's status and do any of the following:

(i) If the guardianship is a limited guardianship, do either of the following:

(A) Continue the limited guardianship.

(B) Order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship.

(ii) If the guardianship was established under section 5204, do either of the following:

(A) Continue the guardianship.

(B) Order the parties to follow a court-structured plan designed to resolve the conditions identified at the review hearing.

(iii)Take an action described in section 5209(2).

700.5208 Petition to terminate guardianship of minor.

(1) A minor's parent or parents may petition the court to terminate a guardianship for the minor as follows:

(a) If the guardianship is a limited guardianship, the parents or the sole parent with a right to custody of the minor.

(b) If the guardianship was established under section 5204, the minor's parent or parents.

(2) If a petition is filed to terminate a guardianship under this section, the court may do 1 or more of the following:

(a) Order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.

(b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.

(c) Appoint a guardian ad litem or attorney to represent the minor.

(d) Take any other action considered necessary in a particular case.

(3) This section and section 5209 apply to all guardianships established before, on, or after the effective date of this section.

700.5209 Court action on petition to terminate guardianship of minor.

(1) After notice and hearing on a petition under section 5208 to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the termination.

(2) For a petition to terminate a guardianship in which subsection (1) does not apply, after notice and hearing, the court may do any of the following:

(a) Terminate the guardianship if the court determines that it is in the best interests of the minor, and do any of the following:

(i) Enter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination.

(ii) Order the family independence agency to supervise the transition period when the minor is being reintegrated into his or her parent's home.

(iii)Order the family independence agency to provide services to facilitate the minor's reintegration into his or her parent's home.

(b) Continue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor, and do any of the following:

(i) If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:

(A) The limited guardianship placement plan.

(B) A court-modified limited guardianship placement plan.

(C) If the limited guardianship was established before December 20, 1990, a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(ii) If the guardianship is ordered under section 5204, order the parent or parents to follow a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(iii)If a guardianship is continued under subparagraph (i) or (ii), schedule and conduct a hearing to review the guardianship before the expiration of the period of time that the guardianship is continued and either terminate the guardianship or limited guardianship or proceed under subdivision (c) or (d).

(c) If the minor resides with the guardian or limited guardian for not less than 1 year and if the court finds that the minor's parent or parents have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor.

(d) Appoint an attorney to represent the minor or refer the matter to the family independence agency. The attorney or the family independence agency may file a complaint on behalf of the minor requesting the family division of the circuit court to take jurisdiction of the minor under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.

700.5210 Order for termination of guardianship of minor.

Upon receipt of a copy of a judgment or an order of disposition in a child custody action regarding a minor that is sent to the court as provided in section 6b of the child custody act of 1970, 1970 PA 91, MCL 722.26b, the court shall terminate the guardianship or limited guardianship for that minor.

700.5211 Venue.

The venue for a guardianship proceeding for a minor is in the place where the minor resides or is present at the time the proceeding is commenced.

700.5212 Court appointment of guardian of minor; qualifications; priority of minor's nominee.

The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.

700.5213 Procedure for court appointment of guardian, temporary guardian, or lawyer-guardian ad litem for minor.

(1) The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

(a) The minor, if 14 years of age or older.

(b) The person who had the principal care and custody of the minor during the 63 days preceding the date of the petition.

(c) Each living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5204 or of sections 5205 and 5206 are satisfied, and the minor's welfare will be served by the requested appointment, the court shall make the appointment. In other cases, the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare.

(3) If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the temporary guardian's authority shall not exceed 6 months.

(4) If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving a consideration to the preference of the minor if the minor is 14 years of age or older.

(5) A lawyer-guardian ad litem appointed under this act represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of the probate code of 1939, 1939 PA 288,

MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act. In addition, both of the following apply under this act:

(a) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(b) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of a lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem shall not be paid a fee unless the court first reviews and approves the fee.

(6) To assist the court in determining a child's best interest, the court may appoint a guardian ad litem for a child involved in a proceeding under this section.

700.5214 Consent to service by acceptance of appointment; notice.

By accepting a parental or court appointment as guardian, a guardian submits personally to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. The petitioner shall cause notice of a proceeding to be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address listed in the court records and to the address then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by court order or parental nomination.

700.5215 Powers and duties of guardian of minor.

A minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons by reason of the parental relationship for the ward's acts. A guardian has all of the following powers and duties:

(a) The guardian shall take reasonable care of a ward's personal effects and commence a protective proceeding if necessary to protect the ward's other property. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special

conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(b) The guardian may receive money payable for the ward's support to the ward's parent, guardian, or custodian under the terms of a statutory benefit or insurance system, or a private contract, devise, trust, conservatorship, or custodianship. The guardian may receive the ward's money or property paid or delivered under section 5102. Money or property received under that section shall be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator is appointed for the ward's estate, in which case the excess shall be paid over at least annually to the conservator. The guardian shall not use that money or property for compensation for the guardian's services except as approved by court order or as determined by a duly appointed conservator other than the guardian. A guardian may institute a proceeding to compel a person's performance of a duty to support the ward or to pay money for the ward's welfare.

(c) The guardian shall facilitate the ward's education and social or other activities, and shall authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would be illegal for a parent to have consented.

(d) A guardian may consent to a minor ward's marriage.

(e) Subject to the conditions and restrictions of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a guardian may consent to marriage or adoption of a minor ward or to the release of a minor ward for adoption.

(f) A guardian must report the condition of the ward and of the ward's estate that is subject to the guardian's possession or control as ordered by the court on petition of a person interested in the minor's welfare or as required by court rule. The report must detail the condition of the ward, medical or mental health treatment or care to which the ward was subjected, and what reason, if any, exists for the continuation of the guardianship.

(g) Within 14 days after a change in the ward's place of residence, the guardian shall give to the court notice of the ward's new address.

700.5216 Compensation; claim for burial expense.

(1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by court order.

(2) If a minor dies while under guardianship and a conservator has not been appointed for the minor's estate and if the guardian has possession of any money of the deceased minor, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the minor's estate.

700.5217 Termination of appointment of guardian.

A guardian's authority and responsibility terminate upon the guardian's death, resignation, or removal or upon the minor's death, adoption, marriage, or attainment of majority. However, a termination does not affect the guardian's liability for prior acts or the obligation to account for the ward's money and property. The guardian's resignation does not terminate the guardianship until it is approved by the court. A parental appointment under an unprobated or informally probated will terminates if the will is later denied probate in a formal proceeding.

700.5218 Proceedings subsequent to appointment; venue.

(1) The court at the place where the ward resides has concurrent jurisdiction over resignation, removal, accounting, or another proceeding relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental appointment was filed.

(2) If the court located where the ward resides is neither the appointing court nor the court in which acceptance of appointment is filed, the court in which a proceeding subsequent to appointment is commenced in all appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever will serve the ward's welfare. A copy of an order accepting a resignation or removing a guardian shall be sent to the appointing court or the court in which acceptance of appointment is filed.

700.5219 Resignation, removal, and other post-appointment proceedings.

(1) A person interested in a ward's welfare or, if 14 years of age or older, the ward may petition for the removal of a guardian on the ground that removal would serve the ward's welfare or for another order that would serve the ward's welfare. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for a successor guardian's appointment.

(2) Notice of a hearing on a petition for an order after a guardian's appointment must be given to the ward, the guardian, and any other person as ordered by the court or as provided by court rule.

(3) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make further order that may be appropriate.

(4) If the court determines at any time in a proceeding that the ward's interest is or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

CHILDREN'S OMBUDSMAN ACT

722.921 Short title.

This act shall be known and may be cited as "the children's ombudsman act".

722.922 Definitions.

As used in this act:

(a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, MCL 710.22.

(c) "Adoption code" means chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.

(d) "Central registry" means that term as defined in section 2 of the child protection law, MCL 722.622.

(e) "Child" means an individual under the age of 18.

(f) "Child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, MCL 722.622.

(g) "Child caring institution" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Child placing agency" means an organization licensed or approved by the department to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.

(i) "Complainant" means an individual who makes a complaint as provided in section 5.

(j) "Child protection law" means the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

(k) "Children's ombudsman" or "ombudsman" means the individual appointed to the office of children's ombudsman under section 3.

(l) "Closed session" means that term as defined in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(m) "Department" means the family independence agency.

(n) "Foster care" means care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved by the department under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a child in a relative's home under a court order.

(o) "Office" means the children's ombudsman office established under section 3.

722.923 Children's ombudsman; establishment; appointment; removal.

(1) As a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department, child placing agencies, or child caring institutions, monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, treatment, and improving delivery of care of children in foster care and adoptive homes, the children's ombudsman is established as an autonomous entity in the department of management and budget.

(2) The governor shall appoint an individual as the ombudsman, with the advice and consent of the senate. The individual shall be qualified by training and experience to perform the duties and exercise the powers of the children's ombudsman and the children's ombudsman office as provided in this act.

(3) The governor may remove the children's ombudsman from office for cause that includes, but is not limited to, incompetency to properly exercise duties, official misconduct, habitual or willful neglect of duty, or other misfeasance or malfeasance in connection with the operation of the office of the children's ombudsman. The governor shall report the reason for the removal to the legislature.

(4) The children's ombudsman serving in office on the effective date of the amendatory act that added this subsection shall serve at the pleasure of the governor.

722.924 Procedures.

(1) The ombudsman shall establish procedures for the office for budgeting, expending money, and employing personnel according to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. Subject to annual appropriations, the ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The ombudsman shall establish procedures for receiving and processing complaints from complainants and individuals not meeting the definition of complainant, conducting investigations, holding informal hearings, and reporting findings and recommendations resulting from investigations.

(3) Personnel employed by the office of the children's ombudsman shall receive mandatory training conducted by the Michigan domestic violence prevention and treatment board in domestic violence and in handling complaints of child abuse or child neglect that involve a history of domestic violence.

(4) Any individual may submit a complaint to the ombudsman. The ombudsman has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate and if a complaint involves an administrative act. The ombudsman may initiate an investigation without receiving a complaint. The ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this act as if he or she is a complainant. The individual is entitled to receive the recommendations of the ombudsman and the department's response to the recommendations of the ombudsman in accordance with state and federal law. During the course of an investigation, the ombudsman may refer a case to the department if the ombudsman determines that the department received a complaint on the case, but did not conduct a field investigation. If the ombudsman refers a case to the department, the department shall conduct a field investigation of the case or provide notice to the ombudsman why a field investigation was not conducted, or what alternative steps may have been taken to address the situation. If a field investigation has been conducted, the department shall report the results to the ombudsman.

722.925 Individuals making complaint to children's ombudsman.

All of the following individuals may make a complaint to the ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:

(a) The child, if he or she is able to articulate a complaint.

(b) A biological parent of the child.

(c) A foster parent of the child.

(d) An adoptive parent or a prospective adoptive parent of the child.

(e) A legally appointed guardian of the child.

(f) A guardian ad litem of the child.

(g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, MCL 710.22.

(h) A Michigan legislator.

(i) An individual required to report child abuse or child neglect under section 3 of the child protection law, 1975 PA 238, MCL 722.623.

(j) An attorney for any individual described in subdivisions (a) to (g).

722.925a Children's ombudsman; powers.

The children's ombudsman has the authority to do all of the following:

(a) Pursue all necessary action, including, but not limited to, legal action, to protect the rights and welfare of a child under the jurisdiction, control, or supervision of the department, the Michigan children's institute, the family division of circuit court under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a child placing agency.

(b) Pursue legislative advocacy in the best interests of children.

(c) Review policies and procedures relating to the department's involvement with children and make recommendations for improvement.

(d) Review each departmental death review team study in which the child's death may have resulted from child abuse or child neglect. As a result of the reviews, the ombudsman may recommend policies, measures, or procedures to prevent future similar occurrences.

722.926 Children's ombudsman; authority.

The ombudsman may do all of the following in relation to a child who may be a victim of child abuse or child neglect:

(a) Upon his or her own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous

grounds. The ombudsman has sole discretion to determine if a complaint involves an administrative act.

(b) Decide, in his or her discretion, whether to investigate an administrative act.

(c) Upon its own initiative or upon receipt of a complaint from a complainant, conduct a preliminary investigation to determine whether an adoption attorney may have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan rules of professional conduct adopted by the Michigan supreme court.

(d) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the ombudsman's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The ombudsman shall be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The ombudsman shall be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1978 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department.

(e) Request a subpoena from a court requiring the production of a record or report necessary to carry out the ombudsman's duties and powers. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the ombudsman may petition the court for enforcement of the subpoena.

(f) Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considers relevant to a matter under investigation.

(g) Make recommendations to the governor and the legislature concerning the need for children's protective services, adoption, or foster care legislation, policy, or practice without prior review by other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations. However, no other office, department, or agency shall prohibit the release of an ombudsman's recommendation to the governor or the legislature.

722.927 **Decision to investigate; notice; misconduct by adoption attorney; pursuing administrative remedies or channels of complaint; further investigation; violation of state or federal criminal law; complaint against child placing agency; petition requesting court jurisdiction or termination of parental rights.**

(1) Upon deciding to investigate a complaint, from a complainant and an individual not meeting the definition of complainant, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the ombudsman's action.

(2) If the preliminary investigation described in section 6 leads the ombudsman to believe that the matter may involve misconduct by an adoption attorney, the ombudsman shall immediately refer the complaint to the attorney grievance commission of the state bar of Michigan.

(3) The ombudsman shall advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of a complaint upon the request of the complainant or upon the ombudsman's own initiative.

(4) If the ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the ombudsman shall refer the matter to the department for further action with respect to licensing.

(5) The ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or a petition for termination of parental rights under section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, if the ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

722.928 Family independence agency and child placing agency; duties; information to be provided to biological parent, adoptive parent, or foster parent; access to departmental computer networks.

(1) The department and a child placing agency shall do all of the following:

(a) Upon the ombudsman's request, grant the ombudsman or his or her designee access to all information, records, and documents in the possession of the department or child placing agency that the ombudsman considers relevant and necessary in an investigation.

(b) Assist the ombudsman to obtain the necessary releases of those documents that are specifically restricted.

(c) Upon the ombudsman's request, provide the ombudsman with progress reports concerning the administrative processing of a complaint.

(d) Upon the ombudsman's request, provide the ombudsman information he or she requests under subdivision (a) within 10 business days after the request. If the department determines that release of the information would violate federal or state law, the ombudsman shall be notified of that determination within the same 10-day deadline.

(2) The department, an attorney involved with an adoption, and a child placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this act.

(3) The ombudsman, the department, and the department of information technology shall enter an agreement not later than June 30, 2005 that shall ensure that the ombudsman has access, in the ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, and adoption, including the central registry, service workers support system/foster care, adoption, juvenile justice (SWSS), and customer information management system (CIMS) unless otherwise prohibited by state or federal law, or the release of the information to the ombudsman would jeopardize federal funding. The cost of implementing this subsection shall be negotiated among the office of the children's ombudsman, the department, and the department of information technology.

722.929 Confidentiality of record of ombudsman; disclosure; limitations.

(1) Subject to subsections (2) through (7), a record of the children's ombudsman's office is confidential, shall only be used for purposes set forth in this act, is not subject to court subpoena, and is not discoverable in a legal proceeding. A record of the children's ombudsman's office is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. If the ombudsman identifies

action or inaction by the state, through its agencies or services, that failed to protect children, the ombudsman shall provide his or her findings and recommendations to the agency affected by those findings, and make those findings and recommendations available to the complainant and the legislature upon request, to the extent consistent with state or federal law. The ombudsman shall not disclose any information that impairs the rights of the child or the child's parents or guardians.

(2) The ombudsman may release information to a complainant or to a closed session of a legislative committee that has jurisdiction over family and children's services issues regarding the department's handling of a case under the child protection law that is obtained or generated during an investigation conducted by the office.

(3) Unless otherwise part of the public record, the office shall not release any of the following confidential information to the general public:

(a) Records relating to mental health evaluation or treatment of a parent or child.

(b) Records relating to the evaluation or treatment of a substance abuse-related disorder of a parent or child.

(c) Records relating to medical diagnosis or treatment of a parent or child.

(d) Records relating to domestic violence-related services and sexual assault services provided to a parent or child.

(e) Records relating to educational services provided to a parent or child.

(4) Notwithstanding subsection (3), if the ombudsman determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child, the ombudsman may disclose information in his or her possession to the department or a court. The ombudsman shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless ordered to by a court.

(5) The ombudsman shall not disclose information relating to an ongoing law enforcement investigation or an ongoing children's protective services investigation.

(6) The ombudsman shall not disclose the identity of an individual making a child abuse or neglect complaint under the child protection law unless that individual's written permission is obtained first or a court has ordered the ombudsman to release that information.

(7) The ombudsman may release an individual's identity who makes an intentionally false report of child abuse or neglect under the child protection law.

722.930 **Report of findings; recommendations; consultation with individual, department, or child placing agency; publication of adverse opinion; notice of actions; information provided to complainant; report.**

(1) The ombudsman shall prepare a report of the factual findings of an investigation and make recommendations to the department or child placing agency if the ombudsman finds 1 or more of the following:

(a) A matter should be further considered by the department or child placing agency.

(b) An administrative act or omission should be modified, canceled, or corrected.

(c) Reasons should be given for an administrative act or omission.

(d) Other action should be taken by the department or child placing agency.

(2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by the department or child placing agency in defense or mitigation of the action. The ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.

(3) The ombudsman shall notify the complainant of the actions taken by the ombudsman and by the department or child placing agency.

(4) The ombudsman may provide to the complainant the following information:

(a) A copy of the ombudsman's report regarding the investigation's findings, recommendations to the department made according to the investigation, the department's response to the ombudsman's findings and recommendations, and any epilogue to the ombudsman's report and the department's response.

(b) Information that has otherwise been made public.

(5) The ombudsman shall not release information to the individual making the complaint that will endanger the health or welfare of a child or another individual.

(6) The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the ombudsman's conduct, including any recommendations regarding the need for legislation or for change in rules or policies.

722.931 Penalty for filing complaint or cooperating in investigation prohibited; intentional false complaint.

(1) Subject to subsection (4), an official, the department, or a child placing agency shall not penalize any person for filing a complaint or cooperating with the ombudsman in investigating a complaint.

(2) An individual, the department, an adoption attorney, or a child placing agency shall not hinder the lawful actions of the ombudsman or employees of the ombudsman.

(3) A report by the ombudsman is not subject to prior approval by a person outside of the office.

(4) An individual who intentionally makes a false complaint of child abuse or neglect under this act is subject to the penalties contained in section 13(5) of the child protection law, MCL 722.633.

722.932 Authority granted under other acts or rules.

The authority granted the ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

FOSTER CARE REVIEW BOARD ACT

722.131 Definitions.

As used in this act:

(a) "Child care organization" means a child caring institution or a child placing agency as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

(b) "Foster care" means care provided to a child on a 24-hour basis either by a child care organization or by a person or organization appointed by the juvenile division of the probate court, either temporarily or permanently, to provide court supervised child care, pursuant to any of the following:

(i) An order of the juvenile division of the probate court if the court acquired jurisdiction over the child pursuant to section 2(b)(1) or (2) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws.

(ii) A voluntary action of a parent or guardian that results in an expenditure of funds appropriated to the department of social services.

(iii)A voluntary release executed pursuant to section 28 of chapter X of Act No. 288 of the Public Acts of 1939, being section 710.28 of the Michigan Compiled Laws.

*

(d) "Foster care event" means any of the following:

(i) The child's return to the parent from whom the child was removed.

(ii) The child's placement with a parent other than the parent from whom the child was removed.

(iii)The child's placement with a relative.

(iv)The voluntary release of parental rights to the child.

(v) The filing on behalf of the child of a petition to terminate parental rights to the child.

(e) "Interested party" means any of the following:

* Note that the statute contains no paragraph (c). [Ed.]

(i) A biological parent whose parental rights have not been terminated.

(ii) A foster parent.

(iii) An employee or representative of the child care organization providing the foster care to the child.

(iv) A person with whom a local board consults during a review of a child in foster care.

(v) Any person designated by the state court administrator.

(f) "Local board" means a local foster care review board created under section 4.

(g) "State board program" means the state foster care review board program created in section 2.

722.132 State foster care review board program; creation; administration; access to and liaison with probate court; direct supervision of foster care services not authorized.

(1) The state foster care review board program is created within the state court administrative office, to consist of staff necessary to perform the functions of the state board program as prescribed by this act. The state court administrative office shall administer the state foster care review program.

(2) The state court administrative office shall assist the state board program in developing and maintaining access to and liaison with the probate court in each county of this state that has a local board.

(3) This act shall not be construed to authorize either the state court administrative office or the local boards to provide direct supervision of foster care services.

722.133 Duties of state court administrative office.

The state court administrative office shall do all of the following:

(a) Determine the number of children who are in foster care in this state.

(b) Establish uniform policies and procedures for foster care review pursuant to this act, including criteria for the selection of foster care cases to be reviewed.

(c) In accordance with section 4, determine the appropriate number of local boards necessary to meet the needs of children in foster care, and establish the jurisdiction of each local board.

(d) Establish criteria and procedures for membership of a local board.

(e) Solicit and receive applications for local board membership and make membership decisions.

(f) Provide written notification to a local board of specific cases of children in foster care appropriate for review, and schedule those cases for review within the time intervals established under section 7.

(g) Inform the child care organization, department of social services, or probate court that provided notification pursuant to section 6(a) of the local board to which the child is assigned.

(h) Make a reasonable effort to provide written notification to each interested party of the date, time, and procedures for a review by a local board of a child in foster care.

(i) Establish a system to monitor the status of each child who is in foster care and who has been assigned to a local board.

(j) Analyze information gathered by local boards throughout this state.

(k) Employ and provide state board program staff and provide local board volunteers.

(l) Provide periodic training sessions for the members of each local board. The training sessions shall include instruction on the need to maintain confidentiality as required under section 8.

(m) Establish an advisory committee consisting of representatives from child care organizations, local boards, and others as the state court administrator considers necessary to review the foster care system and to make recommendations concerning the foster care system to the appropriate groups and agencies. Not less than a majority of the advisory committee shall consist of representatives of the local boards.

(n) Issue an annual report pursuant to section 9.

(o) Perform those duties necessary to implement and review the state board program.

722.134 Local foster care review board; creation; additional boards.

(1) There is created a local foster care review board in each county or in multiple counties as provided in subsection (2). Subject to subsection (3), additional boards may be created in each county or in multiple counties at the discretion of the state court administrative office.

(2) At the direction of the state court administrative office, a single county local board or a board comprised of 1 or more counties is created.

(3) A county shall not have more than 15 local foster care review boards.

722.135 Local foster care review board; membership; terms; persons ineligible for appointment to local board; election of chairperson and vice-chairperson; meetings; training sessions; reimbursement of expenses; removal of member.

(1) A local board shall be composed of 5 members who reside within the jurisdiction of the local board, and who represent to the maximum extent possible the socio-economic, racial, and ethnic groups residing within that jurisdiction. A local board may have 1 or more alternate members who serve when an appointed board member is unavailable.

(2) A local board member shall serve a renewable 3-year term. Of the initial members, 3 members shall serve for 3 years, and 2 members shall serve for 2 years.

(3) A person employed by a child care organization, the family independence agency, or the court shall not be appointed to a local board.

(4) A local board shall elect 1 of its members to serve as chairperson and 1 to serve as vice-chairperson. Each shall serve for a term of 1 year.

(5) A local board shall meet at a place and time specified by the state court administrative office and approved by the chairperson of the local board.

(6) Each member of a local board shall attend an orientation training session and subsequent training sessions as required by the state court administrative office.

(7) The members of a local board shall serve without compensation. Reimbursement of expenses of members of the local board shall be in accordance with standard travel reimbursement rates established annually by the department of management and budget.

(8) A local board member may be removed for cause by the state court administrator.

722.136 Duties of child care organization, department of social services, or probate court.

A child care organization, the department of social services, or the probate court responsible for supervising a child in foster care shall do all of the following:

(a) Provide written notification monthly to the state court administrator of an admission into, discharge from, or transfer of a child in foster care.

(b) Upon request submit an initial placement plan; a list of names, addresses, and telephone numbers of interested parties; and progress reports to the appropriate local board at least once each 6 months, and cooperate with and furnish other information requested by the state court administrator. If foster care is purchased from a child placing agency or child caring institution, that organization shall cooperate in the preparation of an initial placement plan and progress reports.

722.137 Powers and duties of local board.

(1) A local board shall do all of the following:

(a) Review each initial placement plan submitted under section 6 for a child in foster care. The review shall be to determine whether the placement plan for the child contains at least all of the following information:

(i) The purpose for which the child has been placed in foster care and the reason that the child cannot be returned to his or her home immediately.

(ii) The length of time in which the purpose of foster care will be accomplished.

(iii) An assessment of the involvement of the legal parent and steps taken by the child care organization to involve the legal parent in the planning and implementation of the plan.

(iv) A description of the services which have been and are to be provided in order for the purpose of foster care to be accomplished.

(v) The number of foster care placements the child has experienced while in foster care, and the length of time of each foster care placement.

(vi) The person within the child care organization who is directly responsible for assuring that the plan is implemented.

(vii) The type of permanent placement recommended for the child.

(b) Review progress reports submitted under section 6(b) every 6 months following the initial review to determine whether the purpose for which the child has been placed in foster care, as described in the initial placement plan, is being achieved, and whether the plan continues to be appropriate, based on a review of all of the following:

(i) An assessment of the extent to which the child care organization is accomplishing the purpose of foster care as described in the placement plan.

(ii) Identification of the person within the child care organization who is directly responsible for assuring that the placement plan is implemented.

(iii)The length of time the child has been in foster care.

(iv)The number of foster care placements the child has experienced while in foster care and the length of time of each foster care placement.

(v) An assessment of the involvement of the legal parent and steps taken by the child care organization to involve the legal parent in planning and implementation of the plan.

(c) Whenever practicable, conduct reviews and submit reports, as required under subdivision (e), before the judicial review or rehearing mandated in section 19 of chapter XIIA of 1939 PA 288, MCL 712A.19.

(d) Review, at any time considered necessary by the local board, or at the request of the court or an interested party, the case and information submitted by a child care organization under section 6.

(e) Submit to the child care organization that submitted the initial placement plan and progress report and, if applicable, to the court, within 30 days after a review under subdivision (a) or (b), a written statement of findings and recommendations regarding the care, maintenance, and supervision of a child in foster care and the plan for permanent placement of the child. A copy of the statement may be sent to all interested parties. The local board may give information or file a petition for court action or rehearing under section 11 or 21 of chapter XIIA of 1939 PA 288, MCL 712A.11 and 712A.21.

(f) Hear an appeal of a proposed change in foster care placement as provided in section 13b of chapter XIIA of 1939 PA 288, MCL 712A.13b, and report to the court as required by that section.

(g) As part of the ongoing review process, select permanent wards for review from all of the following categories:

(i) Wards who are registered with the Michigan adoption resource exchange and who have been on hold status for not less than 12 months.

(ii) Wards who have not been registered with the Michigan adoption resource exchange, have been permanent wards for not less than 6 months, and do not have a documented permanency plan in place.

(iii) Wards who are less than 12 years of age and have been listed in the Michigan adoption resource exchange photo listing book for more than 6 months and for whom no family has been identified.

(h) Perform those duties necessary to implement this act.

(2) A local board may limit the review to a written report or request a personal appearance of an interested party, as considered necessary by the local board.

(3) If interested parties are provided with a copy of the findings and recommendations of the local board, the local board shall allow the interested parties to submit written comments. Upon approval of a local board, an interested party may make a personal appearance before the local board in connection with the foster care case.

(4) A local board may make recommendations to the state court administrative office regarding issues in foster care policy and procedure and the functions of child care organizations and the court.

(5) A local board shall compile and maintain statistics and make findings regarding its reviews of permanent wards under subsection (1)(g), including, but not limited to, identification of any barriers to permanency.

(6) The Michigan adoption resource exchange shall cooperate with the foster care review board program and submit copies of their file material and registration documentation as requested by the foster care review board program.

722.137a Placement of siblings; variance from licensing rules or statutes.

If the case of a child who has at least 1 sibling is otherwise before a local board, the local board may evaluate the child's placement in a foster family home or foster family group home that would allow the child and 1 or more siblings to remain or be placed together, but would also require obtaining a variance from 1 or more licensing rules or statutes under section 8b of 1973 PA 116, MCL 722.118b. If the local board determines that such a placement would be in the child's best interests and that the variance from the particular licensing rules or statutes would not jeopardize the health or safety of a child residing in

the foster family home or foster family group home, the local board shall recommend the variance to the department of consumer and industry services as provided in section 8b of 1973 PA 116, MCL 722.118b.

722.138 Confidentiality.

(1) Records regarding specific children and their parents and relatives shall be confidential. Disclosure of this confidential information shall be properly safeguarded by the local board, the staff of the state board, and the state court administrator.

(2) A person who discloses confidential information contained in records, reports, and plans prepared pursuant to this act is guilty of a misdemeanor.

(3) Unauthorized disclosure of information contained in records and reports made pursuant to this act by a member of a local board shall be grounds for removal from the board.

722.139 Annual report.

(1) The state court administrator shall publish an annual report of the state board program created by this act and shall make the annual report available to the public. Additionally, the state court administrator shall submit the annual report to the legislature and the governor.

(2) The annual report required by subsection (1) shall include, but is not limited to, all of the following:

(a) An evaluative summary, supplemented by applicable quantitative data, of the activities and functioning of each local board during the preceding year.

(b) An evaluative summary, supplemented by applicable quantitative data, of the activities and functioning of the aggregate of all local boards in the state during the preceding year.

(c) An identification of problems that impede the timely placement of children in a permanent placement and recommendations for improving the timely placement of children in a permanent placement.

(d) The statistics and findings compiled under section 7(5).

FOSTER CARE AND ADOPTION SERVICES ACT

722.951 Short title.

This act shall be known and may be cited as the "foster care and adoption services act".

722.952 Definitions.

As used in this act:

(a) "Adoptee" means a child who is to be adopted or who is adopted.

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, MCL 710.22.

(c) "Adoption code" means the Michigan adoption code, chapter X of 1939 PA 288, MCL 710.21 to 710.70.

(d) "Adoption facilitator" means a child placing agency or an adoption attorney.

(e) "Adoptive parent" means the parent or parents who adopt a child in accordance with the adoption code.

(f) "Agency placement" means that term as defined in section 22 of the adoption code, MCL 710.22.

(g) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Department" means the family independence agency.

(i) "Direct placement" means that term as defined in section 22 of the adoption code, MCL 710.22.

(j) "Foster care" means a child's placement outside the child's parental home by and under the supervision of a child placing agency, the court, the department, or the department of community health.

(k) "Preplacement assessment" means an assessment of a prospective adoptive parent as described in section 23f of the adoption code, MCL 710.23f.

(l) "Supervising agency" means the department if a child is placed in the department's care for foster care, or a child placing agency in whose care a child is placed for foster care.

722.953 Purpose of act.

The purposes of this act are all of the following:

(a) To assist foster parents to provide a stable, loving family environment for children who are placed outside of their homes on a temporary basis.

(b) To help eliminate barriers to the adoption of children and to promote the provision of a stable and loving family environment to children who are without permanent families.

(c) To promote the well-being and safety of all children who receive foster care or are adopted under the laws of this state.

(d) To protect and assist prospective adoptive families as they negotiate the adoption process.

(e) To regulate child placing agencies who certify foster parents and serve adoptees and adoptive families in this state.

(f) To regulate adoption attorneys who facilitate direct placement adoptions.

722.954 Licensure as foster parent; orientation as condition to certification; written information to be provided foster parents before placement; confidentiality.

(1) Before certifying an individual for licensure as a foster parent, a child placing agency shall conduct an orientation designed to ensure the individual's understanding of the purposes of foster care, including the temporary nature of foster care and the ultimate goal of returning the child to his or her permanent family or preparing the child for adoption.

(2) Before placing a child with foster parents, a child placing agency shall provide the foster parents with written information including all of the following:

(a) Any history of abuse or neglect of the child.

(b) All known emotional and psychological problems of the child.

(c) All behavior problems of the child that might present any risk to the foster family.

(d) Any other information necessary to enable the foster family to provide a stable, safe, and healthy environment for the foster child and for other members of the foster family.

(3) The child placing agency shall explain to the foster parents that the information provided under subsection (2) about the child and the child's family is confidential.

722.954a Placement of child in supervising agency's care; determination of placement with relative; documentation of decision; review hearing.

(1) If a child has been placed in a supervising agency's care under chapter XIIA of 1939 PA 288, MCL 712A.1 to 712A.32, the supervising agency shall comply with this section and sections 4b and 4c.

(2) Upon removal, as part of a child's initial case service plan as required by rules promulgated under 1973 PA 116, MCL 722.111 to 722.128, and by section 18f of chapter XIIA of 1939 PA 288, MCL 712A.18f, the supervising agency shall, within 30 days, identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to foster care. Not more than 90 days after the child's removal from his or her home, the supervising agency shall do all of the following:

(a) Make a placement decision and document in writing the reason for the decision.

(b) Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

(3) A person who receives a written decision described in subsection (2) may request in writing, within 5 days, documentation of the reasons for the decision, and if the person does not agree with the placement decision, he or she may request that the child's attorney review the decision to determine if the decision is in the child's best interest. If the child's attorney determines the decision is not in the child's best interest, within 14 days after the date of the written decision the attorney shall petition the court that placed the child out of the child's home for a review hearing. The court shall commence the review hearing not more than 7 days after the date of the attorney's petition and shall hold the hearing on the record.

722.954b Permanent placement; 12-month goal; inclusion in directory of children; in-home visits.

(1) A supervising agency shall strive to achieve a permanent placement for each child in its care, including either a safe return to the child's home or implementation of a permanency plan, no more than 12 months after the child is removed from his or her home. This 12-month goal shall not be extended or delayed for reasons such as a change or transfer of staff or worker at the supervising agency.

(2) If an adoptive family for a child has not been identified within 90 days after entry of an order of termination of parental rights, the supervising agency shall submit the necessary information for inclusion of the child in the directory of children described in section 8.

(3) The supervising agency shall require that its worker make monthly visits to the home or facility in which each child is placed. The supervising agency shall also require its worker to monitor and assess in-home visitation between the child and his or her parents. To ensure the occurrence of in-home visits required under this subsection, the supervising agency shall institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved.

722.954c Release of child's medical records; medical passport; contents; transfer; performance of assessment or psychological evaluation; medical examination.

(1) The supervising agency shall obtain from the parent, guardian, or custodian of each child who is placed in its care the name and address of the child's medical provider and a signed document for the release of the child's medical records. The supervising agency shall require that a child's medical provider remain constant while the child is in foster care, unless the child's current primary medical provider is a managed care health plan or unless doing so would create an unreasonable burden for the relative, foster parent, or other custodian.

(2) The supervising agency shall develop a medical passport for each child who comes under its care. The medical passport shall contain all of the following:

(a) All medical information required by policy or law to be provided to foster parents.

(b) Basic medical history.

(c) A record of all immunizations.

(d) Any other information concerning the child's physical and mental health.

(3) Each foster care worker who transfers a child's medical passport to another foster care worker shall sign and date the passport, verifying that he or she has sought and obtained the necessary information required under subsection (2) and any additional information required under department policy. The supervising agency shall provide a copy of each medical passport and updates as required by the department for maintenance in a central location.

(4) If a child under the care of a supervising agency has suffered sexual abuse, serious physical abuse, or mental illness, the supervising agency shall have an experienced and licensed mental health professional as defined under MCL 330.1100b(14)(a) or (b) or a social worker certified under section 1606 of the occupational code, 1980 PA 299, MCL 339.1606, who is trained in children's psychological assessments perform an assessment or psychological evaluation of the child. The costs of the assessment or evaluation shall be borne by the supervising agency. This subsection applies only to a child who is made a state ward on or after the effective date of the amendatory act that added this section.

(5) A child's supervising agency shall ensure that the child receives a medical examination when the child is first placed in foster care. One objective of this examination is to provide a record of the child's medical and physical status upon entry into foster care.

722.954d Annual report card.

The department shall publish an annual report card for each supervising agency that evaluates the achievements of that agency in obtaining permanency for children and making recommendations for the removal of barriers to permanency.

722.955 Registration of attorney with children's ombudsman; filing of compliance; reregistration; request for removal.

Before providing services in a direct placement adoption as provided under the adoption code, an attorney shall register with the children's ombudsman by filing with the children's ombudsman a verified statement that the attorney is in compliance with all the requirements for an adoption attorney prescribed by section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws. An attorney who wishes to continue providing adoption services shall reregister with the children's ombudsman as provided in this section at least once every 5 years. An adoption attorney may request to be removed from the registry at any time.

722.956 Adoption facilitator; duties; cost.

(1) An adoption facilitator shall do all of the following:

(a) Provide a client with needed services related to adoption, including postadoption services, or make referrals to available resources in the community. The adoption facilitator shall emphasize the importance and availability of counseling for all parties to an adoption and explain that the prospective adoptive parent is required to pay for counseling for the birth parent or guardian unless the birth parent or guardian waives the counseling.

(b) Provide each individual who inquires about services with the pamphlet describing the adoption process prepared by the department under section 115m of the social welfare act, 1939 PA 280, MCL 400.115m. When providing services to an adoption client, the adoption facilitator shall review the pamphlet with the client and make sure the client understands the various alternatives that are available in the adoption process and how to get access to all of the following:

(i) The directory of children produced by the department under section 8.

(ii) The information contained in the registry of adoptive homes maintained by the department under section 8.

(iii) The public information forms on adoption facilitators maintained by the department pursuant to section 14d of 1973 PA 116, MCL 722.124d.

(c) Prepare and provide to each individual who inquires about services a written document that includes all of the following information:

(i) Types of adoptions the adoption facilitator handles.

(ii) A description of the services that the adoption facilitator provides.

(iii) A description of services that are available by referral.

(iv) Eligibility requirements the adoption facilitator has for adoptive families, if any.

(v) If the adoption facilitator is a child placing agency, the procedure used, or range of options the agency offers, for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian in the selection process.

(vi) The extent to which the adoption facilitator permits or encourages the exchange of identifying information or contact between biological and adoptive parents.

(vii) A description of postfinalization services that the adoption facilitator provides, if any.

(viii) A schedule of all fees that the adoption facilitator charges for adoption services.

(ix) A statement that each party to an adoption has a right to independent representation by an attorney and that 1 attorney may not represent both the biological parents or guardian and the prospective adoptive parents.

(d) Insure that each prospective adoptive parent completes an orientation program consistent with requirements for orientation programs developed under administrative rules by the department.

(e) Provide a prospective adoptive parent with written copies, other than those portions made confidential by state or federal law, of all of the following regarding the prospective adoptee:

(i) If not already provided under section 27 of chapter 10 of 1939 PA 288, MCL 710.27, the adoptee's nonidentifying information as listed and described by section 27(1) and (2) of chapter X of 1939 PA 288, MCL 710.27.

(ii) The petition or petitions that resulted in each placement of the child.

(iii) Initial and all updated case service plans concerning the child that were compiled during each foster care placement, whether in foster care, adoption, or otherwise.

(f) No later than the time of the preadoptive or adoptive placement, prepare and provide to the prospective adoptive parent written verification that all of the information described in subdivision (e) has been provided to the prospective adoptive parent.

(g) Not later than the time of the adoptee's preadoptive placement with the prospective adoptive parent, hold a conference with the prospective adoptive parent and do all of the following during that conference:

(i) Review and discuss the information provided to the prospective adoptive parent under subdivision (e).

(ii) Disclose to the prospective adoptive parent all other information known by or available to the adoption facilitator regarding the adoptee's medical and psychological needs.

(iii) Prepare and provide to the prospective adoptive parent a list of the adoptee's medical and psychological needs that are identified and discussed during the conference.

(iv) Prepare written verification for the signatures of the adoption facilitator and the prospective adoptive parent that the conference was held as required by this subdivision, and provide a copy of this written verification to the prospective adoptive parent.

(2) The information required under subsection (1) shall be provided without cost to the biological parent or guardian or prospective adoptive parent.

722.957 Adoption facilitator; placement based on age, race, religious affiliation, disability, or income level; participation of parent or guardian in selection of adoptive parent.

(1) Except as provided in subsection (2), an adoption facilitator shall not refuse to provide services to a potential adoptive parent based solely on age, race, religious affiliation, disability, or income level. A child placing agency shall not make placement decisions based solely on age, race, religious affiliation, disability, or income level.

(2) Subsection (1), as related to religious affiliation, does not apply to a private child placing agency operated, supervised, or controlled by a religious institution or organization that limits services or gives preference to an applicant of the same religion.

(3) In an adoption in which a parent or guardian selects or participates in the selection of the adoptive parent, an adoption facilitator shall allow the parent or guardian the option of selecting from the adoption facilitator's entire pool of potential adoptive parents who have been determined suitable to be adoptive parents of adoptees.

722.958 Rules; training; directory of children available for adoption; registry of adoptive homes; fee for maintaining directory information; foster parent resource centers; pilot project; report.

(1) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to ensure the comprehensive, high-quality training of foster care and adoption workers. It shall consult and may contract with colleges and universities, child placing agencies, and professional organizations

for the design and implementation of the training. The training shall stress cultural sensitivity, interagency cooperation, and respect for individuals and families.

(2) The department shall produce or contract with another person to produce a directory of children under the jurisdiction of the department who are available for adoption. The department shall make copies available throughout the state to ensure that interested individuals have reasonable access to the directory.

(3) The department shall establish and maintain a registry of adoptive homes to be used as a central clearinghouse for information about prospective adoptive parents. The department shall accept information from a prospective adoptive parent who has received a preplacement assessment with a finding that the individual is suitable to be the parent of an adoptee. The information shall be filed in a form and manner that will permit it to be readily accessible to biological parents or child placing agencies seeking adoptive homes for children. The department shall charge a prospective adoptive parent an initial fee of $100.00 for maintaining the information in the registry and a renewal fee of $50.00 for each year the prospective adoptive parent remains in the registry. The department shall provide information in the registry without charge to biological parents or child placing agencies who request it.

(4) The department may establish as pilot projects foster parent resource centers. Each resource center shall provide at least support for and coordination of respite care and assistance to foster parents in obtaining day care. Resource center staff shall pursue other activities designed to promote permanency for children, particularly children with special needs, such as support aimed at retaining foster parents. The department may fund the pilot foster parent resource centers using money appropriated to the department for the current fiscal year. After the pilot project has been in operation for 2 years, the department shall evaluate the pilot project on its organization, effectiveness, and success. The department shall report the results of this evaluation to the legislature, including in the report the number of foster parents who utilized the particular resource center and the top 10 concerns raised by those foster parents and how those concerns were handled.

SAFE DELIVERY OF NEWBORNS LAW

712.1 Short title of chapter; definitions.

(1) This chapter shall be known and may be cited as the "safe delivery of newborns law".

(2) As used in this chapter:

(a) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(b) "Court" means the family division of circuit court.

(c) "Department" means the family independence agency.

(d) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Emergency service provider" means a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when such an individual is inside the premises and on duty.

(f) "Fire department" means an organized fire department as that term is defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

(g) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(h) "Hospital" means a hospital that is licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(i) "Lawyer-guardian ad litem" means an attorney appointed under section 2 of this chapter. A lawyer-guardian ad litem represents the newborn, and has the powers and duties, as set forth in section 17d of chapter XIIA.

(j) "Newborn" means a child who a physician reasonably believes to be not more than 72 hours old.

(k) "Police station" means that term as defined in section 43 of the Michigan vehicle code, 1949 PA 300, MCL 257.43.

(l) "Preplacement assessment" means an assessment of a prospective adoptive parent as described in section 23f of chapter X.

(m) "Surrender" means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn.

712.2 Newborn surrendered to emergency service provider; court jurisdiction; effect of other provisions of law; immunity from civil action.

(1) The court has jurisdiction over a newborn who is surrendered to an emergency service provider as provided in section 3 of this chapter. The court may appoint a lawyer-guardian ad litem to represent a newborn in proceedings under this chapter.

(2) Except as provided in section 5 of this chapter, the reporting requirement of section 3 of the child protection law, 1975 PA 238, MCL 722.623, does not apply regarding a child surrendered to an emergency service provider as provided in section 3 of this chapter.

(3) Unless this chapter specifically provides otherwise, a provision in another chapter of this act does not apply to a proceeding under this chapter. Unless this chapter specifically provides otherwise, the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, does not apply to a proceeding under this chapter.

(4) A hospital and a child placing agency, and their agents and employees, are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under this chapter, except for an act or omission constituting gross negligence or willful or wanton misconduct. To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an employee or contractor of a fire department or police station has the same immunity that this subsection provides to a hospital's or child placing agency's agent or employee.

712.3 Conduct of emergency service provider.

(1) If a parent surrenders a child who may be a newborn to an emergency service provider, the emergency service provider shall comply with the requirements of this section under the assumption that the child is a newborn. The emergency service provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody. The emergency service provider shall make a reasonable effort to do all of the following:

(a) Take action necessary to protect the physical health and safety of the newborn.

(b) Inform the parent that by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(c) Inform the parent that the parent has 28 days to petition the court to regain custody of the newborn.

(d) Provide the parent with written material approved by or produced by the family independence agency that includes, but is not limited to, all of the following statements:

(i) By surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(ii) The parent has 28 days after surrendering the newborn to petition the court to regain custody of the newborn.

(iii) After the 28-day period to petition for custody elapses, there will be a hearing to terminate parental rights.

(iv) There will be public notice of this hearing, and the notice will not contain the parent's name.

(v) The parent will not receive personal notice of this hearing.

(vi) Information the parent provides to an emergency service provider will not be made public.

(vii) A parent can contact the safe delivery line established under section 20 of this chapter for more information.

(2) After providing a parent with the information described in subsection (1), an emergency service provider shall make a reasonable attempt to do all of the following:

(a) Encourage the parent to provide any relevant family or medical information.

(b) Provide the parent with the pamphlet produced under section 20 of this chapter and inform the parent that he or she can receive counseling or medical attention.

(c) Inform the parent that information that he or she provides will not be made public.

(d) Ask the parent to identify himself or herself.

(e) Inform the parent that in order to place the newborn for adoption the state is required to make a reasonable attempt to identify the other parent, and then ask the parent to identify the other parent.

(f) Inform the parent that the child placing agency that takes temporary protective custody of the newborn can provide confidential services to the parent.

(g) Inform the parent that the parent may sign a release for the newborn which may be used at the parental rights termination hearing.

(3) A newborn whose birth is described in the born alive infant protection act and who is in a hospital setting or transferred to a hospital under section 3(1) of the born alive infant protection act is a newborn surrendered as provided in this act. An emergency service provider who has received a newborn pursuant to the born alive infant protection act shall do all of the following:

(a) Comply with the requirements of subsections (1) and (2) to obtain information from or supply information to the surrendering parent by requesting the information from or supplying the information to the attending physician who delivered the newborn.

(b) Make no attempt to directly contact the parent or parents of the newborn.

(c) Provide humane comfort care if the newborn is determined to have no chance of survival due to gestational immaturity in light of available neonatal medical treatment or other condition incompatible with life.

712.5 Transfer of newborn to hospital; physician report of abuse, neglect, or child not a newborn; notice to child placing agency.

(1) An emergency service provider that is not a hospital and that takes a newborn into temporary protective custody under section 3 of this chapter shall transfer the newborn to a hospital. The hospital shall accept a newborn who an emergency service provider transfers to the hospital in compliance with this chapter, taking the newborn into temporary protective custody.

(2) A hospital that takes a newborn into temporary protective custody under this chapter shall have the newborn examined by a physician. If a physician who examines the newborn either determines that there is reason to suspect the newborn has experienced child abuse or child neglect, other than being surrendered to an emergency service provider under section 3 of this chapter, or comes to a reasonable belief that the child is not a newborn, the physician shall immediately report to the department as required by section 3 of the child protection law, 1975 PA 238, MCL 722.623.

(3) If a physician is not required to report to the department as provided in subsection (2), the hospital shall notify a child placing agency that the hospital has taken a newborn into temporary protective custody under this chapter.

712.7 Duties of child placing agency.

Upon receipt of notice from a hospital under section 5 of this chapter, the child placing agency shall do all of the following:

(a) Immediately assume the care, control, and temporary protective custody of the newborn.

(b) If a parent is known and willing, immediately meet with the parent.

(c) Make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment and resides within the state.

(d) Immediately request assistance from law enforcement officials to investigate and determine, through the missing children information clearinghouse, the national center for missing and exploited children, and any other national and state resources, whether the newborn is a missing child.

(e) Not later than 48 hours after a transfer of physical custody to a prospective adoptive parent, petition the court in the county in which the prospective adoptive parent resides to provide authority to place the newborn and provide care for the newborn. The petition shall include all of the following:

(i) The date of the transfer of physical custody.

(ii) The name and address of the emergency service provider to whom the newborn was surrendered.

(iii) Any information, either written or verbal, that was provided by and to the parent who surrendered the newborn. The emergency service provider that originally accepted the newborn as required by section 3 of this chapter shall provide this information to the child placing agency.

(f) Within 28 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the child placing agency shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

712.10 Custody action by biological parent; filing; hearing.

(1) If a biological parent wants custody of a newborn who was surrendered under section 3 of this chapter, the parent must, within 28 days after the newborn was surrendered,

file an action with the court for custody. The parent shall file the custody action in 1 of the following counties:

(a) If the parent has located the newborn, the county where the newborn is located.

(b) If subdivision (a) does not apply and the parent knows the location of the emergency service provider to whom the newborn was surrendered, the county where the emergency service provider is located.

(c) If neither subdivision (a) nor (b) apply, the county where the parent is located.

(2) Before holding a custody hearing in an action filed under this section, the court shall determine whether the individual filing the custody action is the newborn's biological parent.

712.11 Blood or tissue typing or DNA identification profiling; court order in custody hearing; compensation of expert.

(1) In a custody action filed under this chapter, the court shall order that each party claiming paternity or maternity and the child submit to blood or tissue typing determinations, which may include, but are not limited to, determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA identification profiling, to determine whether each party is likely to be, or is not, a biological parent of the child. If the court orders a blood or tissue typing or DNA identification profiling to be conducted and a party refuses to submit to the typing or DNA identification profiling, in addition to any other remedies available, the court may do either of the following:

(a) Dismiss the custody action in regard to the party who refuses.

(b) If a hearing is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.

(2) A blood or tissue typing or DNA identification profiling shall be conducted by a person accredited for paternity or maternity determinations by a nationally recognized scientific organization, including, but not limited to, the American association of blood banks.

(3) The court shall fix the compensation of an expert at a reasonable amount. Except for an individual who the court determines is indigent, the court shall direct each party claiming paternity or maternity to pay the compensation for his or her own testing plus a portion of the compensation for testing the child equal to the total amount divided by the number of parties claiming paternity and maternity. Before blood or tissue typing or DNA identification profiling is conducted, the court may order a part or all of the compensation paid in advance. Documentation of the genetic testing

expenses is admissible as evidence of the amount, which evidence constitutes prima facie evidence of the amount of those expenses without third party foundation testimony.

712.12 Blood or tissue typing or DNA identification profile; summary report of result; objection; admissibility; presumption of paternity or maternity.

(1) Subject to subsection (2), the result of blood or tissue typing or a DNA identification profile made under this chapter and the summary report shall be served on the party who was the test subject. The summary report shall be filed with the court. Objection to the DNA identification profile or summary report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the party. The court shall not schedule a hearing on the issue of paternity or maternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this chapter the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period and on the motion of a party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in section 11 of this chapter that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.

(2) If the probability of paternity or maternity determined by the qualified person described in section 11 of this chapter conducting the blood or tissue typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (1), paternity or maternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of paternity or maternity greater than 99%, the contracting laboratory shall conduct additional genetic testing until all but 1 of the putative fathers or putative mothers is eliminated, unless the dispute involves 2 or more putative fathers or putative mothers who have identical DNA.

(3) Upon the establishment of the presumption of paternity or maternity as provided in subsection (2), the party who has the benefit of the presumption may move for summary disposition under the court rules on the issue of his paternity or her maternity.

712.13 **Information obtained from genetic testing; disclosure of information; retention or destruction of genetic testing material; records; verification of compliance of contracting laboratory; audit; violation as misdemeanor; penalty.**

(1) Except as authorized under this chapter, a person shall not disclose information obtained from genetic testing that is authorized under this chapter.

(2) If a party who is tested as part of an action under this chapter is found to be the child's biological parent, the contracting laboratory shall retain the genetic testing material of the parent and the child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a party is found not to be the child's biological parent, the contracting laboratory shall destroy the party's genetic testing material after it is used in the action, in compliance with section 13811 of the public health code, 1978 PA 368, MCL 333.13811, and in the presence of a witness. The witness may be an individual who is a party to the destruction of the genetic testing material. After the genetic testing material is destroyed, the contracting laboratory shall make and keep a written record of the destruction and have the individual who witnessed the destruction sign the record. The contracting laboratory shall also expunge the contracting laboratory's records regarding the genetic testing performed on the genetic testing material in accordance with the national standards under which the laboratory is accredited. The contracting laboratory shall retain the genetic testing material of the child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. After a contracting laboratory destroys an individual's genetic testing material as provided in this subsection, it shall notify the adult individual, or the parent or legal guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(3) A contracting laboratory or another entity involved with the genetic testing are all required to protect the confidentiality of genetic testing material, except as required for a paternity or maternity determination under this chapter. The court and its officers shall not use or disclose genetic testing material for a purpose other than the paternity or maternity determination as authorized by this chapter.

(4) A person shall not sell, transfer, or offer genetic testing material obtained under this chapter except as authorized by this chapter.

(5) A contracting laboratory shall annually cause to be conducted an independent audit verifying the contracting laboratory's compliance with this section and sections 11 and 12 of this chapter. The audit shall not disclose the names of, or otherwise identify, the test subjects required to submit to blood or tissue typing or DNA identification profiling under section 11 of this chapter during the previous year. The contracting laboratory shall forward the audit to the department of consumer and industry services.

(6) A violation of this section is a misdemeanor punishable by a fine of not more than $5,000.00. A second or subsequent violation of this section is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $10,000.00, or both.

712.14 Determination of custody; basis; newborn's best interest; factors.

(1) In a custody action under this chapter, the court shall determine custody of the newborn based on the newborn's best interest. The court shall consider, evaluate, and make findings on each factor of the newborn's best interest with the goal of achieving permanence for the newborn at the earliest possible date.

(2) A newborn's best interest in a custody action under this chapter is all of the following factors regarding a parent claiming parenthood of the newborn:

(a) The love, affection, and other emotional ties existing between the newborn and the parent.

(b) The parent's capacity to give the newborn love, affection, and guidance.

(c) The parent's capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The permanence, as a family unit, of the existing or proposed custodial home.

(e) The parent's moral fitness.

(f) The parent's mental and physical health.

(g) Whether the parent has a history of domestic violence.

(h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn's birth or surrender.

(i) Any other factor considered by the court to be relevant to the determination of the newborn's best interest.

712.15 Court order.

Based on the court's finding of the newborn's best interest under section 14 of this chapter, the court may issue an order that does 1 of the following:

(a) Grants legal or physical custody, or both, of the newborn to the parent, and either retains or relinquishes jurisdiction.

(b) Terminates the parent's parental rights and gives a child placing agency custody and care of the newborn.

712.17 Release or termination of parental rights.

(1) A parent who surrenders a newborn under section 3 of this chapter and who does not file a custody action under section 10 of this chapter is presumed to have knowingly released his or her parental rights to the newborn.

(2) If a custody action is not filed under section 10 of this chapter, the child placing agency shall petition the court for termination of parental rights under section 19b of chapter XIIA. If the agency has complied with section 7(f) of this chapter, the notice under that section is the notice to the newborn's parents required by section 19b of chapter XIIA.

712.20 Safe delivery program; establishment.

The department of community health in conjunction with the department shall establish a safe delivery program. The safe delivery program shall include, but is not limited to, both of the following:

(a) A toll-free, 24-hour telephone line. The information provided with this telephone line shall include, but is not limited to, all of the following:

(i) Information on prenatal care and the delivery of a newborn.

(ii) Names of health agencies that can assist in obtaining services and supports that provide for the pregnancy-related health of the mother and the health of the baby.

(iii) Information on adoption options and the name and telephone number of a child placing agency that can assist a parent or expecting parent in obtaining adoption services.

(iv) Information that, in order to safely provide for the health of the mother and her newborn, the best place for the delivery of a child is in a hospital, hospital-based birthing center, or birthing center that is accredited by the commission for the accreditation of birth centers.

(v) An explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system, if requested by the mother.

(vi) Information that a hospital will take into protective custody a newborn that is surrendered as provided for in this chapter and, if needed, provide emergency medical assistance to the mother, the newborn, or both.

(vii) Information regarding legal and procedural requirements related to the voluntary surrender of a child as provided for in this chapter.

(viii) Information regarding the legal consequences for endangering a child, including child protective service investigations and potential criminal penalties.

(ix) Information that surrendering a newborn for adoption as provided in this chapter is an affirmative defense to charges of abandonment as provided in section 135 of the Michigan penal code, 1931 PA 328, MCL 750.135.

(x) Information about resources for counseling and assistance with crisis management.

(b) A pamphlet that provides information to the public concerning the safe delivery program. The department of community health and the department shall jointly publish and distribute the pamphlet. The pamphlet shall prominently display the toll-free telephone number prescribed by subdivision (a).

MICHIGAN CHILDREN'S INSTITUTE

400.201 Michigan children's institute; creation; transfer of records and property from state public school.

That in order the state may more effectively exercise the duty and obligation which it owes to unfortunate children, there is hereby created and established the Michigan children's institute. Such records, papers, equipment and appurtenances as needed from the state public school shall be transferred to the said institute and whenever the name "state public school" appears in any statute of this state it shall be taken and deemed to mean the Michigan children's institute.

400.202 Children's institute; control by social welfare commission; superintendent, officers and employees.

The said Michigan children's institute shall be under the control and management of the Michigan social welfare commission, hereinafter referred to as "the commission", whose appointment and duties are provided in Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.90, inclusive, of the Compiled Laws of 1948, and as further expressly provided for in this act. The commission shall appoint the superintendent, and such other officers and employees as it shall deem necessary, who shall severally hold their offices and positions during the pleasure of the commission.

400.203 Provisions for admission of child under 17 to Michigan children's institute.

(1) A child under 17 years of age, provision for whose support and education has been made under regulations of the family independence agency, may be admitted to the Michigan children's institute by commitment to the family independence agency. All children committed to the Michigan children's institute shall be considered committed to the family independence agency and shall be subject to review by the juvenile division of the probate court under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32. The superintendent of the institute shall represent the state as guardian of each child committed beginning with the day the child is admitted and continuing until the child is 19, unless the superintendent or the family independence agency discharges the child sooner as provided in section 8 or 9. Wherever commitment to the Michigan children's institute is mentioned in any law of this state, it shall be construed to mean commitment to the family independence agency. A child may be committed to the family independence agency by either of the following:

(a) By the juvenile division of the probate court, if the child is within the court's jurisdiction under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(b) By the probate court, if the child is a ward of the court and the court has denied an order of adoption for the child.

(c) By observation order. If a child has been decreed to be a ward of the probate court or the juvenile division of the probate court has acquired formal jurisdiction of a child, and it appears to the probate court that, because of the circumstances of the case or because the child's condition might be benefited, the court may make a temporary commitment to the family independence agency and direct that the child be taken to a facility of the Michigan children's institute for observation for a period not to exceed 90 days. Before the expiration of this order of observation, the superintendent of the institute shall report to the probate court the results of the observation of the child. If the superintendent reports to the probate court that the order of observation should be extended or that the child is in need of treatment for emotional disturbance that does not require hospital care and for which the institute has facilities, then the court may extend the temporary commitment and continue the observation order or establish a treatment period for the child to any date prior to the nineteenth birthday of the child. If the child has ceased to be a ward of the court, written consent of the person or persons lawfully having custody of the child shall be secured. Before the expiration of this extended order of observation or treatment, the superintendent shall report to the probate court the results of the observation or treatment of the child and an opinion stating what disposition can be made of the child. Before any child is sent to a facility of the institute for observation, the superintendent of the institute shall notify the probate court that there is room to receive the child and shall designate the facility of the institute for the reception of the child. The commission may by regulation establish conditions for the reimbursement of the expense of caring for the child while under the supervision of the institute if the parents or other persons responsible for the child's support are financially able to pay reasonable costs of the child's care.

(2) The superintendent of the institute has the power to make decisions on behalf of a child committed to the institute. The attorney general or his or her representative shall represent the Michigan children's institute superintendent in any court proceeding in which the superintendent considers such representation necessary to carry out his or her duties under this act.

400.204 Michigan children's institute; commitment order; transportation; expense; communication with child's attorney.

(1) Within 30 days after an order is made committing a child to the superintendent of the Michigan children's institute, the court shall send to the superintendent a certified copy of the petition, the order of disposition in the case, and the report of the physician who examined the child. Upon receipt of the order the superintendent of

the Michigan children's institute shall notify the court of the child's placement so that the court may cause the child to be transported to that placement. The expense of the child's transportation shall be audited by the auditor general or a certified public accountant appointed by the auditor general and paid from the general fund in the same manner as the expense of conveying children to other institutions of the state.

(2) During the time a child is committed to the superintendent of the Michigan children's institute, the superintendent and the child's attorney may communicate with each other regarding issues of commitment, placement, and permanency planning; and if the child's attorney has an objection or concern regarding such an issue, the superintendent and the child's attorney shall consult with each other regarding that issue.

400.205 Committed children; placement in private home, investigation, court order.

In case a child has been committed to said institute, and a person in the same county has been found who is willing to take said child into his home under the same conditions as children placed out on agreement, or for adoption from the said institute, the court, county agent, probation officer or any other person representing the court or state in the placement of children may notify the superintendent of said institute, giving the name and the address of the party interested in taking the child into his home; whereupon the superintendent shall order an investigation be made, and if it appears that the home is a suitable one for said child, the child shall be placed and the order of the court entered on the records of the said institute. Upon entering the order of the court on the records of the said institute, the child shall be considered a ward of said institute and may be supervised, or adopted as are other wards of the said institute: Provided, In case the investigation indicates that the child is not eligible for admission to the said institute because of some mental or physical defect, or should not be offered for adoption because of a mental defect in its forbears, or being of unknown parentage and too young to determine its mental and physical development, the superintendent shall so notify the court with reasons thereof and further disposition shall be made by said court.

400.206 Committed children; temporary residential facilities.

The commission shall maintain at Ann Arbor and at such other places as may be made available to the commission, temporary residential facilities for the reception of children sent to the institute under sections 3 or 4 of this act, or for their care between placements in family homes, or for other temporary purposes. Such facilities may include office space for employees of the commission engaged in the maintenance of the facilities or who work in their vicinity.

400.207 **Rules for maintenance, health, instruction, and training of children; liability for cost of child's care; superintendent as authorized agent; receipt and disposition of donation, grant, or personal property; investments; crediting earnings; expenditures; requisition from trust fund; utilization of county facilities; services of voluntary organization; enforcement of rules; cancellation of agreement; restoration of child to parent or relative; assistance to parent or relative; licensed boarding home; expense; reimbursement; investigation; report.**

(1) The department shall promulgate necessary rules for the maintenance, health, instruction, and training of the children under the control of the Michigan children's institute, for placing them in homes, and for their supervision while they remain public wards. The liability of a county for the cost of a child's care shall be determined under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(2) The superintendent is the authorized agent of the department to implement this act.

(3) The superintendent or the department may receive any donation, grant, or personal property for the benefit of the children of the Michigan children's institute. Upon receiving a donation, grant, or personal property, the superintendent or the department shall remit it within 30 days to the state treasury to be credited to the Michigan children's institute trust fund, which is created in the state treasury. The state treasurer may keep as much of the fund as the treasurer considers advisable invested in United States government bonds, notes, bills, certificates, or other obligations, and shall credit the earnings on the investments to the fund.

(4) The department may expend necessary amounts for the purposes of the Michigan children's institute for the care and education of the children during minority or until released as provided in this act. When a part of the trust fund is required by the department for these purposes, the superintendent shall obtain those funds by requisition.

(5) The department may utilize facilities existing in a county in caring for children and may accept the services of a voluntary organization for the benefit of the children, subject to rules promulgated by the department. The superintendent shall enforce these rules on behalf of the department.

(6) An agreement entered into with a person for the care of a child who is a ward of the Michigan children's institute shall provide that the department may cancel the agreement if, in the department's opinion, the interest of the child requires it. If a parent or relative within the third degree of consanguinity or affinity of a child who is a ward of the institute establishes a suitable home and is capable and willing to support the child, the department may restore the child to his or her parent or

relative. The institute may assist the parent or relative with the support of the child if the aid is less than the cost of care the institute would otherwise provide.

(7) The department may place and maintain a child under the control of the institute in a licensed boarding home for children. The expense of supervision and transportation of the child to the home shall be paid out of money appropriated to the institute, subject to partial reimbursement by the county liable as provided in this section. The superintendent shall cause an investigation of the condition and suitability of each boarding home to be made and a report to be made and kept on file at the superintendent's office. The report shall have the superintendent's approval before a child of the institute may be placed in the licensed boarding home.

400.208 Committed children; return to home county.

The said commission is authorized to return to the counties from which they were sent, the following classes of children:

First, those who have become 16 years of age and who, for any reason, cannot be placed or retained in family homes.

Second, those who by reason of vicious habits or incorrigibility, cannot be placed in or retained in family homes.

Third, those who are of unsound mind or body, or have some physical disability, which prevents their being placed in family homes. Whenever a child shall be ordered by said commission to be returned to a county, as herein provided, the guardianship of the said commission shall cease, and the child thereupon becomes a charge on the county from which it was sent, and the superintendent shall report to the court the reasons thereof, and any other information which may assist the court in a further disposition of the child.

400. 209 Committed children; adoption, marriage, emancipation; consent by superintendent; preliminary consent denial review process.

(1) The superintendent of the institute is authorized to consent to the adoption, marriage, or emancipation of any child who may have been committed to the institute, according to the laws for the adoption, marriage, or emancipation of minors. On such adoption, marriage, or emancipation, the child so adopted, married, or emancipated shall cease to be a ward of the state.

(2) On the effective date of the amendatory act that added this subsection, the family independence agency shall discontinue the Michigan children's institute preliminary consent denial review process.

400.210 Committed children; application for removal from institute, procedure; visitation to homes.

Any person desiring to take a child from said institute by agreement or adoption shall apply for that purpose in writing, on such form as said commission shall prescribe, to the superintendent or to the judge of probate of the county in which the applicant resides. The superintendent of said institute shall require an investigation of the home of the applicant upon such forms as the commission shall prescribe. Said commission shall procure 1 or more reports, at least 4 times each year, for each child placed in a home for adoption or on an agreement, either from the county agent, officer of the institute or the person with whom the child is placed, and at such times as the superintendent of said institute may direct.

It shall be the duty of county agents or child welfare workers of the state department of social welfare in their respective counties, to visit the wards of the said institute at such times as they are requested to do so, by said superintendent, and to report on said homes and children to said institute.

400.211 Preservation of records; confidentiality.

The commission shall preserve in said institute all legal and other papers of importance including reports of investigation of parentage, of family conditions of the children committed to said institute, and also a brief history of each child, showing its name, age, county, former residence, occupations, habits and character, so far as can be ascertained, and the name and residence and occupation of the person who has taken the child by agreement, or for adoption. In any report of any officer of the institute, or any agent of the state department of social welfare or any state or county officer, no names of such children, wards of the state, shall be published. Act No. 142 of the Public Acts of 1909, as amended, and Act No. 115 of the Public Acts of 1925, being sections 6733 to 6736, inclusive, of the Compiled Laws of 1929 shall not apply to said institute. All records pertaining to any child committed to said institute shall be filed as confidential and shall not be made public thereafter, excepting as the said commission shall authorize, when deemed necessary for the best interest of the child.

400.214 Aiding child to escape; penalty.

Any person who shall aid or assist, or entice a child under the control of the said institute to escape from a home in which said child has been placed, or shall aid, entice or assist any such child to leave the state, or shall marry any such child without the consent of the said commission, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding 100 dollars and costs of prosecution, or by imprisonment in a county jail, or any of the state prisons for a term not exceeding a year, or by both such fine and imprisonment according to the discretion of the court.

***Statutes cited are accurate as of the date of publication. Please visit http://thomas.loc.gov or www.firstgov.gov to ensure that all provisions are accurate before relying on them.**

SELECTED PROVISIONS OF THE ADOPTION AND SAFE FAMILIES ACT OF 1997

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) In General.--Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that--

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

"(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

"(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for a child to safely return to the child's home;

"(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; "(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

"(ii) the parent has--

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if

the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

"(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

"(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

"(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--

"(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and "(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

"(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);".

(b) Definition of Legal Guardianship.--Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(7) The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term 'legal guardian' means the caretaker in such a relationship.".

SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.

(a) Requirement for Proceedings.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended--

(3) by adding at the end the following:

"(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless--

"(i) at the option of the State, the child is being cared for by a relative;

"(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

"(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.".

(b) Determination of Beginning of Foster Care.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended--

(3) by adding at the end the following:

"(F) a child shall be considered to have entered foster care on the earlier of--

"(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

"(ii) the date that is 60 days after the date on which the child is removed from the home.".

(c) Transition Rules.--

(1) New foster children.--In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act--

(A) if the State comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

(B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) Current foster children.--In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall--

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than \1/3\ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time;

(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than \2/3\ of such children as the State shall select; and

(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended--

(3) by adding at the end the following:

"(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child

be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.".

SEC. 107. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended--

(1) in the last sentence--

(2) by adding at the end the following:

"(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.".

SEC. 302. PERMANENCY HEARINGS.

Section 475(5)(C) of the Social Security Act (42 U.S.C. 675(5)(C)) is amended--

(5) The term "case review system" means a procedure for assuring that--

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living

arrangement and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents;

SEC. 305. REAUTHORIZATION AND EXPANSION OF FAMILY PRESERVATION AND SUPPORT SERVICES.

(b) Expansion for Time-Limited Family Reunification Services and Adoption Promotion and Support Services.--

(2) Definitions of time-limited family reunification services and adoption promotion and support services.--Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)) is amended by adding at the end the following:

"(7) Time-limited family reunification services.--

"(A) In general.--The term 'time-limited family reunification services' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care.

"(B) Services and activities described.--The services and activities described in this subparagraph are the following:

"(i) Individual, group, and family counseling.

"(ii) Inpatient, residential, or outpatient substance abuse treatment services.

"(iii) Mental health services.

"(iv) Assistance to address domestic violence.

"(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.

"(vi) Transportation to or from any of the services and activities described in this subparagraph.

SELECTED PROVISIONS OF TITLE VI-E

Introduction

The regulations (45 CFR 1355, 1356, and 1357), which went into effect on March 27, 2000, (with a 12 month grace period for provisions pertaining to permanency plan requirements) incorporated provisions of the Adoptions and Safe Families Act and the Multi Ethnic Placement Act. They also amended existing regulations by adding new requirements for state compliance with Title IV-B and IV-E of the Social Security Act. Pursuant to the regulations, the courts must take an active role to guarantee that children are not unnecessarily removed from their homes; that efforts are made to reunify them with their families; and that permanent homes are found timely, if those efforts are unsuccessful. The courts are charged with overseeing hearings and issuing judicial findings in several areas to further this purpose. Specifically, for a child in foster care to receive federal Title IV-E funding, the Court must find, upon removal, that it is contrary to the welfare of the child to remain in the home; that within 60 days from the child's removal, reasonable efforts have been made to prevent the removal; and within 12 months from the date the child enters foster care, and every twelve months thereafter, reasonable efforts to finalize the permanency plan are made.

45 CFR 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

Adoption means the method provided by State law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process is complete.

Child abuse and neglect means the definition contained in 42 U.S.C. 5106(g)(2).

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include

detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to §1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Entity, as used in §1355.38, means any organization or agency (*e.g.,* a private child placing agency) that is separate and independent of the State agency; performs title IV-E functions pursuant to a contract or subcontract with the State agency; and, receives title IV-E funds. A State court is not an "entity" for the purposes of §1355.38 except if an administrative arm of the State court carries out title IV-E administrative functions pursuant to a contract with the State agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation

with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. "Daily supervision" for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment and a subsequent on-site review, as described in §1355.33 of this part.

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:

protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State review of one or more federally-assisted child and family services program(s) in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part; and

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, *e.g.*, compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a

compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

State means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E the term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

State agency means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

Statewide assessment means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in §1355.33(b) of this part, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

45 CFR 1355.34 Criteria for determining substantial conformity.

(c) *Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Based on information from the statewide assessment and onsite review, the State must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the State plan requirements associated with the systemic factor must be in place, and no more than one of the state plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section, is rated on the basis of only one State plan requirement. To be considered in substantial conformity, the State plan requirement associated with statewide information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(2) *Case review system:* The State has procedures in place that:

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(10)(B)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

45 CFR 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) *Reasonable efforts.* The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child

and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.* (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.* (i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c)

of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5) (A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent

with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

(h) *Application of the permanency hearing requirements.* (1) To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and §1355.20 of this part;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the State does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the State, the child is being cared for by a relative;

(ii) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in §1355.20 of this part.

(k) *Removal from the home of a specified relative.* (1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation with the force of law.

(o) *Notice and opportunity to be heard.* The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not include the right to standing as a party to the case.

TITLE IV-E

§ 672. Foster care maintenance payments program

(a) **Qualifying children**

Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 675 (4) of this title) under this part with respect to a child who would have met the requirements of section 606 (a) of this title or of section 607 of this title (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative (specified in section 606 (a) of this title (as so in effect)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 671 (a)(15) of this title for a child have been made;

(2) such child's placement and care are the responsibility of

(A) the State agency administering the State plan approved under section 671 of this title, or

(B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 671 of this title has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child—

(A) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(B)

(i) would have received such aid in or for such month if application had been made therefor, or

(ii) had been living with a relative specified in section 606 (a) of this title (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 1255a (h), 1160 (f), or 1161 (d)(7) [1] of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673 (a)(2)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification. In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602 (a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602 (a)(7)(B) of this title).

(b) **Additional qualifications**
Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675 (4) of this title).

(c) **"Foster family home" and "child-care institution" defined**
For the purposes of this part,

(1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and

(2) the term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been

approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) **Children removed from their homes pursuant to voluntary placement agreements**

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 622 (b)(10) of this title.

(e) **Placements in best interest of child**

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) **"Voluntary placement" and "voluntary placement agreement" defined**

For the purposes of this part and part B of this subchapter,

(1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and

(2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) **Revocation of voluntary placement agreement**

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) **Aid for dependent children; assistance for minor children in needy families**

(1) For purposes of subchapter XIX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect). For purposes of subchapter XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675 (4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

§ 673. Adoption assistance program

(a) **Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses**

(1)

(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675 (3) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency

or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

(A)

(i) at the time adoption proceedings were initiated, met the requirements of section 606 (a) of this title or section 607 of this title (as such sections were in effect on July 16, 1996) or would have met such requirements except for his removal from the home of a relative (specified in section 606 (a) of this title (as so in effect)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 674 (or 603 (as such section was in effect on July 16, 1996)) of this title or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

(ii) meets all of the requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income benefits, or

(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 675 (4)(B) of this title,

(B)

(i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)

(I) would have received such aid in or for such month if application had been made therefor, or

(II) had been living with a relative specified in section 606 (a) of this title (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 672 (a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence. Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph,

(A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and

(B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)

(A) For purposes of paragraph (1)(B)(i), the term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674 (a)(3)(E) of this title.

(b) **Aid for dependent children; assistance for minor children in needy families**

(1) For purposes of subchapter XIX of this chapter, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect) in the State where such child resides.

(2) For purposes of subchapter XX of this chapter, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)

(i) who is a child described in subsection (a)(2) of this section, and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(B) with respect to whom foster care maintenance payments are being made under section 672 of this title.

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675 (4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

(c) **Children with special needs**

For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined

(A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption

assistance under this section or medical assistance under subchapter XIX of this chapter, and

(B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

§ 673b Adoption incentive payments

(a) **Grant authority**
Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) **Incentive-eligible State**
A State is an incentive-eligible State for a fiscal year if—

(1) the State has a plan approved under this part for the fiscal year;

(2)

(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; or

(B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year;

(3) the State is in compliance with subsection (c) of this section for the fiscal year;

(4) in the case of fiscal years 2001 through 2007, the State provides health insurance coverage to any child with special needs (as determined under section 673 (c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years 1998 through 2007.

(c) **Data requirements**

(1) **In general**
A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) **Determination of numbers of adoptions based on AFCARS data**
The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during each of fiscal years 2002 through 2007, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) **No waiver of AFCARS requirements**
This section shall not be construed to alter or affect any requirement of section 679 of this title or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) **Adoption incentive payment**

(1) **In general**
Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) $2,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and

(C) $4,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the

base number of older child adoptions for the State for the fiscal year.

(2) **Pro rata adjustment if insufficient funds available**
For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) of this section for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

(e) **2-year availability of incentive payments**
Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

(f) **Limitations on use of incentive payments**
A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B of this subchapter or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 623, 629d, and 674 of this title.

(g) **Definitions**

As used in this section:

(1) **Foster child adoption**
The term "foster child adoption" means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) **Special needs adoption**
The term "special needs adoption" means the final adoption of a child for whom an adoption assistance agreement is in effect under section 673 of this title.

(3) **Base number of foster child adoptions**
The term "base number of foster child adoptions for a State" means—

(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(4) **Base number of special needs adoptions that are not older child adoptions**
The term "base number of special needs adoptions for a State" means—

(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(5) **Base number of older child adoptions**
The term "base number of older child adoptions for a State" means—

(A) with respect to fiscal year 2003, the number of older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(6) **Older child adoptions**
The term "older child adoptions" means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or

(B) an adoption assistance agreement was in effect under section 673 of this title with respect to the child.

(h) **Limitations on authorization of appropriations**

(1) **In general**
For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary—

(A) $20,000,000 for fiscal year 1999;

(B) $43,000,000 for fiscal year 2000;

(C) $20,000,000 for each of fiscal years 2001 through 2003; and

(D) $43,000,000 for each of fiscal years 2004 through 2008.

(2) **Availability**
Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a) of this section, are authorized to remain available until expended, but not after fiscal year 2008.

(i) **Technical assistance**

(1) **In general**
The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) **Description of the character of the technical assistance**
The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) **Targeting of technical assistance to the courts**
Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) **Limitations on authorization of appropriations**
To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 2004 through 2006.

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672 (a)(1) of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum

(A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and

(B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)

(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is

located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; [1]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care; [1]

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671 (a)(15)(B)(ii) of this title are required to be made with respect to the child; [1]

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; [1] and

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

§ 677. John H. Chafee Foster Care Independence Program

(a) **Purpose**
The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;

(3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

(4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

(b) **Applications**

(1) **In general**
A State may apply for funds from its allotment under subsection (c) of this section for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

(2) **State plan**
A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:

(A) Design and deliver programs to achieve the purposes of this section.

(B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.

(C) Ensure that the programs serve children of various ages and at various stages of achieving independence.

(D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

(E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.

(F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.

(3) **Certifications**
The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) of this section for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) of this section will be expended for room or board for any child who has not attained 18 years of age.

(D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.

(E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.

(F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) of this section with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5714–1 et seq.]), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.

(G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State.

(H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.

(I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

(J) A certification by the chief executive officer of the State that the State educational and training voucher program under this section is in compliance with the conditions specified in subsection (i) of this section, including a statement describing methods the State will use—

(i) to ensure that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs does not exceed the limitation specified in subsection (i)(5) of this section; and

(ii) to avoid duplication of benefits under this and any other Federal or Federally assisted benefit program.

(4) **Approval**
The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—

(A) the application is submitted on or before June 30 of the calendar year in which such period begins; and

(B) the Secretary finds that the application contains the material required by paragraph (1).

(5) **Authority to implement certain amendments; notification**
A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application,

incorporating the amendment, would be approvable under paragraph (4). Within 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.

(6) **Availability**
The State shall make available to the public any application submitted by the State pursuant to paragraph (1), and a brief summary of the plan contained in the application.

(c) **Allotments to States**

(1) **General program allotment**
From the amount specified in subsection (h)(1) of this section that remains after applying subsection (g)(2) of this section for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) of this section for the fiscal year the amount which bears the ratio to such remaining amount equal to the State foster care ratio, as adjusted in accordance with paragraph (2).

(2) **Hold harmless provision**

(A) **In general**
The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998, an additional amount equal to the difference between such allotment and such greater amount.

(B) **Ratable reduction of certain allotments**
In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year, the Secretary shall reduce the amount allotted to the State for the fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998 bears to the sum of such excess amounts determined for all such States.

(3) **Voucher program allotment**
From the amount, if any, appropriated pursuant to subsection (h)(2) of this section for a fiscal year, the Secretary may allot to each State with an application approved under subsection (b) of this section for the fiscal year an amount equal to the State foster care ratio multiplied by the amount so specified.

(4) **State foster care ratio**
In this subsection, the term "State foster care ratio" means the ratio of the number of children in foster care under a program of the State in the most recent fiscal year for which the information is available to the total number of children in foster care in all States for the most recent fiscal year.

(d) **Use of funds**

(1) **In general**
A State to which an amount is paid from its allotment under subsection (c) of this section may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.

(2) **No supplantation of other funds available for same general purposes**
The amounts paid to a State from its allotment under subsection (c) of this section shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.

(3) **Two-year availability of funds**
Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(4) **Reallocation of unused funds**
If a State does not apply for funds under this section for a fiscal year within such time as may be provided by the Secretary, the funds to which the State would be entitled for the fiscal year shall be reallocated to 1 or more other States on the basis of their relative need for additional payments under this section, as determined by the Secretary.

(e) **Penalties**

(1) **Use of grant in violation of this part**
If the Secretary is made aware, by an audit conducted under chapter 75 of title 31 or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) of this section has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b) of this section, the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.

(2) **Failure to comply with data reporting requirement**
The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) of this section in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.

(3) **Penalties based on degree of noncompliance**
The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) **Data collection and performance measurement**

(1) **In general**
The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—

(A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;

(B) identify data elements needed to track—

(i) the number and characteristics of children receiving services under this section;

(ii) the type and quantity of services being provided; and

(iii) State performance on the outcome measures; and

(C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after December 14, 1999.

(2) **Report to the Congress**
Within 12 months after December 14, 1999, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) **Evaluations**

(1) **In general**
The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal

development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.

(2) **Funding of evaluations**
The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) of this section for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) **Limitations on authorization of appropriations**
To carry out this section and for payments to States under section 674 (a)(4) of this title, there are authorized to be appropriated to the Secretary for each fiscal year—

(1) $140,000,000, which shall be available for all purposes under this section; and

(2) an additional $60,000,000, which are authorized to be available for payments to States for education and training vouchers for youths who age out of foster care, to assist the youths to develop skills necessary to lead independent and productive lives.

(i) **Educational and training vouchers**
The following conditions shall apply to a State educational and training voucher program under this section:

(1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

(2) For purposes of the voucher program, youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the State program under this section.

(3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.

(4) The voucher or vouchers provided for an individual under this section—

(A) may be available for the cost of attendance at an institution of higher education, as defined in section 1002 of title 20; and

(B) shall not exceed the lesser of $5,000 per year or the total cost of attendance, as defined in section 1087ll of title 20.

(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 1087ll of title 20, and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.

(6) The program is coordinated with other appropriate education and training programs.

INDIAN CHILD WELFARE ACT

1901 Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the * To * United States Constitution provides that "The Congress shall have Power * * with Indian tribes * regulate Commerce *[1]" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

1902 Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

1903 Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

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

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

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

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

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.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(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;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602 (c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

SUBCHAPTER I—CHILD CUSTODY PROCEEDINGS

1911 Indian tribe jurisdiction over Indian child custody proceedings

(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.

(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.

(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.

(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.

1912 Pending court proceedings

(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.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(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.

(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.

(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.

(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.

1913 Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

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

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) 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.

1914 Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

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 1911, 1912, and 1913 of this title.

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.

(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 his or her 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.

1916 Return of custody

(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.

(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.

1917 Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

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.

1918 Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911 (a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911 (b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911 (a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

1919 Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

1920 Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

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.

1921 Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

1922 Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter 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 subchapter, 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.

1923 Effective date

None of the provisions of this subchapter, except sections 1911 (a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

1931 Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The

objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV–B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program,

licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

1932 Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

1933 Funds for on and off reservation programs

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

1934 "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603 (c) of this title.

SUBCHAPTER III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

1951 Information availability to and disclosure by Secretary

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the

information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

1952 Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

1961 Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

1963 Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

***Rules cited are accurate as of the date of publication. Please visit www.courts.michigan.gov to ensure that all provisions are current before relying on them.**

Rule 3.901 Applicability of Rules

(A) Scope.

(1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.

(2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides.

(3) The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides. MCL 722.631 governs privileges in child protective proceedings.

(B) Application. Unless the context otherwise indicates:

(1) MCR 3.901-3.928, 3.980, and 3.991-3.993 apply to delinquency proceedings and child protective proceedings;

(2) MCR 3.931-3.950 apply only to delinquency proceedings;

(3) MCR 3.951-3.956 apply only to designated proceedings;

(4) MCR 3.961-3.978 apply only to child protective proceedings;

(5) MCR 3.981-3.989 apply only to minor personal protection order proceedings.

Rule 3.902 Construction

(A) In General. The rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties. Limitations on corrections of error are governed by MCR 2.613.

(B) Philosophy. The rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:

(1) receive the care, guidance, and control, preferably in the minor's own home, that is conducive to the minor's welfare and the best interests of the public; and

(2) when removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor's parents should have given the minor.

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1) "Case" means an action initiated in the family division of the circuit court by:

(a) submission of an original complaint, petition, or citation;

(b) acceptance of transfer of an action from another court or tribunal; or

(c) filing or registration of a foreign judgment or order.

(2) "Child protective proceeding" means a proceeding concerning an offense against a child.

(3) "Confidential file" means

(a) that part of a file made confidential by statute or court rule, including, but not limited to,

(i) the diversion record of a minor pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.;*

(ii) the separate statement about known victims of juvenile offenses, as required by the Crime Victim's Rights Act, MCL 780.751 *et seq.*;

(iii) the testimony taken during a closed proceeding pursuant to MCR 3.925(A)(2) and MCL 712A.17(7);

(iv) the dispositional reports pursuant to MCR 3.943(C)(3) and 3.973(E)(4);

(v) fingerprinting material required to be maintained pursuant to MCL 28.243;

(vi) reports of sexually motivated crimes, MCL 28.247;

(vii) test results of those charged with certain sexual offenses or substance abuse offenses, MCL 333.5129;

(b) the contents of a social file maintained by the court, including materials such as

(i) youth and family record fact sheet;

(ii) social study;

(iii) reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school, and police reports);

(iv) Family Independence Agency records;

(v) correspondence;

(vi) victim statements.

(4) "Court" means the family division of the circuit court.

(5) "Delinquency proceeding" means a proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3).

(6) "Designated proceeding" means a proceeding in which the prosecuting attorney has designated, or has requested the court to designate, the case for trial in the family division of the circuit court in the same manner as an adult.

(7) "Father" means:

(a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;

(b) A man who legally adopts the minor;

(c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;

(d) A man judicially determined to have parental rights; or

(e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in

this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.

(8) "File" means a repository for collection of the pleadings and other documents and materials related to a case.

(9) An authorized petition is deemed "filed" when it is delivered to, and accepted by, the clerk of the court.

(10) "Formal calendar" means judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child protective proceeding.

(11) "Guardian" means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.

(12) "Juvenile Code" means 1944 (1st Ex Sess) PA 54, MCL 712A.1 *et seq.*, as amended.

(13) "Legal Custodian" means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.

(14) "Legally admissible evidence" means evidence admissible under the Michigan Rules of Evidence.

(15) "Minor" means a person under the age of 18, and may include a person of age 18 or older over whom the court has continuing jurisdiction pursuant to MCL 712A.2a.

(16) "Officer" means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor.

(17) "Parent" means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.

(18) "Party" includes the

(a) petitioner and juvenile in a delinquency proceeding;

(b) petitioner, child, respondent, and parent, guardian, or legal custodian in a protective proceeding.

(19) "Petition" means a complaint or other written allegation, verified in the manner provided in MCR 2.114(B), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.

(20) "Petition authorized to be filed" refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.

(21) "Petitioner" means the person or agency who requests the court to take action.

(22) "Preliminary inquiry" means informal review by the court to determine appropriate action on a petition.

(23) "Putative father" means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).

(24) "Records" means the pleadings, motions, authorized petition, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.

(25) "Register of actions" means the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards. See MCR 8.119(D)(1)(c).

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

(B) Delinquency Proceedings. When used in delinquency proceedings, unless the context otherwise indicates:

(1) "Detention" means court-ordered removal of a juvenile from the custody of a parent, guardian, or legal custodian, pending trial, disposition, commitment, or further order.

(2) "Juvenile" means a minor alleged or found to be within the jurisdiction of the court for having committed an offense.

(3) "Offense by a juvenile" means an act that violates a criminal statute, a criminal ordinance, a traffic law, or a provision of MCL 712A.2(a) or (d).

(4) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and, in connection with the prosecution of an ordinance violation, an attorney

for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(C) **Child Protective Proceedings.** When used in child protective proceedings, unless the context otherwise indicates:

(1) "Agency" means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(2) "Child" means a minor alleged or found to be within the jurisdiction of the court pursuant to MCL 712A.2(b).

(3) "Contrary to the welfare of the child" includes, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed at risk.

(4) "Foster care" means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to,

(a) care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq.*, or

(b) care provided to a child in a relative's home pursuant to an order of the court.

(5) "Lawyer-guardian ad litem" means that term as defined in MCL 712A.13a(1)(f).

(6) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

(a) has substantial and regular contact with the child,

(b) has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare, and

(c) is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(7) "Offense against a child" means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.

(8) "Placement" means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.

(9) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

(10) Except as provided in MCR 3.977(B), "respondent" means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.

(D) Designated Proceedings.

(1) "Arraignment" means the first hearing in a designated case at which

(a) the juvenile is informed of the allegations, the juvenile's rights, and the potential consequences of the proceeding;

(b) the matter is set for a probable cause or designation hearing; and,

(c) if the juvenile is in custody or custody is requested pending trial, a decision is made regarding custody pursuant to MCR 3.935(C).

(2) "Court-designated case" means a case in which the court, pursuant to a request by the prosecuting attorney, has decided according to the factors set forth in MCR 3.952(C)(3) that the juvenile is to be tried in the family division of circuit court in the same manner as an adult for an offense other than a specified juvenile violation.

(3) "Designated case" means either a prosecutor-designated case or a court-designated case.

(4) "Designation hearing" means a hearing on the prosecuting attorney's request that the court designate the case for trial in the same manner as an adult in the family division of circuit court.

(5) "Preliminary examination" means a hearing at which the court determines whether there is probable cause to believe that the specified juvenile violation or alleged offense occurred and whether there is probable cause to believe that the juvenile committed the specified juvenile violation or alleged offense.

(6) "Prosecutor-designated case" means a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be tried in the same manner as an adult in the family division of the circuit court.

(7) "Sentencing" means the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the offense for which the juvenile was convicted or the decision to delay the imposition of such a sanction.

(8) "Specified juvenile violation" means any offense, attempted offense, conspiracy to commit an offense, or solicitation to commit an offense, as enumerated in MCL 712A.2d, that would constitute:

(a) burning of a dwelling house, MCL 750.72;

(b) assault with intent to commit murder, MCL 750.83;

(c) assault with intent to maim, MCL 750.86;

(d) assault with intent to rob while armed, MCL 750.89;

(e) attempted murder, MCL 750.91;

(f) first-degree murder, MCL 750.316;

(g) second-degree murder, MCL 750.317;

(h) kidnaping, MCL 750.349;

(i) first-degree criminal sexual conduct, MCL 750.520b;

(j) armed robbery, MCL 750.529;

(k) carjacking, MCL 750.529a;

(l) robbery of a bank, safe, or vault, MCL 750.531;

(m) possession, manufacture, or delivery of, or possession with intent to manufacture or deliver, 650 grams(1,000 grams beginning March 1, 2003) or more of any schedule 1 or 2 controlled substance, MCL 333.7401, 333.7403;

(n) assault with intent to do great bodily harm less than murder, MCL 750.84, if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);

(o) first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);

(p) escape or attempted escape from a medium security or high security facility operated by the Family Independence Agency or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a;

(q) any lesser-included offense of an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p); or

(r) any offense arising out of the same transaction as an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p).

(9) "Tried in the same manner as an adult" means a trial in which the juvenile is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction.

(E) Minor Personal Protection Order Proceedings. When used in minor personal protection order proceedings, unless the context otherwise indicates:

(1) "Minor personal protection order" means a personal protection order issued by a court against a minor under jurisdiction granted by MCL 712A.2(h).

(2) "Original petitioner" means the person who originally petitioned for the minor personal protection order.

(3) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

Rule 3.911 Jury

(A) Right. The right to a jury in a juvenile proceeding exists only at the trial.

(B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:

(1) 14 days after the court gives notice of the right to jury trial, or

(2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

(C) **Jury Procedure.** Jury procedure in juvenile cases is governed by MCR 2.508-2.516, except as provided in this subrule.

(1) In a delinquency proceeding,

(a) each party is entitled to 5 peremptory challenges, and

(b) the verdict must be unanimous.

(2) In a child protective proceeding,

(a) each party is entitled to 5 peremptory challenges, with the child considered a separate party, and

(b) a verdict in a case tried by 6 jurors will be received when 5 jurors agree.

(3) Two or more parties on the same side, other than a child in a child protective proceeding, are considered a single party for the purpose of peremptory challenges.

(a) When two or more parties are aligned on the same side and have adverse interests, the court shall allow each such party represented by a different attorney 3 peremptory challenges.

(b) When multiple parties are allowed more than 5 peremptory challenges under this subrule, the court may allow the opposite side a total number of peremptory challenges not to exceed the number allowed to the multiple parties.

(4) In a designated case, jury procedure is governed by MCR 6.401-6.420.

Rule 3.912 Judge

(A) Judge Required. A judge must preside at:

(1) a jury trial;

(2) a waiver proceeding under MCR 3.950;

(3) the preliminary examination, trial, and sentencing in a designated case;

(4) a proceeding on the issuance, modification, or termination of a minor personal protection order.

(B) Right; Demand. The parties have the right to a judge at a hearing on the formal calendar. A party may demand that a judge rather than a referee preside at a nonjury trial by filing a written demand with the court within:

(1) 14 days after the court gives notice of the right to a judge, or

(2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

(C) Designated Cases.

(1) The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause is waived. The judge who presides at a preliminary examination may accept a plea in the designated case.

(2) The juvenile has the right to demand that the same judge who accepted the plea or presided at the trial of a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case.

(D) Disqualification of Judge. The disqualification of a judge is governed by MCR 2.003.

Rule 3.913 Referees

(A) Assignment of Matters to Referees.

(1) General. Subject to the limitations in subrule (A)(2), the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A) and to make recommended findings and conclusions.

(2) Attorney and Nonattorney Referees.

(a) Delinquency Proceedings. Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court under MCL 712A.2(a)(1).

(b) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other

than a preliminary inquiry, preliminary hearing, a progress review under MCR 3.974(A), or an emergency removal hearing under MCR 3.974(B).

(c) Designated Cases. Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions.

(d) Minor Personal Protection Actions. A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions.

(B) Duration of Assignment. Unless a party has demanded trial by jury or by a judge pursuant to MCR 3.911 or 3.912, a referee may conduct the trial and further proceedings through disposition.

(C) Advice of Right to Review of Referee's Recommendations. During a hearing held by a referee, the referee must inform the parties of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 3.991(B).

Rule 3.914 Prosecuting Attorney

(A) General. On request of the court, the prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding or any delinquency proceeding.

(B) Delinquency Proceedings.

(1) Petition Approval. Only the prosecuting attorney may request the court to take jurisdiction of a juvenile under MCL 712A.2(a)(1).

(2) Appearance. The prosecuting attorney shall participate in every delinquency proceeding under MCL 712A.2(a)(1) that requires a hearing and the taking of testimony.

(C) Child Protective Proceedings.

(1) Legal Consultant to Agency. On request of the Michigan Family Independence Agency or of an agent under contract with the agency, the prosecuting attorney shall serve as a legal consultant to the agency or agent at all stages of a child protective proceeding.

(2) Retention of Counsel. In a child protective proceeding, the agency may retain legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency.

(D) Designated Proceedings.

(1) Specified Juvenile Violation. In a case in which the petition alleges a specified juvenile violation, only the prosecuting attorney may designate the case, or request leave to amend a petition to designate the case, for trial of the juvenile in the same manner as an adult.

(2) Other Offenses. In a case in which the petition alleges an offense other than the specified juvenile violation, only the prosecuting attorney may request the court to designate the case for trial of the juvenile in the same manner as an adult.

(E) Minor Personal Protection Orders. The prosecuting attorney shall prosecute criminal contempt proceedings as provided in MCR 3.987(B).

Rule 3.915 Assistance of Attorney

(A) Delinquency Proceedings.

(1) Advice. If the juvenile is not represented by an attorney, the court shall advise the juvenile of the right to the assistance of an attorney at each stage of the proceedings on the formal calendar, including trial, plea of admission, and disposition.

(2) Appointment of an Attorney. The court shall appoint an attorney to represent the juvenile in a delinquency proceeding if:

(a) the parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings;

(b) the parent, guardian, or legal custodian is the complainant or victim;

(c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney, and the juvenile does not waive an attorney;

(d) those responsible for the support of the juvenile refuse or neglect to retain an attorney for the juvenile, and the juvenile does not waive an attorney; or

(e) the court determines that the best interests of the juvenile or the public require appointment.

(3) Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent, guardian, legal custodian, or guardian ad litem objects or when the appointment is based on subrule (A)(2)(e). The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.

(B) Child Protective Proceedings.

(1) Respondent.

(a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that

(i) the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney, and,

(ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.

(b) The court shall appoint an attorney to represent the respondent at any hearing conducted pursuant to these rules if

(i) the respondent requests appointment of an attorney, and

(ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.

(c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child.

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the

attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so.

(b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

(C) Appearance. The appearance of an attorney is governed by MCR 2.117(B).

(D) Duration.

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.

(E) Costs. When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law.

Rule 3.916 Guardian Ad Litem

(A) General. The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.

(B) Appearance. The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement regarding the existence of any interest that the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters.

(C) Access to Information. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed.

(D) **Costs.** The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement as provided by law.

Rule 3.917 Court Appointed Special Advocate

(A) **General.** The court may, upon entry of an appropriate order, appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.

(B) **Qualifications.** All court appointed special advocates shall receive appropriate screening.

(C) **Duties.** Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.

(D) **Term of Appointment.** A court appointed special advocate shall serve until discharged by the court.

(E) **Access to Information.** Upon appointment by the court, the special advocate may be given access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem.

Rule 3.920 Service of Process

(A) **General.**

(1) Unless a party must be summoned as provided in subrule (B), a party shall be given notice of a juvenile proceeding in any manner authorized by the rules in this subchapter.

(2) MCR 2.004 applies in juvenile proceedings involving incarcerated parties.

(B) **Summons.**

(1) In General. A summons may be issued and served on a party before any juvenile proceeding.

(2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:

(a) In a delinquency proceeding, a summons must be served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile, directing them to appear with the juvenile for trial. The juvenile must also be served with a summons to appear for trial. A parent without physical custody must be notified by service as provided in subrule (C), unless the whereabouts of the parent remain unknown after a diligent inquiry.

(b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C).

(c) In a personal protection order enforcement proceeding involving a minor respondent, a summons must be served on the minor. A summons must also be served on the parent or parents, guardian, or legal custodian, unless their whereabouts remain unknown after a diligent inquiry.

(3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:

(a) identify the nature of hearing;

(b) explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;

(c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and

(d) have a copy of the petition attached.

(4) Manner of Serving Summons.

(a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.

(b) If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.

(c) If personal service of a summons is not required, the court may direct that it be served in a manner reasonably calculated to provide notice.

(5) Time of Service.

(a) A summons shall be personally served at least:

(i) 14 days before hearing on a petition that seeks to terminate parental rights or a permanency planning hearing,

(ii) 7 days before trial or a child protective dispositional review hearing, or

(iii) 3 days before any other hearing.

(b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subrule (a) requires for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required by subrule (a) if the party to be served resides outside Michigan.

(c) If service is by publication, the published notice must appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice need not include the petition itself. The notice must be published at least once 21 days before a hearing specified in subrule (a)(i), 14 days before trial or a hearing specified in subrule (a)(ii), or 7 days before any other hearing.

(C) Notice of Hearing.

(1) General. Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules (C)(2) and (C)(3), or as otherwise provided in the rules.

(2) Preliminary Hearing; Emergency Removal Hearing.

(a) When a juvenile is detained, notice of the preliminary hearing must be given to the juvenile and to the parent of the juvenile as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

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

(3) Permanency Planning Hearing; Termination Proceedings.

(a) Notice of a permanency planning hearing must be given in writing at least 14 days before the hearing.

(b) Notice of a hearing on a petition requesting termination of parental rights in a child protective proceeding must be given in writing at least 14 days before the hearing.

(4) Failure to Appear. When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena.

(D) Subpoenas.

(1) The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired.

(2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

(3) Except as otherwise stated in this subrule, service of a subpoena is governed by MCR 2.506.

(E) Waiver of Notice and Service. A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subrule (B), the party must be provided the advice required by subrule (B)(3).

(F) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (C), except that a summons must be served for trial or termination hearing as provided in subrule (B).

(G) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney.

(H) Proof of Service.

(1) Summons. Proof of service of a summons must be made in the manner provided in MCR 2.104(A).

(2) Other Papers. Proof of service of other papers permitted or required to be served under these rules must be made in the manner provided in MCR 2.107(D).

(3) Publication. If the manner of service used involves publication, proof of service must be made in the manner provided in MCR 2.106(G)(1), and (G)(3) if the publication is accompanied by a mailing.

(4) Content. The proof of service must identify the papers served.

(5) Failure to File. Failure to file proof of service does not affect the validity of the service.

Rule 3.921 Persons Entitled to Notice

(A) Delinquency Proceedings.

(1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):

(a) the juvenile,

(b) the custodial parents, guardian, or legal custodian of the juvenile,

(c) the noncustodial parent who has requested notice at a hearing or in writing,

(d) the guardian ad litem or lawyer-guardian ad litem of a juvenile appointed pursuant to these rules,

(e) the attorney retained or appointed to represent the juvenile, and

(f) the prosecuting attorney.

(2) Notice to the Petitioner. The petitioner must be notified of the first hearing on the petition.

(3) Parent Without Physical Custody. A parent of the minor whose parental rights over the minor have not been terminated at the time the minor comes to court, must be notified of the first hearing on the formal calendar, unless the whereabouts of the parent are unknown.

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

(a) the respondent,

(b) the attorney for the respondent,

(c) the lawyer-guardian ad litem for the child,

(d) subject to subrule (C), the parents, guardian, or legal custodian, if any, other than the respondent,

(e) the petitioner,

(f) a party's guardian ad litem appointed pursuant to these rules, and

(g) any other person the court may direct to be notified.

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

(a) the agency responsible for the care and supervision of the child,

(b) the person or institution having court-ordered custody of the child,

(c) the parents of the child, subject to subrule (C), and the attorney for the respondent parent, unless parental rights have been terminated,

(d) the guardian or legal custodian of the child, if any,

(e) the guardian ad litem for the child,

(f) the lawyer-guardian ad litem for the child,

(g) the attorneys for each party,

(h) the prosecuting attorney if the prosecuting attorney has appeared in the case,

(i) the child, if 11 years old or older,

(j) any tribal leader, if there is an Indian tribe affiliation, and

(k) any other person the court may direct to be notified.

(3) Termination of Parental Rights. Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2).

(C) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

(1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice must include the following information:

(a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;

(b) that a petition has been filed with the court;

(c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and

(d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

(2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine, as appropriate, that:

(a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.

(b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.

(c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).

(d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.

(3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if

(a) he fails to appear after proper notice, or

(b) he appears, but fails to establish paternity within the time set by the court.

(D) Failure to Appear; Notice by Publication. When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings, except a hearing on the termination of parental rights.

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) Discovery.

(1) The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:

(a) all written or recorded statements and notes of statements made by the juvenile or respondent that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;

(b) all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;

(c) the names of prospective witnesses;

(d) a list of all prospective exhibits;

(e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;

(f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;

(g) the results of any lineups or showups, including written reports or lineup sheets; and

(h) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.

(2) On motion of a party, the court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right under subrule (A)(1) if timely requested. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.

(3) Depositions may only be taken as authorized by the court.

(4) Failure to comply with subrules (1) and (2) may result in such sanctions, as applicable, as set forth in MCR 2.313.

(B) Notice of Defenses; Rebuttal.

(1) Within 21 days after the juvenile has been given notice of the date of trial, but no later than 7 days before the trial date, the juvenile or the juvenile's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of the names and addresses of defense witnesses.

(2) Within 7 days after receipt of notice, but no later than 2 days before the trial date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above-listed defenses. The notice shall include names and addresses of rebuttal witnesses.

(3) Failure to comply with subrules (1) and (2) may result in the sanctions set forth in MCL 768.21.

(C) Motion Practice. Motion practice in juvenile proceedings is governed by MCR 2.119.

(D) Pretrial Conference. The court may direct the parties to appear at a pretrial conference. The scope and effect of a pretrial conference are governed by MCR 2.401, except as otherwise provided in or inconsistent with the rules of this subchapter.

(E) Notice of Intent.

(1) Within 21 days after the parties have been given notice of the date of trial, but no later than 7 days before the trial date, the proponent must file with the court, and serve all parties, written notice of the intent to:

(a) use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.

(b) request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.

(c) use a videotaped deposition as permitted by law.

(d) admit out-of-court hearsay statements under MCR 3.972(C)(2), including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.

(2) Within 7 days after receipt or notice, but no later than 2 days before the trial date, the nonproponent parties must provide written notice to the court of an intent to offer rebuttal testimony or evidence in opposition to the request and must include the identity of the witnesses to be called.

(3) The court may shorten the time periods provided in subrule (E) if good cause is shown.

Rule 3.923 Miscellaneous Procedures

(A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may:

(1) examine a witness,

(2) call a witness, or

(3) adjourn the matter before the court, and

(a) cause service of process on additional witnesses, or

(b) order production of other evidence.

(B) **Examination or Evaluation.** The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

(C) **Fingerprinting and Photographing.** A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing, or both, of a minor concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.

(D) **Lineup.** If a complaint or petition is filed against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the prosecuting attorney, order the juvenile to appear at a place and time designated by the court for identification by another person, including a corporeal lineup pursuant to MCL 712A.32. If the court orders the juvenile to appear for such an identification procedure, the court must notify the juvenile and the juvenile's parent, guardian or legal custodian that the juvenile has the right to consult with an attorney and have an attorney present during the identification procedure and that if the juvenile and the juvenile's parent, guardian or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian or legal custodian.

(E) **Electronic Equipment; Support Person.** The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

(F) **Impartial Questioner.** The court may appoint an impartial person to address questions to a child witness at a hearing as the court directs.

(G) **Adjournments.** Adjournments of trials or hearings in child protective proceedings should be granted only

(1) for good cause,

(2) after taking into consideration the best interests of the child, and

(3) for as short a period of time as necessary.

Rule 3.924 Information Furnished on Request by Court

Persons or agencies providing testimony, reports, or other information at the request of the court, including otherwise confidential information, records, or reports that are relevant and material to the proceedings following authorization of a petition, are immune from any subsequent legal action with respect to furnishing the information to the court.

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Files; Setting Aside Adjudications

(A) Open Proceedings.

(1) General. Except as provided in subrule (A)(2), juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.

(2) Closed Proceedings; Criteria. The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings; the age, maturity, and preference of the witness; and, if the witness is a child, the preference of a parent, guardian, or legal custodian that the proceedings be open or closed. The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1).

(B) Record of Proceedings. A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.

(C) Judgments and Orders. The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.

(D) Public Access to Records; Confidential File.

(1) General. Records of the juvenile cases, other than confidential files, must be open to the general public.

(2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) **Destruction of Court Files and Records.** This subrule governs the destruction of court files and records.

(1) Destruction Generally; Effect. The court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.

(2) Delinquency Files and Records.

(a) The court must destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age.

(b) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained as a nonpublic record.

(c) Except as provided by subrules (a) and (b), the court must destroy the files and records pertaining to a person's juvenile offenses when the person becomes 30 years old.

(d) If the court destroys its files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.

(3) Child Protective Files and Records.

(a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.

(b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

(F) Setting Aside Adjudications and Convictions.

(1) Adjudications. The setting aside of juvenile adjudications is governed by MCL 712A.18e.

(2) Convictions. The court may only set aside a conviction as provided by MCL 780.621 *et seq.*

(G) Access to Juvenile Offense Record of Convicted Adults. When the juvenile offense record of an adult convicted of a crime is made available to the appropriate agency, as provided in MCL 791.228(1), the record must state whether, with regard to each adjudication, the juvenile had an attorney or voluntarily waived an attorney.

Rule 3.926 Transfer of Jurisdiction; Change of Venue

(A) Definition. As used in MCL 712A.2, a child is "found within the county" in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.

(B) Transfer to County of Residence. When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may transfer the case to the court in the county of residence before trial.

(1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child's sole legal parent, that county will be presumed to be the county of residence.

(2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:

(a) The county of residence of the parent or parents, guardian, or legal custodian.

(b) Whether the child has ever lived in the county, and, if so, for how long.

(c) Whether either parent has moved to another county since the inception of the case.

(d) Whether the child is subject to the prior continuing jurisdiction of another court.

(e) Whether a court has entered an order placing the child in the county for the purpose of adoption.

(f) Whether the child has expressed an intention to reside in the county.

(g) Any other factor the court considers relevant.

(1) If the child has been placed in a county by court order or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for the purpose of adoption.

(C) Costs. When a court other than the court in a county in which the minor resides orders disposition, it will be responsible for any costs incurred in connection with such order unless

(1) the court in the county in which the minor resides agrees to pay the costs of such disposition, or

(2) the minor is made a state ward pursuant to the Youth Rehabilitation Services Act, MCL 803.301 *et seq.*, and the county of residence withholds consent to a transfer of the case.

(D) Change of Venue; Grounds. The court, on motion by a party, may order a case to be heard before a court in another county:

(1) for the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or

(2) when an impartial trial cannot be had where the case is pending.

All costs of the proceeding in another county are to be borne by the court ordering the change of venue.

(E) Bifurcated Proceeding. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.

(F) Transfer of Records. The court entering an order of transfer or change of venue shall send the original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge. Where the courts have agreed to bifurcate the proceedings, the court adjudicating the case shall send any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case.

(G) **Designated Cases.** Designated cases are to be filed in the county in which the offense is alleged to have occurred. Other than a change of venue for the purpose of trial, a designated case may not be transferred to any other county, except, after conviction, a designated case may be transferred to the juvenile's county of residence for entry of a juvenile disposition only. Sentencing of a juvenile, including delayed imposition of sentence, may only be done in the county in which the offense occurred.

Rule 3.927 Prior Court Orders

In a juvenile proceeding involving a minor who is subject to a prior order of another Michigan court, the manner of notice to the other court and the authority of the family division of the circuit court to proceed are governed by MCR 3.205.

Rule 3.928 Contempt of Court

(A) **Power.** The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a juvenile who is within the court's jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.

(B) **Procedure.** Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982-3.989 govern proceedings against a minor for contempt of a minor personal protection order.

(C) **Contempt by Juvenile.** A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.

Rule 3.931 Initiating Delinquency Proceedings

(A) **Commencement of Proceeding.** Any request for court action against a juvenile must be by written petition.

(B) **Content of Petition.** A petition must contain the following information:

(1) the juvenile's name, address, and date of birth, if known;

(2) the names and addresses, if known, of

(a) the juvenile's mother and father,

(b) the guardian, legal custodian, or person having custody of the juvenile, if other than a mother or father,

(c) the nearest known relative of the juvenile, if no parent, guardian, or legal custodian can be found, and

(d) any court with prior continuing jurisdiction;

(3) sufficient allegations that, if true, would constitute an offense by the juvenile;

(4) a citation to the section of the Juvenile Code relied upon for jurisdiction;

(5) a citation to the federal, state, or local law or ordinance allegedly violated by the juvenile;

(6) the court action requested;

(7) if applicable, the notice required by MCL 257.732(7), and the juvenile's Michigan driver's license number; and

(8) information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

(C) Citation or Appearance Ticket.

(1) A citation or appearance ticket may be used to initiate a delinquency proceeding if the charges against the juvenile are limited to:

(a) violations of the Michigan Vehicle Code, or of a provision of an ordinance substantially corresponding to any provision of that law, as provided by MCL 712A.2b.

(b) offenses that, if committed by an adult, would be appropriate for use of an appearance ticket under MCL 764.9c.

(2) The citation or appearance ticket shall be treated by the court as if it were a petition, except that it may not serve as a basis for pretrial detention.

(D) Motor Vehicle Violations; Failure to Appear. If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court

(1) must initiate the procedure required by MCL 257.321a for the failure to answer a citation, and

(2) may issue an order to apprehend the juvenile after a petition is filed with the court.

Rule 3.932 Summary Initial Proceedings

(A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.781(1)(f), the preliminary inquiry need not be conducted on the record. The court may, in the interest of the juvenile and the public:

(1) deny authorization of the petition;

(2) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*;

(3) direct that the juvenile and the parent, guardian, or legal custodian be notified to appear for further informal inquiry on the petition;

(4) proceed on the consent calendar as provided in subrule (C); or

(5) place the matter on the formal calendar as provided in subrule (D).

(B) Offenses Listed in the Crime Victim's Rights Act. A case involving the alleged commission of an offense listed in the Crime Victim's Rights Act, MCL 780.781(1)(f), may only be removed from the adjudicative process upon compliance with the procedures set forth in that act. See MCL 780.786b.

(C) Consent Calendar. If the court receives a petition, citation, or appearance ticket, and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may proceed on the consent calendar without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agree to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.

(1) Notice. Formal notice is not required for cases placed on the consent calendar except as required by article 2 of the Crime Victim's Rights Act, MCL 780.781 *et seq.*

(2) Plea; Adjudication. No formal plea may be entered in a consent calendar case, and the court must not enter an adjudication.

(3) Conference. The court shall conduct a consent calendar conference with the juvenile and the parent, guardian, or legal custodian to discuss the allegations. The victim may, but need not, be present.

(4) Case Plan. If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan.

(5) Custody. A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.

(6) Disposition. No order of disposition may be entered by the court in a case placed on the consent calendar.

(7) Closure. Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.

(8) Transfer to Formal Calendar. If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.

(D) Formal Calendar. The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public. The court shall not authorize an original petition under MCL 712A.2(a)(1), unless the prosecuting attorney has approved submitting the petition to the court. At any time before disposition, the court may transfer the matter to the consent calendar.

Rule 3.933 Acquiring Physical Control of Juvenile

(A) Custody Without Court Order. When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:

(1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;

(2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or

(3) take the juvenile into custody and submit a petition, if:

(a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or

(b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the juvenile.

(B) Custody With Court Order. When a petition is presented to the court, and probable cause exists to believe that a juvenile has committed an offense, the court may issue an order to apprehend the juvenile. The order may include authorization to

(1) enter specified premises as required to bring the juvenile before the court, and

(2) detain the juvenile pending preliminary hearing.

(C) Notification of Court. The officer who apprehends a juvenile must immediately contact the court when:

(1) the officer detains the juvenile,

(2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or

(3) the parent, guardian, or legal custodian will not agree to bring the juvenile to court as provided in subrule (A)(2).

(D) Separate Custody of Juvenile. While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

Rule 3.934 Arranging Court Appearance; Detained Juvenile

(A) General. Unless the prosecuting attorney has authorized a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, when a juvenile is apprehended and not released, the officer shall:

(1) forthwith take the juvenile

(a) before the court for a preliminary hearing, or

(b) to a place designated by the court pending the scheduling of a preliminary hearing;

(2) ensure that the petition is prepared and presented to the court;

(3) notify the parent, guardian, or legal custodian of the detaining of the juvenile and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;

(4) prepare a custody statement for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify.

(B) Temporary Detention; Court Not Open.

(1) Grounds. A juvenile apprehended without court order when the court is not open may be detained pending preliminary hearing if the offense or the juvenile meets a circumstance set forth in MCR 3.935(D)(1), or if no parent, guardian, or legal custodian can be located.

(2) Designated Court Person. The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.

Rule 3.935 Preliminary Hearing

(A) Time.

(1) Commencement. The preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), or the juvenile must be released.

(2) General Adjournment. The court may adjourn the hearing for up to 14 days:

(a) to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or

(b) for other good cause shown.

(3) Special Adjournment; Specified Juvenile Violation. This subrule applies to a juvenile accused of an offense that allegedly was committed between the juvenile's 14th and 17th birthdays and that would constitute a specified juvenile violation listed in MCL 712A.2(a)(1).

(a) On a request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (i)-(iii).

(i) The court shall adjourn the preliminary hearing for up to 5 days to give the prosecuting attorney the opportunity to determine whether to authorize the filing of a criminal complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, instead of unconditionally approving the filing of a petition with the court.

(ii) The court, during the special adjournment under subrule 3(a), must defer a decision regarding whether to authorize the filing of the petition.

(iii) The court, during the special adjournment under subrule (3)(a), must release the juvenile pursuant to MCR 3.935(E) or detain the juvenile pursuant to MCR 3.935(D).

(b) If, at the resumption of the preliminary hearing following special adjournment, the prosecuting attorney has not authorized the filing with a magistrate of a criminal complaint and warrant on the charge concerning the juvenile, approval of the petition by the prosecuting attorney shall no longer be deemed conditional and the court shall proceed with the preliminary hearing and decide whether to authorize the petition to be filed.

(c) This rule does not preclude the prosecuting attorney from moving for a waiver of jurisdiction over the juvenile under MCR 3.950.

(B) Procedure.

(1) The court shall determine whether the parent, guardian, or legal custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or legal custodian present, provided a guardian ad litem or attorney appears with the juvenile.

(2) The court shall read the allegations in the petition.

(3) The court shall determine whether the petition should be dismissed, whether the matter should be referred to alternate services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*, whether the matter should be heard on the consent calendar as provided by MCR 3.932(C), or whether to continue the preliminary hearing.

(4) If the hearing is to continue, the court shall advise the juvenile on the record in plain language of:

(a) the right to an attorney pursuant to MCR 3.915(A)(1);

(b) the right to trial by judge or jury on the allegations in the petition and that a referee may be assigned to hear the case unless demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912; and

(c) the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.

(5) If the charge is a violation of MCL 712A.2(a)(2)-(4) or (d), the court must inquire if the juvenile or a parent is a member of any American Indian tribe or band. If the juvenile is a member, or if a parent is a tribal member and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe or band and follow the procedures set forth in MCR 3.980.

(6) The juvenile must be allowed an opportunity to deny or otherwise plead to the allegations.

(7) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the petition to be filed pursuant to MCR 3.932(D). If it authorizes the filing of the petition, the court must:

(a) determine if fingerprints must be taken as provided by MCL 712A.11(5) and MCR 3.936; and

(b) determine if the juvenile should be released, with or without conditions, or detained, as provided in subrules (C)-(F).

(8) The juvenile may be detained pending the completion of the preliminary hearing if the conditions for detention under subrule (D) are established.

(C) Determination Whether to Release or Detain.

(1) Factors. In determining whether the juvenile is to be released, with or without conditions, or detained, the court shall consider the following factors:

(a) the juvenile's family ties and relationships,

(b) the juvenile's prior delinquency record,

(c) the juvenile's record of appearance or nonappearance at court proceedings,

(d) the violent nature of the alleged offense,

(e) the juvenile's prior history of committing acts that resulted in bodily injury to others,

(f) the juvenile's character and mental condition,

(g) the court's ability to supervise the juvenile if placed with a parent or relative, and

(h) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.

(2) Findings. The court must state the reasons for its decision to grant or deny release on the record or in a written memorandum. The court's statement need not include a finding on each of the enumerated factors.

(D) Detention.

(1) Conditions for Detention. A juvenile may be ordered detained or continued in detention if the court finds probable cause to believe the juvenile committed the offense, and that one or more of the following circumstances are present:

(a) the offense alleged is so serious that release would endanger the public safety;

(b) the juvenile is charged with an offense that would be a felony if committed by an adult and will likely commit another offense pending trial, if released, and

(i) another petition is pending against the juvenile,

(ii) the juvenile is on probation, or

(iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;

(c) there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

(d) the home conditions of the juvenile make detention necessary;

(e) the juvenile has run away from home;

(f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a valid court order; or

(g) pretrial detention is otherwise specifically authorized by law.

(2) Waiver. A juvenile may waive the probable cause determination required by subrule (1) only if the juvenile is represented by an attorney.

(3) Evidence; Findings. The juvenile may contest the sufficiency of evidence by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. The Michigan Rules of Evidence do not apply, other than those with respect to privileges.

(4) Type of Detention. The detained juvenile must be placed in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15 and 712A.16.

(E) Release; Conditions.

(1) The court may release a juvenile to a parent pending the resumption of the preliminary hearing, pending trial, or until further order without conditions, or, if the court determines that release with conditions is necessary to reasonably ensure the appearance of the juvenile as required or to reasonably ensure the safety of the public, the court may, in its discretion, order that the release of the juvenile be on the condition or combination of conditions that the court determines to be appropriate, including, but not limited to:

(a) that the juvenile will not commit any offense while released,

(b) that the juvenile will not use alcohol or any controlled substance or tobacco product,

(c) that the juvenile will participate in a substance abuse assessment, testing, or treatment program,

(d) that the juvenile will participate in a treatment program for a physical or mental condition,

(e) that the juvenile will comply with restrictions on personal associations or place of residence,

(f) that the juvenile will comply with a specified curfew,

(g) that the juvenile will maintain appropriate behavior and attendance at an educational program, and

(h) that the juvenile's driver's license or passport will be surrendered.

(2) Violation of Conditions of Release. If a juvenile is alleged to have violated the conditions set by the court, the court may order the juvenile apprehended and detained immediately. The court may then modify the conditions or revoke the juvenile's release status after providing the juvenile an opportunity to be heard on the issue of the violation of conditions of release.

(F) Bail. In addition to any other conditions of release, the court may require a parent, guardian, or legal custodian to post bail.

(1) Cash or Surety Bond. The court may require a parent, guardian, or legal custodian to post a surety bond or cash in the full amount of the bail, at the option of the parent, guardian, or legal custodian. A surety bond must be written by a person or company licensed to write surety bonds in Michigan. Except as otherwise provided by this rule, MCR 3.604 applies to bonds posted under this rule.

(2) Option to Deposit Cash or 10 Percent of Bail. Unless the court requires a surety bond or cash in the full amount of the bail as provided in subrule (F)(1), the court shall advise the parent, guardian, or legal custodian of the option to satisfy the monetary requirement of bail by:

(a) posting either cash or a surety bond in the full amount of bail set by the court or a surety bond written by a person or company licensed to write surety bonds in Michigan, or

(b) depositing with the register, clerk, or cashier of the court currency equal to 10 percent of the bail, but at least $10.

(3) Revocation or Modification. The court may modify or revoke the bail for good cause after providing the parties notice and an opportunity to be heard.

(4) Return of Bail. If the conditions of bail are met, the court shall discharge any surety.

(a) If disposition imposes reimbursement or costs, the bail money posted by the parent must first be applied to the amount of reimbursement and costs, and the balance, if any, returned.

(b) If the juvenile is discharged from all obligations in the case, the court shall return the cash posted, or return 90 percent and retain 10 percent if the amount posted represented 10 percent of the bail.

(5) Forfeiture. If the conditions of bail are not met, the court may issue a writ for the apprehension of the juvenile and enter an order declaring the bail money, if any, forfeited.

(a) The court must immediately mail notice of the forfeiture order to the parent at the last known address and to any surety.

(b) If the juvenile does not appear and surrender to the court within 28 days from the forfeiture date, or does not within the period satisfy the court that the juvenile is not at fault, the court may enter judgment against the parent and surety, if any, for the entire amount of the bail and, when allowed, costs of the court proceedings.

Rule 3.936 Fingerprinting

(A) General. The court must permit fingerprinting of a juvenile pursuant to MCL 712A.11(5) and 712A.18(10), and as provided in this rule. Notice of fingerprinting retained by the court is confidential.

(B) Order for Fingerprints. At the time that the court authorizes the filing of a petition alleging a juvenile offense and before the court enters an order of disposition on a juvenile offense, the court shall examine the confidential files and verify that the juvenile has been fingerprinted. If it appears to the court that the juvenile has not been fingerprinted, the court must:

(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken; or

(2) issue an order to the sheriff's department to apprehend the juvenile and to take the fingerprints of the juvenile.

(C) **Notice of Disposition.** The court shall notify the Department of State Police in writing:

(1) of any juvenile who had been fingerprinted for a juvenile offense and who was found not to be within the jurisdiction of the court under MCL 712A.2(a)(1); or

(2) that the court took jurisdiction of a juvenile under MCL 712A.2(a)(1), who was fingerprinted for a juvenile offense, specifying the offense, the method of adjudication, and the disposition ordered.

(D) **Order for Return of Fingerprints.** When a juvenile has been fingerprinted for a juvenile offense, but no petition on the offense is submitted to the court, the court does not authorize the petition, or the court does not take jurisdiction of the juvenile under MCL 712A.2(a)(1), if the records have not been destroyed as provided by MCL 28.243(7)-(8), the court, on motion filed pursuant to MCL 28.243(8), shall:

(1) issue an order directing the Department of State Police, or other official holding the information, to return the fingerprints, arrest card, and description of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(12); and

(2) direct that fingerprint information in the court file pertaining to the offense be destroyed.

Rule 3.939 Case Transferred From District Court Pursuant to Subchapter 6.900

(A) **General Procedure.** Except as provided in subrule (B), the court shall hear and dispose of a case transferred pursuant to MCL 766.14 in the same manner as if the case had been commenced in the family division of circuit court. A petition that has been approved by the prosecuting attorney must be submitted to the court.

(B) **Probable Cause Finding of Magistrate.** The court may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the probable cause requirement of MCR 3.935(D)(1).

Rule 3.941 Pleas of Admission or No Contest

(A) **Capacity.** A juvenile may offer a plea of admission or of no contest to an offense with the consent of the court. The court shall not accept a plea to an offense unless the court is satisfied that the plea is accurate, voluntary, and understanding.

(B) **Conditional Pleas.** The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) **Plea Procedure.** Before accepting a plea of admission or of no contest, the court must personally address the juvenile and must comply with subrules (1)-(4).

(1) An Understanding Plea. The court shall tell the juvenile:

(a) the name of the offense charged,

(b) the possible dispositions,

(c) that if the plea is accepted, the juvenile will not have a trial of any kind, so the juvenile gives up the rights that would be present at trial, including the right:

(i) to trial by jury,

(ii) to trial by the judge if the juvenile does not want trial by jury,

(iii) to be presumed innocent until proven guilty,

(iv) to have the petitioner or prosecutor prove guilt beyond a reasonable doubt,

(v) to have witnesses against the juvenile appear at the trial,

(vi) to question the witnesses against the juvenile,

(vii) to have the court order any witnesses for the juvenile's defense to appear at the trial,

(viii) to remain silent and not have that silence used against the juvenile, and

(ix) to testify at trial, if the juvenile wants to testify.

(2) A Voluntary Plea.

(a) The court shall confirm any plea agreement on the record.

(b) The court shall ask the juvenile if any promises have been made beyond those in a plea agreement or whether anyone has threatened the juvenile.

(3) An Accurate Plea. The court may not accept a plea of admission or of no contest without establishing support for a finding that the juvenile committed the offense:

(a) either by questioning the juvenile or by other means when the plea is a plea of admission, or

(b) by means other than questioning the juvenile when the juvenile pleads no contest. The court shall also state why a plea of no contest is appropriate.

(4) Support for Plea. The court shall inquire of the parent, guardian, legal custodian, or guardian ad litem, if present, whether there is any reason why the court should not accept the plea tendered by the juvenile.

(D) Plea Withdrawal. The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the juvenile may withdraw the plea offer by right. After the court accepts the plea, the court has discretion to allow the juvenile to withdraw a plea.

Rule 3.942 Trial

(A) Time. In all cases the trial must be held within 6 months after the filing of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

(B) Preliminary Matters.

(1) The court shall determine whether all parties are present.

(a) The juvenile has the right to be present at the trial with an attorney, parent, guardian, legal custodian, or guardian ad litem, if any.

(b) The court may proceed in the absence of a parent, guardian, or legal custodian who was properly notified to appear.

(c) The victim has the right to be present at trial as provided by MCL 780.789.

(2) The court shall read the allegations contained in the petition, unless waived.

(3) The court shall inform the juvenile of the right to the assistance of an attorney pursuant to MCR 3.915 unless an attorney appears representing the juvenile. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is literate and competent to conduct the defense.

(C) Evidence; Standard of Proof. The Michigan Rules of Evidence and the standard of proof beyond a reasonable doubt apply at trial.

(D) Verdict. In a delinquency proceeding, the verdict must be guilty or not guilty of either the offense charged or a lesser included offense.

Rule 3.943 Dispositional Hearing

(A) General. A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person, once the court has determined following trial or plea that the juvenile has committed an offense.

(B) Time. The interval between the plea of admission or trial and disposition, if any, is within the court's discretion. When the juvenile is detained, the interval may not be more than 35 days, except for good cause.

(C) Evidence.

(1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at dispositional hearings. All relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.

(2) The juvenile, or the juvenile's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when those individuals are reasonably available.

(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at a dispositional hearing, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Presence of Juvenile and Victim.

(1) The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced.

(2) The victim has the right to be present at the dispositional hearing and to make an impact statement as provided by the Crime Victim's Rights Act, MCL 780.751 *et seq.*

(E) Dispositions.

(1) If the juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18.

(2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; imposing additional costs; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule.

(3) Before a juvenile is placed in an institution outside the state of Michigan as a disposition, the court must find that:

(a) institutional care is in the best interests of the juvenile,

(b) equivalent facilities to meet the juvenile's needs are not available within Michigan, and

(c) the placement will not cause undue hardship.

(4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has been fingerprinted. If the juvenile has not been fingerprinted, the court shall proceed as provided by MCR 3.936.

(5) If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751 *et seq.*, the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.

(6) The court shall prepare and forward to the Secretary of State an abstract of its findings at such times and for such offenses as are required by law.

(7) Mandatory Detention for Use of a Firearm.

(a) In addition to any other disposition, a juvenile, other than a juvenile sentenced in the same manner as an adult under MCL 712A.18(1)(n), shall be committed under MCL 712A.18(1)(e) to a detention facility for a specified period of time if all the following circumstances exist:

(i) the juvenile is under the jurisdiction of the court under MCL 712A.2(a)(1),

(ii) the juvenile was found to have violated a law of this state or of the United States or a criminal municipal ordinance, and

(iii) the juvenile was found to have used a firearm during the offense.

(b) The length of the commitment to a detention facility shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(c) "Firearm" means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air.

Rule 3.944 Probation Violation

(A) Petition; Temporary Custody.

(1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:

(a) direct that the juvenile be notified pursuant to MCR 3.920 to appear for a hearing on the alleged violation, which notice must include a copy of the probation violation petition and a notice of the juvenile's rights as provided in subrule (C)(1); or

(b) order that the juvenile be apprehended and brought to the court for a detention hearing, which must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).

(2) When a juvenile is apprehended pursuant to court order as provided in subrule (A)(1)(b), the officer must:

(a) forthwith take the juvenile

(i) to the court for a detention hearing, or

(ii) to the place designated by the court pending the scheduling of a detention hearing; and

(b) notify the custodial parent, guardian, or legal custodian that the juvenile has been taken into custody, of the time and place of the detention

hearing, if known, and of the need for the presence of the parent, guardian, or legal custodian at the detention hearing.

(B) Detention Hearing; Procedure. At the detention hearing:

(1) The court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified, but fails to appear, the detention hearing may be conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile.

(2) The court must provide the juvenile with a copy of the petition alleging probation violation.

(3) The court must read the petition to the juvenile, unless the attorney or juvenile waives the reading.

(4) The court must advise the juvenile of the juvenile's rights as provided in subrule (C)(1) and of the possible dispositions.

(5) The juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation. If the juvenile wishes to admit the probation violation or plead no contest, the court must comply with subrule (D) before accepting the plea.

(a) If the juvenile admits the probation violation or pleads no contest, and the court accepts the plea, the court may modify the existing order of probation or may order any disposition available under MCL 712A.18 or MCL 712A.18a.

(b) If the juvenile denies the probation violation or remains silent, the court must schedule a probation violation hearing, which must commence within 42 days. The court may order the juvenile detained without bond pending the probation violation hearing if there is probable cause to believe the juvenile violated probation. If the hearing is not commenced within 42 days, and the delay in commencing the hearing is not attributable to the juvenile, the juvenile must be released pending hearing without requiring that bail be posted.

(C) Probation Violation Hearing.

(1) At the probation violation hearing, the juvenile has the following rights:

(a) the right to be present at the hearing,

(b) the right to an attorney pursuant to MCR 3.915(A)(1),

(c) the right to have the petitioner prove the probation violation by a preponderance of the evidence,

(d) the right to have the court order any witnesses to appear at the hearing,

(e) the right to question witnesses against the juvenile,

(f) the right to remain silent and not have that silence used against the juvenile, and

(g) the right to testify at the hearing, if the juvenile wants to testify.

(2) At the probation violation hearing, the Michigan Rules of Evidence do not apply, other than those with respect to privileges. There is no right to a jury.

(3) If it is alleged that the juvenile violated probation by having been found, pursuant to MCR 3.941 or MCR 3.942, to have committed an offense, the juvenile may then be found to have violated probation pursuant to this rule.

(D) Pleas of Admission or No Contest. If the juvenile wishes to admit the probation violation or plead no contest, before accepting the plea, the court must:

(1) tell the juvenile the nature of the alleged probation violation;

(2) tell the juvenile the possible dispositions;

(3) tell the juvenile that if the plea is accepted, the juvenile will not have a contested hearing of any kind, so the juvenile would give up the rights that the juvenile would have at a contested hearing, including the rights as provided in subrule (C)(1);

(4) confirm any plea agreement on the record;

(5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile;

(6) establish support for a finding that the juvenile violated probation,

(a) by questioning the juvenile or by other means when the plea is a plea of admission, or

(b) by means other than questioning the juvenile when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate;

(7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea. Agreement or objection by the parent, guardian, legal custodian, or guardian ad litem to a plea of admission or of no contest by a juvenile shall be placed on the record if the parent, guardian, legal custodian, or guardian ad litem is present; and

(8) determine that the plea is accurately, voluntarily and understandingly made.

(E) Disposition of Probation Violation; Reporting.

(1) If, after hearing, the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.

(2) If, after hearing, the court finds that a violation of probation occurred on the basis of the juvenile having committed an offense, that finding must be recorded as a violation of probation only and not a finding that the juvenile committed the underlying offense. That finding must not be reported to the State Police or the Secretary of State as an adjudication or a disposition.

Rule 3.945 Dispositional Review

(A) Dispositional Review Hearings.

(1) Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a dispositional review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Required Review Hearings.

(a) If the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).

(b) A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of

placement. A review hearing is not required if the juvenile and a parent consent to the new placement in a writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, may be released only with the approval of the court.

(B) Hearing to Extend Jurisdiction.

(1) When Required. When a juvenile committed under MCL 712A.18(1)(e) for an offense specified in MCL 712A.18d remains under court jurisdiction after the juvenile's 18th birthday, the court must conduct a hearing to determine whether to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.

(a) Time of Hearing. Unless adjourned for good cause, a commitment review hearing must be held as nearly as possible to, but before, the juvenile's 19th birthday.

(b) Notice of Hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if the address or whereabouts are known, the parent, guardian or legal custodian of the juvenile, at least 14 days before the hearing. The notice must clearly indicate that the court may extend jurisdiction over the juvenile until the juvenile reaches 21 years of age and must include advice to the juvenile and the parent, guardian, or legal custodian that the juvenile has the right to an attorney.

(2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained.

(3) Evidence; Commitment Report. The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The institution, agency, or facility must prepare a report for use at the hearing to extend jurisdiction. The report must contain information required by MCL 803.225. The court must consider this information in determining whether to extend jurisdiction beyond the age of 19.

(4) Burden of Proof; Findings. The court must extend jurisdiction over the juvenile until the age of 21, unless the juvenile proves by a preponderance of the evidence that the juvenile has been rehabilitated and does not present a serious risk to public safety. In making the determination, the court must consider the following factors:

(a) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(b) the juvenile's willingness to accept responsibility for prior behavior;

(c) the juvenile's behavior in the current placement;

(d) the juvenile's prior record, character, and physical and mental maturity;

(e) the juvenile's potential for violent conduct, as demonstrated by prior behavior;

(f) the recommendations of the institution, agency, or facility charged with the juvenile's care regarding the appropriateness of the juvenile's release or continued custody; and

(g) any other information the prosecuting attorney or the juvenile submits.

(C) Review of Extended Jurisdiction Cases.

(1) Out-of-Home Care. If the juvenile is placed outside the home, the court must hold a dispositional review hearing no later than every 182 days after the hearing to extend jurisdiction.

(2) Periodic Review. If the institution, agency, or facility to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.

(D) Juvenile on Conditional Release. The procedures set forth in MCR 3.944 apply to juveniles committed under MCL 712A.18 who have allegedly violated a condition of release after being returned to the community on release from a public institution. The court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed, provided the court has not retained jurisdiction.

Rule 3.946 Post-Dispositional Secure Detention Pending Return to Placement

(A) If a juvenile who has been found to have committed an offense that would be a misdemeanor or a felony if committed by an adult has been placed out of the home by court order or by the Family Independence Agency, and the juvenile leaves such placement without authority, upon being apprehended the juvenile may be detained without the right to bail. Any detention must be authorized by the court.

(B) If a juvenile is placed in secure detention pursuant to this rule and no new petition is filed that would require a preliminary hearing pursuant to MCR 3.935, and no probation violation petition is filed, the court must conduct a detention hearing within 48 hours after the juvenile has been taken into custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2).

(C) At the detention hearing the court must:

(1) assure that the custodial parent, guardian, or legal custodian has been notified, if that person's whereabouts are known,

(2) advise the juvenile of the right to be represented by an attorney,

(3) determine whether the juvenile should be released or should continue to be detained.

Rule 3.950 Waiver of Jurisdiction

(A) Authority. Only a judge assigned to hear cases in the family division of the circuit court of the county where the offense is alleged to have been committed may waive jurisdiction pursuant to MCL 712A.4.

(B) Definition. As used in this rule, "felony" means an offense punishable by imprisonment for more than one year or an offense designated by law as a felony.

(C) Motion by Prosecuting Attorney. A motion by the prosecuting attorney requesting that the family division waive its jurisdiction to a court of general criminal jurisdiction must be in writing and must clearly indicate the charges and that if the motion is granted the juvenile will be prosecuted as though an adult.

(1) A motion to waive jurisdiction of the juvenile must be filed within 14 days after the petition has been authorized to be filed. Absent a timely motion and good cause shown, the juvenile shall no longer be subject to waiver of jurisdiction on the charges.

(2) A copy of the motion seeking waiver must be personally served on the juvenile and the parent, guardian, or legal custodian of the juvenile, if their addresses or whereabouts are known or can be determined by the exercise of due diligence.

(D) Hearing Procedure. The waiver hearing consists of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.

(1) First Phase. The first-phase hearing is to determine whether there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony, and that there is probable cause to believe that the juvenile who is 14 years of age or older committed the offense.

(a) The probable cause hearing shall be commenced within 28 days after the filing of the petition unless adjourned for good cause.

(b) At the hearing, the prosecuting attorney has the burden to present legally admissible evidence to establish each element of the offense and to establish probable cause that the juvenile committed the offense.

(c) The court need not conduct the first phase of the waiver hearing, if:

(i) the court has found the requisite probable cause at a hearing under MCR 3.935(D)(1), provided that at the earlier hearing only legally admissible evidence was used to establish probable cause that the offense was committed and probable cause that the juvenile committed the offense; or

(ii) the juvenile, after being informed by the court on the record that the probable cause hearing is equivalent to and held in place of preliminary examination in district court, waives the hearing. The court must determine that the waiver of hearing is freely, voluntarily, and understandingly given and that the juvenile knows there will be no preliminary examination in district court if the court waives jurisdiction.

(2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (D)(1)(c), the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. However, if the juvenile has been previously subject to the general criminal jurisdiction of the circuit court under MCL 712A.4 or 600.606, the court shall waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.

(a) The second-phase hearing shall be commenced within 28 days after the conclusion of the first phase, or within 35 days after the filing of the petition if there was no hearing pursuant to subrule (D)(1)(c), unless adjourned for good cause.

(b) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply to the second phase of the waiver hearing.

(c) The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by waiver.

(d) The court, in determining whether to waive the juvenile to the court having general criminal jurisdiction, shall consider and make findings on

the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

(i) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(ii) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(iii) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(iv) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(v) the adequacy of the punishment or programming available in the juvenile justice system;

(vi) the dispositional options available for the juvenile.

(e) In determining whether to waive the juvenile to the court having general criminal jurisdiction, the court may also consider any stipulation by the defense to a finding that the best interests of the juvenile and the public support a waiver.

(E) Grant of Waiver Motion.

(1) If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must:

(a) Enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information.

(b) Make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record.

(c) Advise the juvenile, orally or in writing, that

(i) the juvenile is entitled to appellate review of the decision to waive jurisdiction,

(ii) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right, and

(iii) if the juvenile is financially unable to retain an attorney, the court will appoint one to represent the juvenile on appeal.

(d) The court shall send, without cost, a copy of the order and a copy of the written opinion or transcript of the court's findings and conclusions, to the court having general criminal jurisdiction.

(2) Upon the grant of a waiver motion, a juvenile must be transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived pursuant to this rule are not required to be kept separate and apart from adult prisoners.

(F) Denial of Waiver Motion. If the waiver motion is denied, the court shall make written findings or place them on the record. A transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion must be sent to the prosecuting attorney and the juvenile, or juvenile's attorney, upon request. If the juvenile is detained and the trial of the matter in the family division has not started within 28 days after entry of the order denying the waiver motion, and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

(G) Psychiatric Testimony.

(1) A psychiatrist, psychologist, or certified social worker who conducts a court-ordered examination for the purpose of a waiver hearing may not testify at a subsequent criminal proceeding involving the juvenile without the juvenile's written consent.

(2) The juvenile's consent may only be given:

(a) in the presence of an attorney representing the juvenile or, if no attorney represents the juvenile, in the presence of a parent, guardian, or legal custodian;

(b) after the juvenile has had an opportunity to read the report of the psychiatrist, psychologist, or certified social worker; and

(c) after the waiver decision is rendered.

(3) Consent to testimony by the psychiatrist, psychologist, or certified social worker does not waive the juvenile's privilege against self-incrimination.

Rule 3.951 Initiating Designated Proceedings

(A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

(b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:

(i) of the right to an attorney pursuant to MCR 3.915(A)(1);

(ii) of the right to trial by judge or jury on the allegations in the petition;

(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

(iv) of the right to have a preliminary examination within 14 days;

(v) that the case has been designated for trial in the same manner as an adult and, if the prosecuting attorney proves that there is probable cause to believe an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult; and

(vi) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

(i) determine if fingerprints must be taken as provided by MCR 3.936;

(ii) schedule a preliminary examination within 14 days before a judge other than the judge who would conduct the trial;

(iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging a specified juvenile violation did not include a designation of the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to designate the case as the interests of justice require.

(B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile

violation and requests the court to designate the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

(b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:

(i) of the right to an attorney pursuant to MCR 3.915(A)(1);

(ii) of the right to trial by judge or jury on the allegations in the petition;

(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

(iv) of the right to have a designation hearing within 14 days;

(v) of the right to have a preliminary examination within 14 days after the case is designated if the juvenile is charged with a felony or offense for which an adult could be imprisoned for more than one year;

(vi) that if the case is designated by the court for trial in the same manner as an adult and, if a preliminary examination is required by law, the prosecuting attorney proves that there is probable cause to believe that an offense was committed and there is probable cause

to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;

(vii) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

(i) determine if fingerprints must be taken as provided by MCR 3.936;

(ii) schedule a designation hearing within 14 days;

(iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging an offense other than a specified juvenile violation did not include a request that the court designate the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to request the court to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to request the court to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to request the court to designate the case as the interests of justice require.

Rule 3.952 Designation Hearing

(A) Time. The designation hearing shall be commenced within 14 days after the arraignment, unless adjourned for good cause.

(B) Notice.

(1) A copy of the petition or a copy of the petition and separate written request for court designation must be personally served on the juvenile and the juvenile's parent, guardian, or legal custodian, if the address or whereabouts of the juvenile's parent, guardian, or custodian is known or can be determined by the exercise of due diligence.

(2) Notice of the date, time, and place of the designation hearing must be given to the juvenile, the juvenile's parent, guardian, or legal custodian, the attorney for the juvenile, if any, and the prosecuting attorney. The notice may be given either orally on the record or in writing, served on each individual by mail, or given in another manner reasonably calculated to provide notice.

(C) Hearing Procedure.

(1) Evidence. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Burden of Proof. The prosecuting attorney has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by designation.

(3) Factors to be Considered. In determining whether to designate the case for trial in the same manner as an adult, the court must consider all the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:

(a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(c) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(e) the adequacy of the punishment or programming available in the juvenile justice system; and

(f) the dispositional options available for the juvenile.

(D) Grant of Request for Court Designation.

(1) If the court determines that it is in the best interests of the juvenile and the public that the juvenile be tried in the same manner as an adult in the family division of the circuit court, the court must:

(a) Enter a written order granting the request for court designation and

(i) schedule a preliminary examination within 14 days if the juvenile is charged with a felony or an offense for which an adult could be imprisoned for more than one year, or

(ii) schedule the matter for trial or pretrial hearing if the juvenile is charged with a misdemeanor.

(b) Make findings of fact and conclusions of law forming the basis for entry of the order designating the petition. The findings and conclusions may be incorporated in a written opinion or stated on the record.

(E) Denial of Request for Designation. If the request for court designation is denied, the court shall make written findings or place them on the record. Further proceedings shall be conducted pursuant to MCR 3.941-3.944.

Rule 3.953 Preliminary Examination in Designated Cases

(A) Requirement. A preliminary examination must be held only in designated cases in which the juvenile is alleged to have committed a felony or an offense for which an adult could be imprisoned for more than one year.

(B) Waiver. The juvenile may waive the preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The judge shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.

(C) Combined Hearing. The preliminary examination may be combined with a designation hearing provided that the Michigan Rules of Evidence, except as otherwise provided by law, apply only to the preliminary examination phase of the combined hearing.

(D) Time. The preliminary examination must commence within 14 days of the arraignment in a prosecutor-designated case or within 14 days after court-ordered designation of a petition, unless the preliminary examination was combined with the designation hearing.

(E) Procedure. The preliminary examination must be conducted in accordance with MCR 6.110.

(F) Findings.

(1) If the court finds there is probable cause to believe that the alleged offense was committed and probable cause to believe the juvenile committed the offense, the court may schedule the matter for trial or a pretrial hearing.

(2) If the court does not find there is probable cause to believe that the alleged offense was committed or does not find there is probable cause to believe the juvenile committed the offense, the court shall dismiss the petition, unless the court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense.

(3) If the court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense, the court may, as provided in MCR 3.952, further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult. If the court designates the case following the determination of probable cause under this subrule, the court may schedule the matter for trial or a pretrial hearing.

(G) Confinement. If the court has designated the case and finds probable cause to believe that a felony or an offense for which an adult could be imprisoned for more than one year has been committed and probable cause to believe that the juvenile committed the offense, the judge may confine the juvenile in the county jail pending trial. If the juvenile is under 17 years of age, the juvenile may be confined in jail only if the juvenile can be separated by sight and sound from adult prisoners and if the sheriff has approved the confinement.

Rule 3.954 Trial of Designated Cases

Trials of designated cases are governed by subchapter 6.400, except for MCR 6.402(A). The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer. Pleas in designated cases are governed by subchapter 6.300.

Rule 3.955 Sentencing or Disposition in Designated Cases

(A) **Determining Whether to Sentence or Impose Disposition.** If a juvenile is convicted under MCL 712A.2d, sentencing or disposition shall be made as provided in MCL 712A.18(1)(n) and the Crime Victim's Rights Act, MCL 780.751 *et seq.*, if applicable. In deciding whether to enter an order of disposition, or impose or delay imposition of sentence, the court shall consider all the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(1) the seriousness of the alleged offense in terms of community protection, including but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(2) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(3) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(4) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the juvenile.

The court also shall give the juvenile, the juvenile's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in deciding whether to enter an order of disposition or to impose or delay imposition of sentence.

(B) **Burden of Proof.** The court shall enter an order of disposition unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria in subrule (A), it would be in the best interests of the public to sentence the juvenile as an adult.

(C) **Sentencing.** If the court determines that the juvenile should be sentenced as an adult, either initially or following a delayed imposition of sentence, the sentencing hearing shall be held in accordance with the procedures set forth in MCR 6.425.

(D) Delayed Imposition of Sentence. If the court determines that the juvenile should be sentenced as an adult, the court may, in its discretion, enter an order of disposition delaying imposition of sentence and placing the juvenile on probation on such terms and conditions as it considers appropriate, including ordering any disposition under MCL 712A.18. A delayed sentence may be imposed in accordance with MCR 3.956.

(E) Disposition Hearing. If the court does not determine that the juvenile should be sentenced as an adult, the court shall hold a dispositional hearing and comply with the procedures set forth in MCR 3.943.

Rule 3.956 Review Hearings; Probation Violation

(A) Review Hearings in Delayed Imposition of Sentence Cases.

(1) When Required. If the court entered an order of disposition delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety.

(a) Time of Hearing.

(i) Annual Review. The court shall conduct an annual review of the probation, including, but not limited to, the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in placement. In conducting the review, the court must examine any report prepared under MCL 803.223, and any report prepared by the officer or agency supervising probation. The court may order changes in the juvenile's probation on the basis of the review including, but not limited to, imposition of sentence.

(ii) Review on Request of Institution or Agency. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has extended jurisdiction, any time before the juvenile becomes 21 years of age.

(iii) Mandatory Review. The court shall schedule a review hearing to be held within 42 days before the juvenile attains the age of 19, unless adjourned for good cause.

(iv) Final Review. The court shall conduct a final review of the juvenile's probation not less than 91 days before the end of the probation period.

(b) Notice of Hearing. Notice of the hearing must be given at least 14 days before the hearing to

(i) the prosecuting attorney;

(ii) the agency or the superintendent of the institution or facility to which the juvenile has been committed;

(iii) the juvenile; and

(iv) if the address or whereabouts are known, the parent, guardian, or legal custodian of the juvenile.

The notice must clearly indicate that the court may extend jurisdiction over the juvenile or impose sentence and must advise the juvenile and the parent, guardian, or legal custodian of the juvenile that the juvenile has a right to an attorney.

(2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile unless an attorney has been retained. The court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(3) Evidence; Commitment Report. The court may consider the commitment report prepared as provided in MCL 803.225 and any report prepared upon the court's order by the officer or agency supervising probation.

(4) Burden of Proof; Findings.

(a) Before the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply. In making the determination, the court must consider the following factors:

(i) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(ii) the juvenile's willingness to accept responsibility for prior behavior;

(iii) the juvenile's behavior in the current placement;

(iv) the juvenile's prior record, character, and physical and mental maturity;

(v) the juvenile's potential for violent conduct as demonstrated by prior behavior;

(vi) the recommendation of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody;

(vii) any other information the prosecuting attorney or the juvenile submit.

(b) Before the court may impose a sentence at the final review hearing, the court must determine that the best interests of the public would be served by the imposition of a sentence provided by law for an adult offender. In making the determination, the court must consider the following factors, in addition to the criteria specified in subrule (4)(a):

(i) the effect of treatment on the juvenile's rehabilitation;

(ii) whether the juvenile is likely to be dangerous to the public if released;

(iii) the best interests of the public welfare and the protection of public security.

(5) Sentencing credit. If a sentence of imprisonment is imposed, the juvenile shall receive credit for the time served on probation.

(B) Violation of Probation in Delayed Imposition of Sentence Cases.

(1) Subsequent Conviction. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(2) Other Violations of Probation. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subrule (B)(1), the court may impose sentence or may order any of the following for the juvenile:

(a) A change in placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical program.

(f) Incarceration in the county jail for not more than 30 days if the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and if the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(3) Hearing. The probation violation hearing must be conducted pursuant to MCR 3.944(C).

(4) Sentencing Credit. If a sentence of imprisonment is imposed, the juvenile must receive credit for the time served on probation.

Rule 3.961 Initiating Child Protective Proceedings

(A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition.

(B) Content of Petition. A petition must contain the following information, if known:

(1) The child's name, address, and date of birth.

(2) The names and addresses of:

(a) the child's mother and father,

(b) the parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,

(c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and

(d) any court with prior continuing jurisdiction.

(3) The essential facts that constitute an offense against the child under the Juvenile Code.

(4) A citation to the section of the Juvenile Code relied on for jurisdiction.

(5) The child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe.

(6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated.

(7) The information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

Rule 3.962 Preliminary Inquiry

(A) Purpose. When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.

(B) Action by Court. A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:

(1) Deny authorization of the petition.

(2) Refer the matter to alternative services.

(3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

Rule 3.963 Protective Custody of Child

(A) Taking Custody Without Court Order. An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.

(B) Court-Ordered Custody.

(1) The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court may also include in such an order authorization to enter specified premises to remove the child.

(2) The order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination.

(3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing, whether there has been a central registry clearance, and whether a criminal history check has been initiated.

(C) Arranging for Court Appearance. An officer or other person who takes a child into protective custody must:

(1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;

(2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;

(3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;

(4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;

(5) ensure that the petition is prepared and submitted to the court;

(6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.

Rule 3.965 Preliminary Hearing

(A) Time for Preliminary Hearing.

(1) Child in Protective Custody. The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released.

(2) Severely Physically Injured or Sexually Abused Child. When the Family Independence Agency submits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722.628(3)(c), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) Procedure.

(1) The court must determine if the parent, guardian, or legal custodian has been notified, and if the lawyer-guardian ad litem for the child is present. The preliminary hearing may be adjourned for the purpose of securing the appearance of an attorney, parent, guardian, or legal custodian or may be conducted in the absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made.

(2) The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.

(3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court must read the allegations in the petition in open court, unless waived.

(4) The court shall determine if the petition should be dismissed or the matter referred to alternate services. If the court so determines the court must release the child. Otherwise, the court must continue the hearing.

(5) The court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).

(6) The court must advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912.

(7) The court shall allow the respondent an opportunity to deny or admit the allegations and make a statement of explanation.

(8) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.

(9) The court must inquire if the child or either parent is a member of any American Indian tribe or band. If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980.

(10) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown. If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing and subject to subrules (C) and (D).

(11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, the placement of the child pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.

(12) If the court authorizes the filing of the petition, the court:

(a) may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child; or

(b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made.

(13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care. If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1) Placement; Proofs. If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.

(2) Criteria. If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs.

(3) Findings. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

(4) Record Checks; Home Study. If the child has been placed in a relative's home,

(a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before, or within 7 days after, the placement, and

(b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.

(5) No Right to Bail. No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.

(6) Parenting Time or Visitation.

(a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.

(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.

(7) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child. The court must make this determination no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that

(a) the parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k); or

(b) the parent has been convicted of:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) parental rights of the parent with respect to a sibling have been terminated involuntarily.

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;

(3) that the general elements of an initial service plan include:

(a) the background of the child and the family,

(b) an evaluation of the experiences and problems of the child,

(c) a projection of the expected length of stay in foster care, and

(d) an identification of specific goals and projected time frames for meeting the goals; and

(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child's attending physician of record or primary care physician.

Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan. On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.

(B) Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

(a) a child has been removed from the home;

(b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit

and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;

(c) the supervising agency has provided written notice of the placement decision;

(d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and

(e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7 days of the filing of the petition.

(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

(1) General. The court must conduct a hearing upon notice from the Foster Care Review Board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a permanent ward of the Michigan Children's Institute.

(2) Procedure.

(a) Time. The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the Foster Care Review Board that there is a disagreement regarding a placement change.

(b) Notice. The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(c) Evidence. The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.

(d) Findings. The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child's best interests.

Rule 3.971 Pleas of Admission or No Contest

(A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

(1) of the allegations in the petition;

(2) of the right to an attorney, if respondent is without an attorney;

(3) that, if the court accepts the plea, the respondent will give up the rights to

(a) trial by a judge or trial by a jury,

(b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,

(c) have witnesses against the respondent appear and testify under oath at the trial,

(d) cross-examine witnesses, and

(e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

(1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). If the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is placed by the court unless the trial is postponed:

(1) on stipulation of the parties;

(2) because process cannot be completed; or

(3) because the court finds that the testimony of a presently unavailable witness is needed.

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

(B) Preliminary Proceedings.

(1) The court shall determine that the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of the respondent provided notice has been served on the respondent. The child may be excused as the court determines the child's interests require.

(2) The court shall read the allegations in the petition, unless waived.

(C) Evidentiary Matters.

(1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.

(2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(20) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(e), (f), (r), or (s), performed with or on the child by another person may be admitted into evidence through the testimony of the person to whom the statement is made as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

(b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.

(c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

(D) Recommendation by Lawyer-Guardian ad Litem. At the conclusion of the proofs, the lawyer-guardian ad litem for the child may make a recommendation to the finder of fact regarding whether one or more of the statutory grounds alleged in the petition have been proven.

(E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven.

Rule 3.973 Dispositional Hearing

(A) Purpose. A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.

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

(C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than 35 days, except for good cause.

(D) Presence of Parties.

(1) The child may be excused from the dispositional hearing as the interests of the child require.

(2) The respondent has the right to be present or may appear through an attorney.

(3) The court may proceed in the absence of parties provided that proper notice has been given.

(E) Evidence; Reports.

(1) The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges. However, as provided by MCL 722.631, no assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(2) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value. The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.

(3) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making the reports when those individuals are reasonably available.

(4) Written reports, other than those portions made confidential by law, case service plans, and court orders, including all updates and revisions, shall be available to the foster parent, child caring institution, or relative with whom the child is placed. The foster parents, child caring institution, or relative with whom the child is placed shall not have the right to cross-examine individuals making such reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in subrule (E)(2).

(F) Dispositional Orders.

(1) The court shall enter an order of disposition as provided in the Juvenile Code and these rules.

(2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A.18f. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child.

(3) The court, on consideration of the written report prepared by the agency responsible for the care and supervision of the child pursuant to MCL 712A.18f(1), shall, when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made:

(a) to prevent the child's removal from home, or

(b) to rectify the conditions that caused the child to be removed from the child's home.

(4) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include the following:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(G) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

(1) follow the review procedures in MCR 3.975 for a child in placement, or

(2) review the progress of a child at home pursuant to the procedures of MCR 3.974(A).

(H) Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are governed by MCR 3.977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A) Review of Child's Progress.

(1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. A progress review does not require a hearing.

(2) Time. The progress of the child must be reviewed no later than 182 days after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care.

(3) Change of Placement. Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).

(B) Emergency Removal.

(1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.

(2) Notice. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921.

(3) Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written

determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.

(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:

(i) to be represented by an attorney at the dispositional review hearing;

(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and

(iii) to use compulsory process to obtain witnesses for the dispositional review hearing.

(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.

(C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR. 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) no later than every 91 days following entry of the original order of disposition; or

(2) no later than every 182 days after the first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 3.976(E)(3).

(D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

(1) Review of Case Service Plan. The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

(c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;

(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;

(e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and

(f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

(2) Progress Toward Returning Child Home. The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

(1) order the return of the child home,

(2) order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,

(3) change the placement of the child,

(4) modify the dispositional order,

(5) modify any part of the case service plan,

(6) enter a new dispositional order, or

(7) continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

Rule 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

(1) the child may be returned to the parent, guardian, or legal custodian;

(2) a petition to terminate parental rights should be filed;

(3) the child may be placed in a legal guardianship;

(4) the child may be permanently placed with a fit and willing relative; or

(5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4).

(B) Time.

(1) An initial permanency planning hearing must be held within 28 days after a petition has been adjudicated and both of the following occur:

(a) A court of competent jurisdiction has determined that

(i) a parent is found to have abused the child, or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or

(ii) the parent's rights to another child were terminated involuntarily, and

(b) the court has determined that reasonable efforts are not required to reunify the child and the family.

(2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than one year after an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or workers at the supervising agency.

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

(C) Notice. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in

further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(D) Hearing Procedure; Evidence.

(1) Procedure. Each permanency planning hearing must be conducted by a judge or a referee. Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

(1) Determining Whether to Return Child Home. At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time

within which the petition must be filed, which may not be more than 42 days after the date of the order.

(3) Other Placement Plans. If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that termination of parental rights is not in the best interest of the child, the court must either

(a) continue the placement of the child in foster care for a limited period to be set by the court if the court determines that other permanent placement is not possible, or

(b) place the child in foster care on a long-term basis if the court determines that it is in the child's best interests.

Rule 3.977 Termination of Parental Rights

(A) General.

(1) This rule applies to all proceedings in which termination of parental rights is sought . Proceedings for termination of parental rights involving an Indian child, as defined by 25 USC 1901 *et seq.*, are governed by MCR 3.980 in addition to this rule.

(2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:

(a) the agency,

(b) the child,

(c) the guardian, legal custodian, or representative of the child,

(d) a concerned person as defined in MCL 712A.19b(6),

(e) the state children's ombudsman, or

(f) the prosecuting attorney, without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.

(3) The burden of proof is on the party seeking by court order to terminate the rights of the respondent over the child. There is no right to a jury determination.

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes

(1) the natural or adoptive mother of the child;

(2) the father of the child as defined by MCR 3.903(A)(7).

"Respondent" does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload.

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.

(F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) the supplemental petition for termination of parental rights contains a request for termination;

(b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true; and

(ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interests of the child.

(2) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(G) Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a

supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

(1) Time.

(a) Filing Petition. The supplemental petition for termination of parental rights may be filed at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first.

(b) Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) Order. The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition

(a) are true, and

(b) come within MCL 712A.19b(3),

unless the court finds by clear and convincing evidence that termination of parental rights to the child is not in the best interest of the child.

(H) Findings.

(1) General. The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient. If the court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs, but no later than 70 days after the commencement of the hearing to terminate parental rights.

(2) Denial of Termination. If the court finds that the parental rights of respondent should not be terminated, the court must make findings of fact and conclusions of law.

(3) Order of Termination. An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.

(I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) The respondent is entitled to appellate review of the order.

(b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within 14 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

(d) The respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

(2) Appointment of Attorney.

(a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall appoint an attorney within 14 days after the respondent's request is filed. The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

(b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete

register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

(3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.

(J) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights.

Rule 3.978 Post-Termination Review Hearings

(A) Review Hearing Requirement. Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency.

(B) Notice; Right to be Heard. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing.

(C) Findings. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.

(D) Termination of Jurisdiction. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.

Rule 3.980 American Indian Children

(A) **Notice; Transfer.** If any Indian child as defined by the Indian Child Welfare Act, 25 USC 1901 *et seq.*, is the subject of a protective proceeding or is charged with an offense in violation of MCL 712A.2(a)(2)-(4) or (d), the following procedures shall be used:

(1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter shall be transferred to the tribal court having jurisdiction.

(2) If the child does not reside on a reservation, the court shall ensure that the petitioner has given notice of the proceedings to the child's tribe and the child's parents or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior.

(3) If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case.

(B) Emergency Removal.

(1) An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child.

(2) An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.

(C) Removal Hearing.

(1) After Emergency Removal. If an Indian child is removed under subrule (B)(1) or (2), a removal hearing must be completed within 28 days of removal from the parent or Indian custodian.

(2) Non-Emergency Removal. Except in cases of emergency removal under subrules (B)(1) or (2), a removal hearing must be completed before an Indian child may be removed from the parent or Indian custodian.

(3) Evidence. An Indian child must not be removed from a parent or Indian custodian, or, for an Indian child removed under subrules (B)(1) or (2), remain

removed from a parent or Indian custodian pending further proceedings, without clear and convincing evidence, including the testimony of at least one expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.

(4) A removal hearing may be combined with any other hearing.

(5) The Indian child, if removed from home, must be placed, in descending order of preference, with:

(a) a member of the child's extended family,

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

(c) an Indian foster family licensed or approved by a non-Indian licensing authority,

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

The court may order another placement for good cause shown.

(D) Termination of Parental Rights. In addition to the required findings under MCR 3.977, the parental rights of a parent of an Indian child must not be terminated unless there is also evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

Rule 3.981 Minor Personal Protection Orders; Issuance; Modification; Recision; Appeal

Procedure for the issuance, dismissal, modification, or recision of minor personal protection orders is governed by subchapter 3.700. Procedure in appeals related to minor personal protection orders is governed by MCR 3.709 and MCR 3.993.

Rule 3.982 Enforcement of Minor Personal Protection Orders

(A) In General. A minor personal protection order is enforceable under MCL 600.2950(22), (25), 600.2950a(19), (22), 764.15b, and 600.1701 *et seq*. For the purpose of MCR 3.981-3.989, "minor personal protection order" includes a foreign

protection order against a minor respondent enforceable in Michigan under MCL 600.2950*l*.

(B) Procedure. Unless indicated otherwise in these rules, contempt proceedings for the enforcement of minor personal protection orders where the respondent is under 18 years of age are governed by MCR 3.982-3.989.

(C) Form of Proceeding. A contempt proceeding brought in a court other than the one that issued the minor personal protection order shall be entitled "In the Matter of Contempt of [Respondent], a minor". The clerk shall provide a copy of the contempt proceeding to the court that issued the minor personal protection order.

Rule 3.983 Initiation of Contempt Proceedings by Supplemental Petition

(A) Filing. If a respondent allegedly violates a minor personal protection order, the original petitioner, a law enforcement officer, a prosecuting attorney, a probation officer, or a caseworker may submit a supplemental petition in writing to have the respondent found in contempt. The supplemental petition must contain a specific description of the facts constituting a violation of the personal protection order. There is no fee for such a petition.

(B) Scheduling. Upon receiving the supplemental petition, the court must either:

(1) set a date for a preliminary hearing on the supplemental petition, to be held as soon as practicable, and issue a summons to appear; or

(2) issue an order authorizing a peace officer or other person designated by the court to apprehend the respondent.

(C) Service. If the court sets a date for a preliminary hearing, the petitioner shall serve the supplemental petition and summons on the respondent and, if the relevant addresses are known or are ascertainable upon diligent inquiry, on the respondent's parent or parents, guardian, or custodian. Service must be in the manner provided by MCR 3.920 at least 7 days before the preliminary hearing.

(D) Order to Apprehend.

(1) A court order to apprehend the respondent may include authorization to:

(a) enter specified premises as required to bring the minor before the court, and

(b) detain the minor pending preliminary hearing if it appears there is a substantial likelihood of retaliation or continued violation.

(2) Upon apprehending a minor respondent under a court order, the officer shall comply with MCR 3.984(B) and (C).

Rule 3.984 Apprehension of Alleged Violator

(A) Apprehension; Release to Parent, Guardian, or Custodian. When an officer apprehends a minor for violation of a minor personal protection order without a court order for apprehension and does not warn and release the minor, the officer may accept a written promise of the minor's parent, guardian, or custodian to bring the minor to court, and release the minor to the parent, guardian, or custodian.

(B) Custody; Detention. When an officer apprehends a minor in relation to a minor personal protection order pursuant to a court order that specifies that the minor is to be brought directly to court; or when an officer apprehends a minor for an alleged violation of a minor personal protection order without a court order, and either the officer has failed to obtain a written promise from the minor's parent, guardian, or custodian to bring the minor to court, or it appears to the officer that there is a substantial likelihood of retaliation or violation by the minor, the officer shall immediately do the following:

(1) If the whereabouts of the minor's parent or parents, guardian, or custodian is known, inform the minor's parent or parents, guardian, or custodian of the minor's apprehension and of the minor's whereabouts and of the need for the parent or parents, guardian, or custodian to be present at the preliminary hearing;

(2) Take the minor

(a) before the court for a preliminary hearing, or

(b) to a place designated by the court pending the scheduling of a preliminary hearing;

(3) Prepare a custody statement for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify; and

(4) Ensure that a supplemental petition is prepared and filed with the court.

(C) Separate Custody. While awaiting arrival of the parent, guardian, or custodian, appearance before the court, or otherwise, a minor under 17 years of age must be

maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

(D) Designated Court Person. The court must designate a judge, referee or other person who may be contacted by the officer taking a minor under 17 into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the minor pending preliminary hearing.

(E) Out-of-County Violation. Subject to MCR 3.985(H), if a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the jurisdiction where the minor personal protection order was issued, the apprehending jurisdiction may notify the issuing jurisdiction that it may request that the respondent be returned to the issuing jurisdiction for enforcement proceedings.

Rule 3.985 Preliminary Hearing

(A) Time.

(1) Commencement. If the respondent was apprehended or arrested for violation of a minor personal protection order or was apprehended or arrested under a court order, and the respondent is taken into court custody or is jailed, the preliminary hearing must commence no later than 24 hours after the minor was apprehended or arrested, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), or the minor must be released. Otherwise, the preliminary hearing must commence as soon as practicable after the apprehension or arrest, or the submission of a supplemental petition.

(2) General Adjournment. The court may adjourn the hearing for up to 14 days:

(a) to secure the attendance of witnesses or the minor's parent, guardian, or custodian, or

(b) for other good cause shown.

(B) Procedure.

(1) The court shall determine whether the parent, guardian, or custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or custodian provided a guardian ad litem or attorney appears with the minor.

(2) Unless waived by the respondent, the court shall read the allegations in the supplemental petition, and ensure that the respondent has received written notice of the alleged violation.

(3) Immediately after the reading of the allegations, the court shall advise the respondent on the record in plain language of the rights to:

(a) contest the allegations at a violation hearing;

(b) an attorney at every stage in the proceedings, and, if the court determines it might sentence the respondent to jail or place the respondent in secure detention, the fact that the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one;

(c) a nonjury trial and that a referee may be assigned to hear the case unless demand for a judge is filed pursuant to MCR 3.912;

(d) have witnesses against the respondent appear at a violation hearing and to question the witnesses;

(e) have the court order any witnesses for the respondent's defense to appear at the hearing; and

(f) remain silent and to not have that silence used against the respondent, and that any statement by the respondent may be used against the respondent.

(4) The court must decide whether to authorize the filing of the supplemental petition and proceed formally, or to dismiss the supplemental petition.

(5) The respondent must be allowed an opportunity to deny or otherwise plead to the allegations. If the respondent wishes to enter a plea of admission or of nolo contendere, the court shall follow MCR 3.986.

(6) If the court authorizes the filing of the supplemental petition, the court must:

(a) set a date and time for the violation hearing, or, if the court accepts a plea of admission or no contest, either enter a dispositional order or set the matter for dispositional hearing; and
(b) either release the respondent pursuant to subrule (E) or order detention of the respondent as provided in subrule (F).

(C) Notification. Following the preliminary hearing, if the respondent denies the allegations in the supplemental petition, the court must:

(1) notify the prosecuting attorney of the scheduled violation hearing;

(2) notify the respondent, respondent's attorney, if any, and respondent's parents, guardian, or custodian of the scheduled violation hearing and direct the parties to appear at the hearing and give evidence on the charge of contempt.

Notice of hearing must be given by personal service or ordinary mail at least 7 days before the violation hearing, unless the respondent is detained, in which case notice of hearing must be served at least 24 hours before the hearing.

(D) Failure to Appear. If the respondent was notified of the preliminary hearing and fails to appear for the preliminary hearing, the court may issue an order in accordance with MCR 3.983(D) authorizing a peace officer or other person designated by the court to apprehend the respondent.

(1) If the respondent is under 17 years of age, the court may order the respondent detained pending a hearing on the apprehension order; if the court releases the respondent it may set bond for the respondent's appearance at the violation hearing.

(2) If the respondent is 17 years of age, the court may order the respondent confined to jail pending a hearing on the apprehension order. If the court releases the respondent it must set bond for the respondent's appearance at the violation hearing.

(E) Release of Respondent.

(1) Subject to the conditions set forth in subrule (F), the respondent may be released, with conditions, to a parent, guardian, or custodian pending the resumption of the preliminary hearing or pending the violation hearing after the court considers available information on

(a) family ties and relationships,

(b) the minor's prior juvenile delinquency or minor personal protection order record, if any,

(c) the minor's record of appearance or nonappearance at court proceedings,

(d) the violent nature of the alleged violation,

(e) the minor's prior history of committing acts that resulted in bodily injury to others,

(f) the minor's character and mental condition,

(g) the court's ability to supervise the minor if placed with a parent or relative,

(h) the likelihood of retaliation or violation of the order by the respondent, and

(i) any other factors indicating the minor's ties to the community, the risk of nonappearance, and the danger to the respondent or the original petitioner if the respondent is released.

(2) Bail procedure is governed by MCR 3.935(F).

(F) Detention Pending Violation Hearing.

(1) Conditions. A minor shall not be removed from the parent, guardian, or custodian pending violation hearing or further court order unless:

(a) probable cause exists to believe the minor violated the minor personal protection order; and

(b) at the preliminary hearing the court finds one or more of the following circumstances to be present:

(i) there is a substantial likelihood of retaliation or continued violation by the minor who allegedly violated the minor personal protection order;

(ii) there is a substantial likelihood that if the minor is released to the parent, with or without conditions, the minor will fail to appear at the next court proceeding; or

(iii) detention pending violation hearing is otherwise specifically authorized by law.

(2) Waiver. A minor respondent in custody may waive the probable cause phase of a detention determination only if the minor is represented by an attorney.

(3) Evidence; Findings. At the preliminary hearing the minor respondent may contest the sufficiency of evidence to support detention by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. A finding of probable cause under subrule (F)(1)(a) may be based on hearsay evidence which possesses adequate guarantees of trustworthiness.

(4) Type of Detention. The detained minor must be placed in the least restrictive environment that will meet the needs of the minor and the public, and conforms to the requirements of MCL 712A.15 and 712A.16.

(G) **Findings.** At the preliminary hearing the court must state the reasons for its decision to release or detain the minor on the record or in a written memorandum.

(H) **Out-of-County Violation.** When a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the one that issued the personal protection order, and the apprehending jurisdiction conducts the preliminary hearing, if it has not already done so, the apprehending jurisdiction must immediately notify the issuing jurisdiction that the latter may request that the respondent be returned to the issuing jurisdiction for enforcement proceedings.

Rule 3.986 Pleas of Admission or No Contest

(A) **Capacity.** A minor may offer a plea of admission or of no contest to the violation of a minor personal protection order with the consent of the court. The court shall not accept a plea to a violation unless the court is satisfied that the plea is accurate, voluntary, and understanding.

(B) **Qualified Pleas.** The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) **Support of Plea by Parent, Guardian, Custodian.** The court shall inquire of the parents, guardian, custodian, or guardian ad litem whether there is any reason the court should not accept the plea tendered by the minor. Agreement or objection by the parent, guardian, custodian, or guardian ad litem to a plea of admission or of no contest by a minor must be placed on the record if that person is present.

(D) **Plea Withdrawal.** The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the minor may withdraw the plea offer by right. After the court accepts a plea, the court has discretion to allow the minor to withdraw the plea.

Rule 3.987 Violation Hearing

(A) **Time.** Upon completion of the preliminary hearing the court shall set a date and time for the violation hearing if the respondent denies the allegations in the supplemental petition. The violation hearing must be held within 72 hours of apprehension, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), if the respondent is detained. If the respondent is not detained the hearing must be held within 21 days.

(B) **Prosecution After Apprehension.** If a criminal contempt proceeding is commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains an attorney to prosecute the criminal contempt proceeding. If the prosecuting attorney determines that the personal protection order was not

violated or that it would not be in the interest of justice to prosecute the criminal contempt violation, the prosecuting attorney need not prosecute the proceeding.

(C) Preliminary Matters.

(1) The court must determine whether the appropriate parties have been notified and are present.

(a) The respondent has the right to be present at the violation hearing along with parents, guardian, or custodian, and guardian ad litem and attorney.

(b) The court may proceed in the absence of a parent properly noticed to appear, provided the respondent is represented by an attorney.

(c) The original petitioner has the right to be present at the violation hearing.

(2) The court must read the allegations contained in the supplemental petition, unless waived.

(3) Unless an attorney appears with the minor, the court must inform the minor of the right to the assistance of an attorney and that, if the court determines that it might sentence the respondent to jail or place the respondent in secure detention, the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the minor of the dangers and disadvantages of self-representation and determine whether the minor is literate and competent to conduct the defense.

(D) Jury. There is no right to a jury trial.

(E) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.

(F) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by a preponderance of the evidence.

(G) Judicial Findings. At the conclusion of the hearing, the court must make specific findings of fact, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 3.988 Dispositional Hearing

(A) **Time.** The time interval between the entry of judgment finding a violation of a minor personal protection order and disposition, if any, is within the court's discretion, but may not be more than 35 days. When the minor is detained, the interval may not be more than 14 days, except for good cause.

(B) Presence of Respondent and Petitioner.

(1) The respondent may be excused from part of the dispositional hearing for good cause, but the respondent must be present when the disposition is announced.

(2) The petitioner has the right to be present at the dispositional hearing.

(C) Evidence.

(1) At the dispositional hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied on to the extent of its probative value, even though such evidence may not be admissible at the violation hearing.

(2) The respondent, or the respondent's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Dispositions.

(1) If a minor respondent at least 17 years of age pleads or is found guilty of criminal contempt, the court may impose a sentence of incarceration of up to 93 days and may impose a fine of not more than $500.

(2) If a minor respondent pleads or is found guilty of civil contempt, the court shall

(a) impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721, if the respondent is at least 17 years of age.

(b) subject the respondent to the dispositional alternatives listed in MCL 712A.18, if the respondent is under 17 years of age.

(3) In addition to the sentence, the court may impose other conditions to the minor personal protection order.

Rule 3.989 Supplemental Dispositions

When it is alleged that a minor placed on probation for the violation of a minor personal protection order has violated a condition of probation, the court shall follow the procedures for supplemental disposition as provided in MCR 3.944.

Rule 3.991 Review of Referee Recommendations

(A) General.

(1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court shall review the recommendations if requested by a party in the manner provided by subrule (B).

(2) If no such request is filed within the time provided by subrule (B)(3), the court may enter an order in accordance with the referee's recommendations.

(3) Nothing in this rule prohibits a judge from reviewing a referee's recommendation before the expiration of the time for requesting review and entering an appropriate order.

(4) After the entry of an order under subrule (A)(3), a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

(1) be in writing,

(2) state the grounds for review,

(3) be filed with the court within 7 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and

(4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) **Prompt Review; No Party Appearance Required.** Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E) **Review Standard.** The judge must enter an order adopting the referee's recommendation unless:

(1) the judge would have reached a different result had he or she heard the case; or

(2) the referee committed a clear error of law, which

(a) likely would have affected the outcome, or

(b) cannot otherwise be considered harmless.

(F) **Remedy.** The judge may adopt, modify, or deny the recommendation of the referee, in whole or in part, on the basis of the record and the memorandums prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

(G) **Stay.** The court may stay any order or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

Rule 3.992 Rehearings; New Trial

(A) **Time and Grounds.** Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.

(B) **Notice.** All parties must be given notice of the motion in accordance with Rule 3.920.

(C) **Response by Parties.** Any response by parties must be in writing and filed with the court and served on the opposing parties within 7 days after notice of the motion.

(D) **Procedure.** The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.

(E) **Hearings.** The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the hearing. The court shall state the reasons for its decision on the motion on the record or in writing.

(F) **Stay.** The court may stay any order, or grant bail to a detained juvenile, pending a ruling on the motion.

Rule 3.993 Appeals

(A) The following orders are appealable to the Court of Appeals by right:

(1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,

(2) an order terminating parental rights,

(3) any order required by law to be appealed to the Court of Appeals, and

(4) any final order.

(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.

(C) Procedure; Delayed Appeals.

(1) Applicable Rules. Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.

(2) Delayed Appeals; Termination of Parental Rights. The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.

***Rules cited are accurate as of the date of publication. Please visit www.courts.michigan.gov to ensure that all provisions are current before relying on them.**

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) An application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must

(a) be in writing,

(b) state with particularity the grounds and authority on which it is based,

(c) state the relief or order sought, and

(d) be signed by the party or attorney as provided in MCR 2.114.

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked judge's copy on the cover sheet; that notation may be handwritten.

(3) A motion and notice of the hearing on it may be combined in the same document.

(4) If a contested motion is filed after rejection of a proposed order under subrule (D), a copy of the rejected order and an affidavit establishing the rejection must be filed with the motion.

(B) Form of Affidavits.

(1) If an affidavit is filed in support of or in opposition to a motion, it must:

(a) be made on personal knowledge;

(b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and

(c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.

(2) Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to the affidavit unless the papers or copies:

(a) have already been filed in the action;

(b) are matters of public record in the county in which the action is pending;

(c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or

(d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.

(C) Time for Service and Filing of Motions and Responses.

(1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:

(a) at least 9 days before the time set for the hearing, if served by mail, or

(b) at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2).

(2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:

(a) at least 5 days before the hearing, if served by mail, or

(b) at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2).

(3) If the court sets a different time for serving a motion or response its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(4) Unless the court sets a different time, a motion must be filed at least 7 days before the hearing, and any response to a motion required or permitted by these rules must be filed at least 3 days before the hearing.

(D) Uncontested Orders.

(1) Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.

(2) On receipt of a request to stipulate, a party may

(a) stipulate to the entry of the order by signing the following statement at the end of the proposed order: "I stipulate to the entry of the above order"; or

(b) waive notice and hearing on the entry of an order by signing the following statement at the end of the proposed order: "Notice and hearing on entry of the above order is waived."

A proposed order is deemed rejected unless it is stipulated to or notice and hearing are waived within 7 days after it is served.

(3) If the parties have stipulated to the entry of a proposed order or waived notice and hearing, the court may enter the order. If the court declines to enter the order, it shall notify the moving party that a hearing on the motion is required. The matter then proceeds as a contested motion under subrule (E).

(4) The moving party must serve a copy of an order entered by the court pursuant to subrule (D)(3) on the parties entitled to notice under MCR 2.107, or notify them that the court requires the matter to be heard as a contested motion.

(5) Notwithstanding the provisions of subrule (D)(3), stipulations and orders for adjournment are governed by MCR 2.503.

(E) Contested Motions.

(1) Contested motions should be noticed for hearing at the time designated by the court for the hearing of motions. A motion will be heard on the day for which it is noticed, unless the court otherwise directs. If a motion cannot be heard on the day it is noticed, the court may schedule a new hearing date or the moving party may renotice the hearing.

(2) When a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition.

(3) A court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion.

(4) Appearance at the hearing is governed by the following:

(a) A party who, pursuant to subrule (D)(2), has previously rejected the proposed order before the court must either

(i) appear at the hearing held on the motion, or

(ii) before the hearing, file a response containing a concise statement of reasons in opposition to the motion and supporting authorities.

A party who fails to comply with this subrule is subject to assessment of costs under subrule (E)(4)(c).

(b) Unless excused by the court, the moving party must appear at a hearing on the motion. A moving party who fails to appear is subject to assessment of costs under subrule (E)(4)(c); in addition, the court may assess a penalty not to exceed $100, payable to the clerk of the court.

(c) If a party violates the provisions of subrule (E)(4)(a) or (b), the court shall assess costs against the offending party, that party's attorney, or both, equal to the expenses reasonably incurred by the opposing party in appearing at the hearing, including reasonable attorney fees, unless the circumstances make an award of expenses unjust.

(F) Motions for Rehearing or Reconsideration.

(1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

(2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

(G) Motion Fees. The following provisions apply to actions in which a motion fee is required:

(1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled "motion," "petition," "application," or otherwise.

(2) The clerk shall charge a single motion fee for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.

(3) A motion fee may not be charged:

(a) in criminal cases;

(b) for a notice of settlement of a proposed judgment or order under MCR 2.602(B);

(c) for a request for an order waiving fees under MCR 2.002 or MCL 600.2529(4) or MCL 600.8371(6);

(d) if the motion is filed at the same time as another document in the same action as to which a fee is required; or

(e) for entry of an uncontested order under subrule (D).

Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

(A) Time; Discretion of Court. At any time after the commencement of the action, on its own initiative or the request of a party, the court may direct that the attorneys for the parties, alone or with the parties, appear for a conference. The court shall give reasonable notice of the scheduling of a conference. More than one conference may be held in an action.

(B) Early Scheduling Conference and Order.

(1) Early Scheduling Conference. The court may direct that an early scheduling conference be held. In addition to those considerations enumerated in subrule (C)(1), during this conference the court should consider:

(a) whether jurisdiction and venue are proper or whether the case is frivolous,

(b) whether to refer the case to an alternative dispute resolution procedure under MCR 2.410, and

(c) the complexity of a particular case and enter a scheduling order setting time limitations for the processing of the case and establishing dates when future actions should begin or be completed in the case.

(2) Scheduling Order.

(a) At an early scheduling conference under subrule (B)(1), a pretrial conference under subrule (C), or at such other time as the court concludes that such an order would facilitate the progress of the case, the court shall establish times for events the court deems appropriate, including

(i) the initiation or completion of an ADR process,

(ii) the amendment of pleadings, adding of parties, or filing of motions,

(iii) the completion of discovery,

(iv) the exchange of witness lists under subrule (I), and

(v) the scheduling of a pretrial conference, a settlement conference, or trial.

More than one such order may be entered in a case.

(b) The scheduling of events under this subrule shall take into consideration the nature and complexity of the case, including the issues involved, the number and location of parties and potential witnesses, including experts, the extent of expected and necessary discovery, and the availability of reasonably certain trial dates.

(c) Whenever reasonably practical, the scheduling of events under this subrule shall be made after meaningful consultation with all counsel of record.

(i) If a scheduling order is entered under this subrule in a manner that does not permit meaningful advance consultation with counsel, within 14 days after entry of the order, a party may file and serve a written request for amendment of the order detailing the reasons why the order should be amended.

(ii) Upon receiving such a written request, the court shall reconsider the order in light of the objections raised by the parties. Whether the reconsideration occurs at a conference or in some other manner, the court must either enter a new scheduling order or notify the parties in writing that the court declines to amend the order. The court must schedule a conference, enter the new order, or send the written notice, within 14 days after receiving the request.

(iii) The submission of a request pursuant to this subrule, or the failure to submit such a request, does not preclude a party from filing a motion to modify a scheduling order.

(C) Pretrial Conference; Scope.

(1) At a conference under this subrule, in addition to the matters listed in subrule (B)(1), the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, including:

(a) the simplification of the issues;

(b) the amount of time necessary for discovery;

(c) the necessity or desirability of amendments to the pleadings;

(d) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

(e) the limitation of the number of expert witnesses;

(f) the consolidation of actions for trial, the separation of issues, and the order of trial when some issues are to be tried by a jury and some by the court;

(g) the possibility of settlement;

(h) whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;

(i) the identity of the witnesses to testify at trial;

(j) the estimated length of trial;

(k) whether all claims arising out of the transaction or occurrence that is the subject matter of the action have been joined as required by MCR 2.203(A);

(l) other matters that may aid in the disposition of the action.

(2) Conference Order. If appropriate, the court shall enter an order incorporating agreements reached and decisions made at the conference.

(D) Order for Trial Briefs. The court may direct the attorneys to furnish trial briefs as to any or all of the issues involved in the action.

(E) Appearance of Counsel. The attorneys attending the conference shall be thoroughly familiar with the case and have the authority necessary to fully participate in the conference. The court may direct that the attorneys who intend to try the case attend the conference.

(F) Presence of Parties at Conference. If the court anticipates meaningful discussion of settlement, the court may direct that the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:

(1) be present at the conference or be immediately available at the time of the conference; and

(2) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may require the availability of a specified individual; provided, however, that the availability of a substitute who has the information and authority required by subrule (F)(2) shall constitute compliance with the order.

The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G) Failure to Attend or to Participate.

(1) Failure of a party or the party's attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B).

(2) The court shall excuse a failure to attend a conference or to participate as directed by the court, and shall enter a just order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice; or

(b) the failure was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(H) Conference After Discovery. If the court finds at a pretrial conference held after the completion of discovery that due to a lack of reasonable diligence by a party the action is not ready for trial, the court may enter an appropriate order to facilitate preparation of the action for trial and may require the offending party to pay the reasonable expenses, including attorney fees, caused by the lack of diligence.

(I) Witness Lists.

(1) No later than the time directed by the court under subrule (B)(2)(a), the parties shall file and serve witness lists. The witness list must include:

(a) the name of each witness, and the witness' address, if known; however, records custodians whose testimony would be limited to providing the foundation for the admission of records may be identified generally;

(b) whether the witness is an expert, and the field of expertise.

(2) The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.

(3) This subrule does not prevent a party from obtaining an earlier disclosure of witness information by other discovery means as provided in these rules.

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1) The court in which a matter is pending may by order or subpoena command a party or witness to appear for the purpose of testifying in open court on a date and time certain and from time to time and day to day thereafter until excused by the court, and to produce notes, records, documents, photographs, or other portable tangible things as specified.

(2) The court may require a party and a representative of an insurance carrier for a party with information and authority adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(3) A subpoena may be issued only in accordance with this rule or MCR 2.305, 2.621(C), 9.112(D), 9.115(I)(1), or 9.212.

(B) Authorized Signatures.

(1) A subpoena signed by an attorney of record in the action or by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court.

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, or lithographed.

(C) Notice to Witness of Required Attendance.

(1) The signer of a subpoena must issue it for service on the witness sufficiently in advance of the trial or hearing to give the witness reasonable notice of the date and time the witness is to appear. Unless the court orders otherwise, the subpoena must be served at least 2 days before the witness is to appear.

(2) The party having the subpoena issued must take reasonable steps to keep the witness informed of adjournments of the scheduled trial or hearing.

(3) If the served witness notifies the party that it is impossible for the witness to be present in court as directed, the party must either excuse the witness from attendance at that time or notify the witness that a special hearing may be held to adjudicate the issue.

(D) Form of Subpoena. A subpoena must:

(1) be entitled in the name of the People of the State of Michigan;

(2) be imprinted with the seal of the Supreme Court of Michigan;

(3) have typed or printed on it the name of the court in which the matter is pending;

(4) state the place where the trial or hearing is scheduled;

(5) state the title of the action in which the person is expected to testify;

(6) state the file designation assigned by the court; and

(7) state that failure to obey the commands of the subpoena or reasonable directions of the signer as to time and place to appear may subject the person to whom it is directed to penalties for contempt of court.

The state court administrator shall develop and approve a subpoena form for statewide use.

(E) Refusal of Witness to Attend or to Testify; Contempt.

(1) If a person fails to comply with a subpoena served in accordance with this rule or with a notice under subrule (C)(2), the failure may be considered a contempt of court by the court in which the action is pending.

(2) If a person refuses to be sworn or to testify regarding a matter not privileged after being ordered to do so by the court, the refusal may be considered a contempt of court.

(F) Failure of Party to Attend. If a party or an officer, director, or managing agent of a party fails to attend or produce documents or other tangible evidence pursuant to a subpoena or an order to attend, the court may:

(1) stay further proceedings until the order is obeyed;

(2) tax costs to the other party or parties to the action;

(3) strike all or a part of the pleadings of that party;

(4) refuse to allow that party to support or oppose designated claims and defenses;

(5) dismiss the action or any part of it; or

(6) enter judgment by default against that party.

(G) Service of Subpoena and Order to Attend; Fees.

(1) A subpoena may be served anywhere in Michigan in the manner provided by MCR 2.105. The fee for attendance and mileage provided by law must be tendered to the person on whom the subpoena is served at the time of service. Tender must be made in cash, by money order, by cashier's check, or by a check drawn on the account of an attorney of record in the action or the attorney's authorized agent.

(2) A subpoena may also be served by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service. The fees for attendance and mileage provided by law are to be given to the witness after the witness appears at the court, and the acknowledgment card must so indicate. If the card is not returned, the subpoena must be served in the manner provided in subrule (G)(1).

(3) A subpoena or order to attend directed to a party, or to an officer, director, or managing agent of a party, may be served in the manner provided by MCR 2.107, and fees and mileage need not be paid.

(H) Hearing on Subpoena or Order.

(1) A person served with a subpoena or order to attend may appear before the court in person or by writing to explain why the person should not be compelled to comply with the subpoena, order to attend, or directions of the party having it issued.

(2) The court may direct that a special hearing be held to adjudicate the issue.

(3) For good cause with or without a hearing, the court may excuse a witness from compliance with a subpoena, the directions of the party having it issued, or an order to attend.

(4) A person must comply with the command of a subpoena unless relieved by order of the court or written direction of the person who had the subpoena issued.

(I) Subpoena for Production of Hospital Medical Records.

(1) Except as provided in subrule (I)(5), a hospital may comply with a subpoena calling for production of medical records belonging to the hospital in the manner provided in this subrule. This subrule does not apply to x-ray films or to other portions of a medical record that are not susceptible to photostatic reproduction.

(a) The hospital may deliver or mail to the clerk of the court in which the action is pending, without cost to the parties, a complete and accurate copy of the original record.

(b) The copy of the record must be accompanied by a sworn certificate, in the form approved by the state court administrator, signed by the medical record librarian or another authorized official of the hospital, verifying that it is a complete and accurate reproduction of the original record.

(c) The envelope or other container in which the record is delivered to the court shall be clearly marked to identify its contents. If the hospital wishes the record returned when it is no longer needed in the action, that fact must be stated on the container, and, with the record, the hospital must provide the clerk with a self-addressed, stamped envelope that the clerk may use to return the record.

(d) The hospital shall promptly notify the attorney for the party who caused the subpoena to be issued that the documents involved have been delivered or mailed to the court in accordance with subrule (I)(1).

(2) The clerk shall keep the copies sealed in the container in which they were supplied by the hospital. The container shall be clearly marked to identify the contents, the name of the patient, and the title and number of the action. The container shall not be opened except at the direction of the court.

(3) If the hospital has requested that the record be returned, the clerk shall return the record to the hospital when 42 days have passed after a final order terminating the action, unless an appeal has been taken. In the event of an appeal, the record shall be returned when 42 days have passed after a final order terminating the appeal. If the hospital did not request that the record be returned as provided in subrule (I)(1)(c), the clerk may destroy the record after the time provided in this subrule.

(4) The admissibility of the contents of medical records produced under this rule or under MCR 2.314 is not affected or altered by these procedures and remains subject to the same objections as if the original records were personally produced by the custodian at the trial or hearing.

(5) A party may have a subpoena issued directing that an original record of a person be produced at the trial or hearing by the custodian of the record. The subpoena must specifically state that the original records, not copies, are required. A party may also require, by subpoena, the attendance of the custodian without the records.

Rule 2.613 Limitations on Corrections of Error

(A) Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

(B) Correction of Error by Other Judges. A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the

judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

(C) Review of Findings by Trial Court. Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.

Rule 3.205 Prior and Subsequent Orders and Judgments Affecting Minors

(A) Jurisdiction. 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.

(B) Notice to Prior Court, Friend of the Court, Juvenile Officer, and Prosecuting Attorney.

(1) As used in this rule, "appropriate official" means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved.

(2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must mail written notice of proceedings in the subsequent court to the attention of

(a) the clerk or register of the prior court, and

(b) the appropriate official of the prior court.

(3) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known.

(4) The notice requirement of this subrule is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21-day period, if required by the best interests of the minor.

(C) Prior Orders.

(1) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order.

(2) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, except as provided by law.

(D) Duties of Officials of Prior and Subsequent Courts.

(1) Upon receipt of the notice required by subrule (B), the appropriate official of the prior court

(a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and

(b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.

(2) Upon request of the prior court, the appropriate official of the subsequent court

(a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and

(b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.

(3) If a circuit court awards custody of a minor pursuant to MCL 722.26b, the clerk of the circuit court must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of the minor as a result of the guardianship proceedings, regardless whether there is a request.

(4) Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take the steps necessary to implement the order in the prior court.

Rule 3.206 Pleading

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(4) The caption of the complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff or petitioner, or of a plaintiff or petitioner appearing without an attorney:

(a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.

(b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition has been previously filed in [this court]/[_____Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

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Rule 3.701 Applicability of Rules; Forms

(A) Scope. Except as provided by this subchapter and the provisions of MCL 600.2950 and 600.2950a, actions for personal protection for relief against domestic violence or stalking are governed by the Michigan Court Rules. Procedure related to personal protection orders against adults is governed by this subchapter. Procedure related to personal protection orders against minors is governed by subchapter 3.900, except as provided in MCR 3.981.

(B) Forms. The state court administrator shall approve forms for use in personal protection act proceedings. The forms shall be made available for public distribution by the clerk of the circuit court.

Rule 3.702 Definitions

When used in this subchapter, unless the context otherwise indicates:

(1) "personal protection order" means a protection order as described under MCL 600.2950 and 600.2950a;

(2) "petition" refers to a pleading for commencing an independent action for personal protection and is not considered a motion as defined in MCR 2.119;

(3) "petitioner" refers to the party seeking protection;

(4) "respondent" refers to the party to be restrained;

(5) "existing action" means an action in this court or any other court in which both the petitioner and the respondent are parties; existing actions include, but are

not limited to, pending and completed domestic relations actions, criminal actions, other actions for personal protection orders.

(6) "minor" means a person under the age of 18.

(7) "minor personal protection order" means a personal protection order issued by a court against a minor and under jurisdiction granted by MCL 712A.2(h).

Rule 3.703 Commencing a Personal Protection Action

(A) Filing. A personal protection action is an independent action commenced by filing a petition with a court. There are no fees for filing a personal protection action and no summons is issued. A personal protection action may not be commenced by filing a motion in an existing case or by joining a claim to an action.

(B) Petition in General. The petition must

(1) be in writing;

(2) state with particularity the facts on which it is based;

(3) state the relief sought and the conduct to be restrained;

(4) state whether an ex parte order is being sought;

(5) state whether a personal protection order action involving the same parties has been commenced in another jurisdiction; and

(6) be signed by the party or attorney as provided in MCR 2.114. The petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address.

(C) Petition Against a Minor. In addition to the requirements outlined in (B), a petition against a minor must list:

(1) the minor's name, address, and either age or date of birth; and

(2) if known or can be easily ascertained, the names and addresses of the minor's parent or parents, guardian, or custodian.

(D) Other Pending Actions; Order, Judgments.

(1) The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other

court affecting the parties, including the name of the court and the case number, if known.

(a) If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it shall be assigned to the same judge.

(b) If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court should contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.

(2) If the prior action resulted in an order providing for continuing jurisdiction of a minor, and the new action requests relief with regard to the minor, the court must comply with MCR 3.205.

(E) Venue.

(1) If the respondent is an adult, the petitioner may file a personal protection action in any county in Michigan regardless of residency.

(2) If the respondent is a minor, the petitioner may file a personal protection order in either the petitioner's or respondent's county of residence. If the respondent does not live in this state, venue for the action is proper in the petitioner's county of residence.

(F) Minor or Legally Incapacitated Individual as Petitioner.

(1) If the petitioner is a minor or a legally incapacitated individual, the petitioner shall proceed through a next friend. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult.

(2) Unless the court determines appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. However, the court shall appoint a next friend if the minor is less than 14 years of age. The next friend is not responsible for the costs of the action.

(G) Request for Ex Parte Order. If the petition requests an ex parte order, the petition must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.

Rule 3.704 Dismissal

Except as specified in MCR 3.705(A)(5) and (B), an action for a personal protection order may only be dismissed upon motion by the petitioner prior to the issuance of an order. There is no fee for such a motion.

Rule 3.705 Issuance of Personal Protection Orders

(A) Ex Parte Orders.

(1) The court must rule on a request for an ex parte order within 24 hours of the filing of the petition.

(2) If it clearly appears from specific facts shown by verified complaint, written petition, or affidavit that the petitioner is entitled to the relief sought, an ex parte order shall be granted if immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued. In a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order. A permanent record or memorandum must be made of any nonwritten evidence, argument or other representations made in support of issuance of an ex parte order.

(3) An ex parte order is valid for not less than 182 days, and must state its expiration date.

(4) If an ex parte order is entered, the petitioner shall serve the petition and order as provided in MCR 3.706(D). However, failure to make service does not affect the order's validity or effectiveness.

(5) If the court refuses to grant an ex parte order, it shall state the reasons in writing and shall advise the petitioner of the right to request a hearing as provided in subrule (B). If the petitioner does not request a hearing within 21 days of entry of the order, the order denying the petition is final. The court shall not be required to give such notice if the court determines after interviewing the petitioner that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.

(B) Hearings.

(1) The court shall schedule a hearing as soon as possible in the following instances, unless it determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing:

(a) the petition does not request an ex parte order; or

(b) the court refuses to enter an ex parte order and the petitioner subsequently requests a hearing.

(2) The petitioner shall serve on the respondent notice of the hearing along with the petition as provided in MCR 2.105(A). If the respondent is a minor, and the where-abouts of the respondent's parent or parents, guardian, or custodian is known, the petitioner shall also in the same manner serve notice of the hearing and the petition on the respondent's parent or parents, guardian, or custodian. One day before the hearing is deemed sufficient notice.

(3) The hearing shall be held on the record.

(4) The petitioner must attend the hearing. If the petitioner fails to attend the hearing, the court may adjourn and reschedule the hearing or dismiss the petition.

(5) If the respondent fails to appear at a hearing on the petition and the court determines the petitioner made diligent attempts to serve the respondent, whether the respondent was served or not, the order may be entered without further notice to the respondent if the court determines that the petitioner is entitled to relief.

(6) At the conclusion of the hearing the court must state the reasons for granting or denying a personal protection order on the record and enter an appropriate order. In addition, the court must state the reasons for denying a personal protection order in writing, and, in a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order.

Rule 3.706 Orders

(A) Form and Scope of Order. An order granting a personal protection order must include the following:

(1) A statement that the personal protection order has been entered, listing the type or types of conduct enjoined.

(2) A statement that the personal protection order is effective when signed by the judge and is immediately enforceable anywhere in Michigan, and that, after service, the personal protecion order may be enforced by another state, an Indian tribe, or a territory of the United States.

(3) A statement that violation of the personal protection order will subject the individual restrained or enjoined to either of the following:

(a) If the respondent is 17 years of age or more, immediate arrest and, if the respondent is found guilty of criminal contempt, imprisonment for not more than 93 days and may be fined not more than $500; or

(b) If the respondent is less than 17 years of age, immediate apprehension and, if the respondent is found in contempt, the dispositional alternatives listed in MCL 712A.18.

(4) An expiration date stated clearly on the face of the order.

(5) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency, and that if the respondent violates the personal protection order in another jurisdiction, the respondent is subject to the enforcement procedures and penalties of the jurisdiction in which the violation occurred.

(6) Identification of the law enforcement agency, designated by the court to enter the personal protection order into the law enforcement information network.

(7) For ex parte orders, a statement that, within 14 days after being served with or receiving actual notice of the order, the individual restrained or enjoined may file a motion to modify or terminate the personal protection order and a request for a hearing, and that motion forms and filing instructions are available from the clerk of the court.

(B) Mutual Orders Prohibited. A personal protection order may not be made mutual.

(C) Existing Custody and Parenting Time Orders.

(1) Contact With Court Having Prior Jurisdiction. The court issuing a personal protection order must contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, and where practicable, the judge should consult with that court, as contemplated in MCR 3.205(C)(2), regarding the impact upon custody and parenting time rights before issuing the personal protection order.

(2) Conditions Modifying Custody and Parenting Time Provisions. If the respondent's custody or parenting time rights will be adversely affected by the personal protection order, the issuing court shall determine whether conditions should be specified in the order which would accommodate the respondent's rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.

(3) Effect of Personal Protection Order. A personal protection order takes precedence over any existing custody or parenting time order until the personal

protection order has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order to accommodate the conditions of the personal protection order.

(a) If the respondent or petitioner wants the existing custody or parenting time order modified, the respondent or petitioner must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing. The hearing must be held within 21 days after the motion is filed.

(b) Proceedings to modify custody and parenting time orders are subject to subchapter 3.200.

(D) Service. The petitioner shall serve the order on the respondent as provided in MCR 2.105(A). If the respondent is a minor, and the whereabouts of the respondent's parent or parents, guardian, or custodian is known, the petitioner shall also in the same manner serve the order on the respondent's parent or parents, guardian, or custodian. On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). Failure to serve the order does not affect its validity or effectiveness.

(E) Oral Notice. If oral notice of the order is made by a law enforcement officer as described in MCL 600.2950(22) or 600.2950a(19), proof of the notification must be filed with the court by the law enforcement officer.

Rule 3.707 Modification, Termination, or Extension of Order

(A) Modification or Termination.

(1) Time for Filing and Service.

(a) The petitioner may file a motion to modify or terminate the personal protection order and request a hearing at any time after the personal protection order is issued.

(b) The respondent may file a motion to modify or terminate the personal protection order and request a hearing within 14 days after being served with, or receiving actual notice of, the order unless good cause is shown for filing the motion after the 14 days have elapsed.

(c) The moving party shall serve the motion to modify or terminate the order and the notice of hearing at least 7 days before the hearing date as provided in MCR 2.105(A)(2) at the mailing address or addresses provided to the court. On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). If the moving

party is a respondent who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of employment, a police officer certified by the Michigan law enforcement training council act of 1965, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of employment, providing notice one day before the hearing is deemed as sufficient notice to the petitioner.

(2) Hearing on the Motion. The court must schedule and hold a hearing on a motion to modify or terminate a personal protection order within 14 days of the filing of the motion, except that if the respondent is a person described in MCL 600.2950(2) or 600.2950a(2), the court shall schedule the hearing on the motion within 5 days after the filing of the motion.

(3) Notice of Modification or Termination. If a personal protection order is modified or terminated, the clerk must immediately notify the law enforcement agency specified in the personal protection order of the change. A modified or terminated order must be served as provided in MCR 2.107.

(B) Extension of Order.

(1) Time for Filing. The petitioner may file an ex parte motion to extend the effectiveness of the order, without hearing, by requesting a new expiration date. The motion must be filed with the court that issued the personal protection order no later than 3 days before the order is to expire. The court must act on the motion within 3 days after it is filed. Failure to timely file a motion to extend the effectiveness of the order does not preclude the petitioner from commencing a new personal protection action regarding the same respondent, as provided in MCR 3.703.

(2) Notice of Extension. If the expiration date on a personal protection order is extended, an amended order must be entered. The clerk must immediately notify the law enforcement agency specified in the personal protection order of the change. The order must be served on the respondent as provided in MCR 2.107.

(C) Minors and Legally Incapacitated Individuals. Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.703(F).

(D) Fees. There are no motion fees for modifying, terminating, or extending a personal protection order.

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(A) In General.

(1) A personal protection order is enforceable under MCL 600.2950(23),(25),600.2950a(20),(22), 764.15b, and 600.1701 *et seq.* For the purpose of this rule, "personal protection order" includes a foreign protection order enforceable in Michigan under MCL 600.2950*l*.

(2) Proceedings to enforce a minor personal protection order where the respondent is under 18 are governed by subchapter 3.900. Proceedings to enforce a personal protection order issued against an adult, or to enforce a minor personal protection order still in effect when the respondent is 18 or older, are governed by this rule.

(B) Motion to Show Cause.

(1) Filing. If the respondent violates the personal protection order, the petitioner may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. There is no fee for such a motion. If the petitioner's motion and affidavit establish a basis for a finding of contempt, the court shall either:

(a) order the respondent to appear at a specified time to answer the contempt charge; or

(b) issue a bench warrant for the arrest of the respondent.

(2) Service. The petitioner shall serve the motion to show cause and the order on the respondent by personal service at least 7 days before the show cause hearing.

(C) Arrest.

(1) If the respondent is arrested for violation of a personal protection order as provided in MCL 764.15b(1), the court in the county where the arrest is made shall proceed as provided in MCL 764.15b(2)-(5), except as provided in this rule.

(2) A contempt proceeding brought in a court other than the one that issued the personal protection order shall be entitled "In the Matter of Contempt of [Respondent]." The clerk shall provide a copy of any documents pertaining to the contempt proceeding to the court that issued the personal protection order.

(3) If it appears that a circuit judge will not be available within 24 hours after arrest, the respondent shall be taken, within that time, before a district court,

which shall set bond and order the respondent to appear for arraignment before the family division of the circuit court in that county.

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1) advise the respondent of the alleged violation,

(2) advise the respondent of the right to contest the charge at a contempt hearing,

(3) advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

(4) if requested and appropriate, appoint a lawyer,

(5) set a reasonable bond pending a hearing of the alleged violation,

(6) take a guilty plea as provided in subrule (E) or schedule a hearing as provided in subrule (F).

(E) Pleas of Guilty. The respondent may plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the respondent and receiving the respondent's response, must

(1) advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing and, if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (D)(3),

(2) advise the respondent of the maximum possible jail sentence for the violation,

(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and

(4) establish factual support for a finding that the respondent is guilty of the alleged violation.

(F) Scheduling or Postponing Hearing. Following the respondent's appearance or arraignment, the court shall do the following:

(1) Set a date for the hearing at the earliest practicable time except as required under MCL 764.15b.

(a) The hearing of a respondent being held in custody for an alleged violation of a personal protection order must be held within 72 hours after the arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. The court must set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the individuals named in the personal protection order.

(b) If a respondent is released on bond pending the hearing, the bond may include any condition specified in MCR 6.106(D) necessary to reasonably ensure the safety of the individuals named in the personal protection order, including continued compliance with the personal protection order. The release order shall also comply with MCL 765.6b.

(c) If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution.

(2) Notify the prosecuting attorney of a criminal contempt proceeding.

(3) Notify the petitioner and his or her attorney, if any, of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt.

(G) Prosecution After Arrest. In a criminal contempt proceeding commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains his or her own attorney for the criminal contempt proceeding.

(H) The Violation Hearing.

(1) Jury. There is no right to a jury trial.

(2) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.

(3) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence.

(4) Judicial Findings. At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

(5) Sentencing.

(a) If the respondent pleads or is found guilty of criminal contempt, the court shall impose a sentence of incarceration for no more than 93 days and may impose a fine of not more than $500.00.

(b) If the respondent pleads or is found guilty of civil contempt, the court shall impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721.

In addition to such a sentence, the court may impose other conditions to the personal protection order.

Rule 3.709 Appeals

(A) Rules Applicable. Except as provided by this rule, appeals involving personal protection order matters must comply with subchapter 7.200. Appeals involving minor personal protection actions under the Juvenile Code must additionally comply with MCR 3.993.

(B) From Entry of Personal Protection Order.

(1) Either party has an appeal of right from

(a) an order granting or denying a personal protection order after a hearing under subrule 3.705(B)(6), or

(b) the ruling on respondent's first motion to rescind or modify the order if an ex parte order was entered.

(2) Appeals of all other orders are by leave to appeal.

(C) From Finding after Violation Hearing.

(1) The respondent has an appeal of right from a sentence for criminal contempt entered after a contested hearing.

(2) All other appeals concerning violation proceedings are by application for leave.

M Civ JI 97.05 Introduction to Parties, Counsel, and Witnesses

(1) I will now introduce the parties to this case, the lawyers, and the witnesses, and you will be asked if you know any of them.

(2) The petitioner is [_____]. The petitioner's case will be presented by [Prosecutor, Attorney General, other Attorney]. The People of the State of Michigan are represented by [_____], an assistant prosecuting attorney for [_____] County.*

(3) The [mother/father/parents/guardian/nonparent adult/ respondent/custodian] [is/are] [_____/ and _____] and [he/she/they] [is/are] represented by lawyer _____.

(4) [_____], a lawyer, has been appointed by the Court to represent the [child/children]. (If both a lawyer-guardian ad litem and an attorney have been appointed for one or more of the children, give the following instead: [_____], a lawyer, has been appointed by the court to represent the best interests of the [child/children] and is called the lawyer-guardian ad litem for the [child/children]. [_____], a lawyer, has been appointed by the court to represent the wishes of [child's name].)

(5) The witnesses who may testify in this case are: (read list of witnesses).

M Civ JI 97.35 Statutory Grounds

(1) The issue that you, the jury, will have to decide is whether one or more of the statutory grounds alleged in the petition have been proven.† If you find that one or more of the statutory grounds alleged in the petition have been proven, then the

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Note on Use
The alternative language in subsection 2 recognizes that Petitioner is not always the State of Michigan or the Family Independence Agency.

* This sentence should be read only if the prosecutor appears on behalf of the People, as opposed to appearing on behalf of or as legal consultant to, for example, the Family Independence Agency. MCL 712A.17(4) and (5), and MCR 3.914.

Note on Use
† If only one statutory ground is alleged in the petition, substitute "the statutory ground" for "one or more of the statutory grounds" throughout these instructions.

Court will have jurisdiction over [Children's names]. I will now explain what those statutory grounds are. The Court has jurisdiction over a child *:

(a) If that child's parent or other person legally responsible for the care and maintenance of that child, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, or

(b) If that child is subject to a substantial risk of harm to his or her mental well-being, or

(c) If that child is abandoned by his or her parents, guardian or other custodian, or

(d) If that child is without proper custody or guardianship, or

(e) If that child's home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult or other custodian, is an unfit place for that child to live in, or

(f) If that child's parent has substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the child, or

(g) If that child's parent has substantially failed, without good cause, to comply with a court-structured plan regarding the child, or

(h) If that child has a guardian appointed for him or her under the Michigan Estates and Protected Individuals Code and

(i) that child's parent, having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for a period of two 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 two years or more before the filing of the petition, and

(ii) that child's parent, having the ability to visit, contact or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition.

* The court should select the subsections that apply.

M Civ JI 97.36 Definitions

(1) Neglect means the failure of a parent, guardian, nonparent adult or custodian to provide the care that a child needs, including the failure to protect the physical and emotional health of a child. Neglect may be intentional or unintentional. It is for you, the jury, to determine from the evidence in this case, what care was necessary for the [child/children] and whether or not [his/her/their] parent(s), guardian, nonparent adult or custodian provided that care.

(2) The legal definition of cruelty is the same as the common understanding of the word cruelty. It implies physical or emotional mistreatment of a child.

(3) Depravity means a morally corrupt act or practice.

(4) The legal definition of criminality is the same as the common understanding of the word criminality. Criminality is present when a person violates the criminal laws of the State of Michigan or of the United States. Whether a violation of the criminal laws of the State of Michigan or of the United States by a parent, guardian, nonparent adult or custodian renders the home or environment of a child an unfit place for the child to live in is for you to decide based on all of the evidence in the case.

(5) A child is without proper custody or guardianship when he or she is: 1) left with, or found in the custody of, a person other than a legal parent, legal guardian or other person authorized by law or court order to have custody of the child, and 2) the child was originally placed, or came to be, in the custody of a person not legally entitled to custody of the child for either an indefinite period of time, no matter how short, or for a definite, but unreasonably long, period of time. What is unreasonably long depends on all the circumstances. It is proper for a parent or guardian to place his or her child with another person who is legally responsible for the care and maintenance of the child and who is able to and does provide the child with proper care and maintenance. A baby sitter, relative or other care-giver is not legally responsible for the care and maintenance of a child after the previously agreed-upon period of care has ended.

(6) Education means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a child, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(7) A child is abandoned when the child's [parent(s)/guardian/custodian] leave(s) the child for any length of time, no matter how short, with the intention of never returning for the child. The intent of the [parent(s)/guardian/custodian] to abandon

the child may be inferred from the [parent's/parents'/guardian's/custodian's] words and/or actions surrounding the act of leaving the child.

M Civ JI 97.39 Treatment of One Child as Evidence of Treatment of Another Child

You have heard testimony about [another child/other children] of [Mother's/Father's names], namely, [Children's names]. [That child/Those children] [is/are] not the subject(s) of the petition(s) before you now.* How a parent treats one child is evidence of how that parent may treat another child. Therefore, if you choose to believe the evidence, presented by any party, relating to how [Mother's/Father's names] treated [that other child/those other children], you may consider it in making your decision in relation to [this child/any or all of these children].[§]

M Civ JI 97.42 Unfit Home by Reason of Neglect or Cruelty —Res Ipsa Loquitur

You may, but are not required to, find that the child's home or environment was an unfit place for the child to live in by reason of neglect or cruelty on the part of his or her parent, guardian, nonparent adult or custodian if you find all the following:

1. The child has suffered an injury or injuries.

2. The child was not capable of inflicting the injury or injuries on himself or herself.

3. The injury or injuries are such that would not ordinarily occur unless they were caused by another person inflicting them on the child or another person not providing proper care and supervision for the child in order to prevent the injury or injuries.

4. The child was in the exclusive control of his or her parent, guardian, nonparent adult or custodian at the time the injury or injuries occurred. The term "custodian" includes any other person to whom the parent or guardian entrusted the care of the child if the parent or guardian knew, or should have known, that that person might injure the child or permit the child to be injured through lack of proper care and supervision.

5. The true explanation of what happened to the child is more likely to be within the knowledge of the parent, guardian, nonparent adult or custodian than the petitioner.

Note on Use

[§] Do not read this sentence if the "other child or children" are also subjects of the present petition.

M Civ JI 97.43 Findings Re: Statutory Grounds

(1)(a) If you find by a preponderance of the evidence that [Children's names], mother, or father, or both, when able to do so, neglected or refused to provide proper or necessary support, medical, surgical or other care necessary for [his/her/their] health or morals, or

(b) If you find by a preponderance of the evidence that [Children's names] [was/were] subject to a substantial risk of harm to [his/her/their] mental well-being, or

(c) If you find by a preponderance of the evidence that [Children's names] [was/were] abandoned by [his/her/their] [mother/father/parents/guardian/custodian], or

(d) If you find by a preponderance of the evidence that [Children's names] [was/were] without proper custody or guardianship, or

(e) If you find by a preponderance of the evidence that the home or environment of [Children's names] was an unfit place for [him/her/them] to live in by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of [his/her/their] [mother, father, or both/guardian/nonparent adult/custodian], or

(f) If you find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the [child/children], or

(g) If you find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a court-structured plan regarding the [child/children], or

(h) If you find by a preponderance of the evidence that [Children's names] [has/have] a guardian appointed for [him/her/them] under the Michigan Estates and Protected Individuals Code, and

(i) that [Children's names] mother, or father, or both, having the ability to support or assist in supporting the [child/children], [has/have] failed or neglected, without good cause, to provide regular and substantial support for the [child/children] for a period of two years or more before the filing of the petition, or if a support order has been entered, [has/have] failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(ii) that [Children's names] mother, or father, or both, having the ability to visit, contact or communicate with the [child/children]), [has/have] regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition, then you must find that one or more of the statutory grounds alleged in the petition have been proven.(Read only those paragraphs below that have the same letter caption as the paragraphs you read from the first half of this instruction.)

(2)(a) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, when able to do so, neglected or refused to provide proper or necessary support, medical, surgical or other care necessary for [his/her/their] health or morals, and

(b) If you do not find by a preponderance of the evidence that [Children's names] [was/were] subject to a substantial risk of harm to [his/her/their] mental well-being, and

(c) If you do not find by a preponderance of the evidence that [Children's names] [was/were] abandoned by [his/her/their] [mother/father/parents/guardian/custodian], and

(d) If you do not find by a preponderance of the evidence that [Children's names] [was/were] without proper custody or guardianship, and

(e) If you do not find by a preponderance of the evidence that the home or environment of [Children's names] was an unfit place for [him/her/them] to live in by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of [his/her/their] [mother, father, or both/guardian/nonparent adult/custodian], and

(f) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the [child/children], and

(g) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a court-structured plan regarding the [child/children], and

(h) If you do not find by a preponderance of the evidence that [Children's names] [has/have] a guardian appointed for [him/her/them] under the Michigan Estates and Protected Individuals Code, and

(i) that [Children's names] mother, or father, or both, having the ability to support or assist in supporting the [child/children], [has/have] failed or

neglected, without good cause, to provide regular and substantial support for the [child/children] for a period of two years or more before the filing of the petition, or if a support order has been entered, [has/have] failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(ii) that [Children's names] mother, or father, or both, having the ability to visit, contact or communicate with the [child/children], [has/have] regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition, then you must find that none of the statutory grounds alleged in the petition have been proven.

M Civ JI 97.44 Court to Determine Disposition

You are not to concern yourselves with what will happen to [Children's names] if you should find that one or more of the statutory grounds alleged in the petition have been proven. If the Court has jurisdiction of [this child/these children], that does not necessarily mean that [he/she/they] will be removed from their home or made [a ward/wards] of the court either temporarily or permanently. If the Court has jurisdiction of [this child/these children], the Court will then decide at a later time what to do about [this child/these children] and [his/her/their] family. There are many options available to the Court.

M Civ JI 97.45 Not a Criminal Proceeding

I instruct you that this is a child protection proceeding. It is not a criminal case. Therefore, the issue before you is not that of guilt or innocence, but whether one or more of the statutory grounds alleged in the petition have been proven. You should not consider this proceeding to be in any way involved with the criminal law so far as your deliberations are concerned.

M Civ JI 97.60 Form of Verdict: Multiple Statutory Grounds Alleged

We, the jury, find that:

[ ] One or more of the statutory grounds alleged in the petition concerning (child's name) have been proven.

[ ] None of the statutory grounds alleged in the petition concerning (child's name) has been proven.

M Civ JI 97.61 Form of Verdict: One Statutory Ground Alleged

We, the jury, find that:

[ ] The statutory ground alleged in the petition concerning (child's name) has been proven.

[ ] The statutory ground alleged in the petition concerning (child's name) has not been proven.

***Rules cited are accurate as of the date of publication. Please visit www.courts.michigan.gov to ensure that all provisions are current before relying on them.**

MICHIGAN RULES OF EVIDENCE

Rule 101 Scope

These rules govern proceedings in the courts of this state to the extent and with the exceptions stated in Rule 1101. A statutory rule of evidence not in conflict with these rules or other rules adopted by the Supreme Court is effective until superseded by rule or decision of the Supreme Court.

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103 Rulings on Evidence

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) *Record of offer and ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) *Hearing of jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) *Plain error.* Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104 Preliminary Questions

(a) *Questions of admissibility generally.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.

(b) *Relevancy conditioned on fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) *Hearing of jury.* Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness, and so requests.

(d) *Testimony by accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) *Weight and credibility.* This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105 Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106 Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Rule 201 Judicial Notice of Adjudicative Facts

(a) *Scope of rule.* This rule governs only judicial notice of adjudicative facts, and does not preclude judicial notice of legislative facts.

(b) *Kinds of facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When discretionary.* A court may take judicial notice, whether requested or not, and may require a party to supply necessary information.

(d) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(e) *Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.

(f) *Instructing jury.* In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Rule 202 Judicial Notice of Law

(a) *When discretionary.* A court may take judicial notice without request by a party of (1) the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States; (2) private acts and resolutions of the Congress of the United States and of the Legislature of Michigan, and ordinances and regulations of governmental subdivisions or agencies of Michigan; and (3) the laws of foreign countries.

(b) *When conditionally mandatory.* A court shall take judicial notice of each matter specified in paragraph (a) of this rule if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request and (2) has given each adverse party such notice as the court may require to enable the adverse party to prepare to meet the request.

Rule 301 Presumptions in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going

forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Rule 302 Presumptions in Criminal Cases

(a) *Scope.* In criminal cases, presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) *Instructing the jury.* Whenever the existence of a presumed fact against an accused is submitted to the jury, the court shall instruct the jury that it may, but need not, infer the existence of the presumed fact from the basic facts and that the prosecution still bears the burden of proof beyond a reasonable doubt of all the elements of the offense.

Rule 401 Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible.

Rule 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused offered by the prosecution;

(2) *Character of alleged victim of homicide.* When self-defense is an issue in a charge of homicide, evidence of a trait of character for aggression of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;

(3) *Character of alleged victim of sexual conduct crime.* In a prosecution for criminal sexual conduct, evidence of the alleged victim's past sexual conduct with the defendant and evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease;

(4) *Character of witness.* Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) *Other crimes, wrongs, or acts.*

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

(2) The prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence. If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

Rule 405 Methods of Proving Character

(a) *Reputation or opinion.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into reports of relevant specific instances of conduct.

(b) *Specific instances of conduct.* In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406 Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407 Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408 Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409 Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410 Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) A plea of guilty which was later withdrawn;

(2) A plea of nolo contendere, except that, to the extent that evidence of a guilty plea would be admissible, evidence of a plea of nolo contendere to a criminal charge may be admitted in a civil proceeding to support a defense against a claim asserted by the person who entered the plea;

(3) Any statement made in the course of any proceedings under MCR 6.302 or comparable state or federal procedure regarding either of the foregoing pleas; or

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411 Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, if controverted, or bias or prejudice of a witness.

Rule 501 Privilege; General Rule

Privilege is governed by the common law, except as modified by statute or court rule.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603 Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 604 Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 605 Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 606 Competency of Juror as Witness

A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. No objection need be made in order to preserve the point.

Rule 607 Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608 Evidence of Character and Conduct of Witness

(a) *Opinion and reputation evidence of character.* The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) *Specific instances of conduct.* Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609 Impeachment by Evidence of Conviction of Crime

(a) *General rule.* For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

(1) the crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

(b) *Determining probative value and prejudicial effect.* For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the

age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

(c) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.

(d) *Effect of pardon, annulment, or certificate of rehabilitation.* Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(e) *Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this rule, except in subsequent cases against the same child in the juvenile division of a probate court. The court may, however, in a criminal case or a juvenile proceeding against the child allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission is necessary for a fair determination of the case or proceeding.

(f) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610 Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611 Mode and Order of Interrogation and Presentation

(a) *Control by court.* The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination.* A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. The judge may limit cross-examination with respect to matters not testified to on direct examination.

(c) *Leading Questions.*

(1) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony.

(2) Ordinarily leading questions should be permitted on cross-examination.

(3) When a party calls a hostile witness, an adverse party or a witness identified with an adverse party, interrogation may be by leading questions. It is not necessary to declare the intent to ask leading questions before the questioning begins or before the questioning moves beyond preliminary inquiries.

Rule 612 Writing or Object Used to Refresh Memory

(a) *While testifying.* If, while testifying, a witness uses a writing or object to refresh memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) *Before testifying.* If, before testifying, a witness uses a writing or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) *Terms and conditions of production and use.* A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 613 Prior Statements of Witnesses

(a) *Examining witness concerning prior statement.* In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request it shall be shown or disclosed to opposing counsel and the witness.

(b) *Extrinsic evidence of prior inconsistent statement of witness.* Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Rule 614 Calling and Interrogation of Witnesses by Court

(a) *Calling by court.* The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by court.* The court may interrogate witnesses, whether called by itself or by a party.

(c) *Objections.* Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 615 Exclusion of Witnesses

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

Rule 701 Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702 Testimony by Experts

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703 Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence. This rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence hereafter.

Rule 704 Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705 Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706 Court-Appointed Experts

(a) *Appointment.* The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) *Compensation.* Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) *Disclosure of appointment.* In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) *Parties' experts of own selection.* Nothing in this rule limits the parties in calling expert witnesses of their own selection.

Rule 707 Use of Learned Treatises for Impeachment

To the extent called to the attention of an expert witness upon cross-examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, are admissible for impeachment purposes only. If admitted, the statements may be read into evidence but may not be received as exhibits.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay.* A statement is not hearsay if–

(1) *Prior statement of witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an

express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements made for purposes of medical treatment or medical diagnosis in connection with treatment.* Statements made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical

history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment.

(5) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of paragraph (6).* Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public records and reports.* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, and subject to the limitations of MCL 257.624.

(9) *Records of vital statistics.* Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of religious organizations.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Deposition testimony of an expert.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding if the court finds that the deponent is an expert witness and if the deponent is not a party to the proceeding.

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) *Reputation concerning boundaries or general history.* Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) *Reputation as to character.* Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or upon a plea of guilty (or upon a plea of nolo contendere if evidence of the plea is not excluded by MRE 410), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to personal, family, or general history, or boundaries.* Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 803A Hearsay Exception; Child's Statement About Sexual Act

A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:

(1) the declarant was under the age of ten when the statement was made;

(2) the statement is shown to have been spontaneous and without indication of manufacture;

(3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; and

(4) the statement is introduced through the testimony of someone other than the declarant.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

This rule applies in criminal and delinquency proceedings only.

Rule 804 Hearsay Exceptions; Declarant Unavailable

(a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant–

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) has a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means, and in a criminal case, due diligence is shown.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Deposition Testimony.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same or another proceeding, if the

party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

For purposes of this subsection only, "unavailability of a witness" also includes situations in which:

(A) The witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(B) On motion and notice, such exceptional circumstances exist as to make it desirable, in the interests of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(6) *Statement by declarant made unavailable by opponent.* A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(7) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805 Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if

attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Rule 901 Requirement of Authentication or Identification

(a) *General provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported

public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by the Supreme Court of Michigan or by a Michigan statute.

Rule 902 Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular

official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this state.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions created by law.* Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

(11) *Certified records of regularly conducted activity.* The original or a duplicate of a record, whether domestic or foreign, of regularly conducted business activity that would be admissible under rule 803(6), if accompanied by a written declaration under oath by its custodian or other qualified person certifying that

(A) The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) The record was kept in the course of the regularly conducted business activity; and

(C) It was the regular practice of the business activity to make the record.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Rule 903 Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Rule 1001 Contents of Writings, Recordings, and Photographs; Definitions

For purposes of this article the following definitions are applicable:

(1) *Writings and recordings.* "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs.* "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.

(3) *Original.* An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) *Duplicate.* A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques, which accurately reproduces the original.

Rule 1002 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

Rule 1003 Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004 Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if–

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or

(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005 Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006 Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007 Testimony or Written Admission of a Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Rule 1008 Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Rule 1101 Applicability

(a) *Rules applicable.* Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) *Rules inapplicable.* The rules other than those with respect to privileges do not apply in the following situations and proceedings:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) *Grand jury.* Proceedings before grand juries.

(3) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) *Contempt proceedings.* Contempt proceedings in which the court may act summarily.

(5) *Small claims.* Small claims division of the district court.

(6) *In camera custody hearings.* In camera proceedings in child custody matters to determine a child's custodial preference.

(7) *Proceedings involving juveniles.* Proceedings in the family division of the circuit court wherever MCR subchapter 3.900 states that the Michigan Rules of Evidence do not apply.

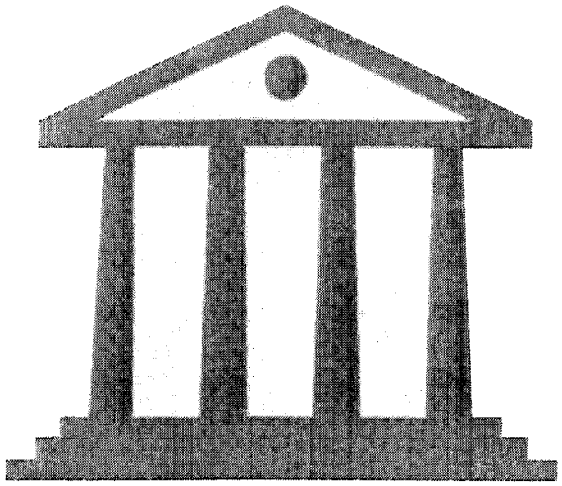
(8) *Preliminary examinations.* At preliminary examinations in criminal cases, hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, possession and entry.

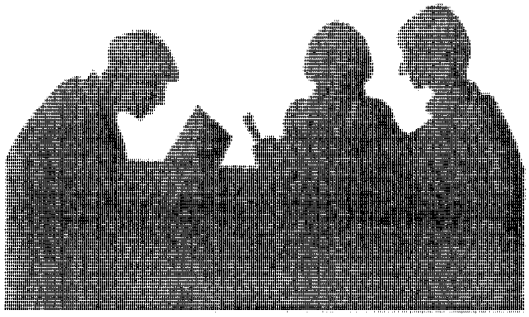
(9) *Domestic Relations Matters.* The court's consideration of a report or recommendation submitted by the friend of the court pursuant to MCL 552.505(1)(g) or (h).

(10) *Mental Health Hearings.* In hearings under Chapters 4, 4A, 5, and 6 of the Mental Health Code, MCL 330.1400 *et seq.*, the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

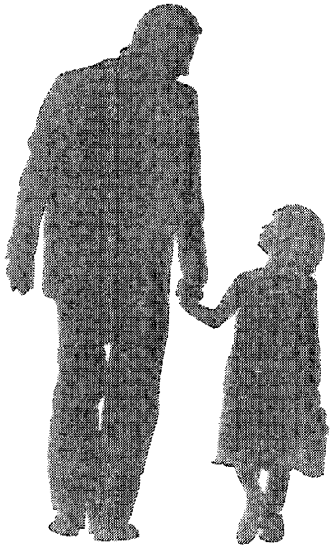
Rule 1102 Title

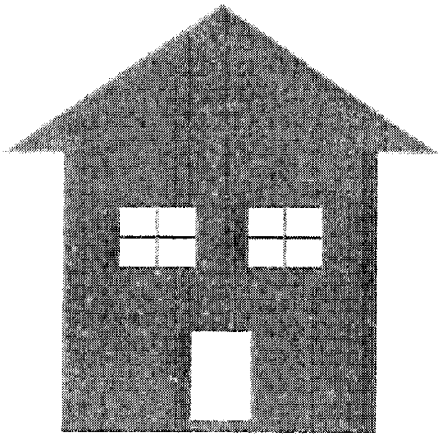
These rules are named the Michigan Rules of Evidence and may be cited as MRE.
The notes following the individual rules were drafted by the chair and the reporter of the committee which drafted the proposed rules of evidence for the benefit of the bench and bar and are not authoritative constructions by the Court.





LAWYER-GUARDIAN AD LITEM PROTOCOL





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Lawyer-Guardian ad Litem Protocol

1. Introduction

The lawyer-guardian ad litem's role within an adversarial system is unique. The lawyer-guardian ad litem (L-GAL) is responsible both for protecting the legal rights of his or her client—an independent and equal party in the proceedings—and for serving as an independent voice for what is in the client's best interests. A L-GAL must know the applicable law and be familiar with a wide array of non-legal issues that arise in child protective proceedings. Being part of the adversarial process but at the same time apart from it, the L-GAL has some obligations to the client that are very similar to the obligations imposed on the lawyers for the adversaries, and some obligations that are entirely different. The child's lack of legal competence further complicates the situation. In 1998, because of its concern for the protection of children who are abused or neglected by their parents, the Michigan Legislature enacted a statute that delineates the role and responsibilities of the L-GAL. This statute, MCL 712A.17d, read in conjunction with other statutes, court rules, case law, and the Michigan Rules of Professional Conduct, gives guidance to lawyers who are appointed to this important role. This protocol is intended as another tool to help assure competent, effective representation in every case in which the court appoints a L-GAL.

The Advisory Committee for this protocol recognizes that the fees paid by courts to L-GALs and the services that courts will pay the L-GAL to perform vary throughout Michigan, and that many feel that L-GALs are not fairly compensated. The Advisory Committee also

recognizes, however, that a court's policy with regard to L-GAL fees does not alter or abrogate a L-GAL's responsibilities under MCL 712A.17d. This protocol is intended to help L-GALs comply with MCL 712A.17d; it contains recommendations by the Advisory Committee for reasonable compliance with that statute. Any deviation from the explicit language of the statute should be read only as an Advisory Committee recommendation. Most importantly, the Advisory Committee recognizes the invaluable service to the child, court, and community that L-GALs provide.

Depending upon the circumstances of the case and available resources, several representatives of the child or the court may be appointed. The following definitions are provided to help distinguish between a L-GAL and other representatives of the child or court who may be appointed by the court in a case:

- **Lawyer-guardian ad litem:** A lawyer-guardian ad litem must be appointed for a child in every child protective proceeding instituted under the Juvenile Code.[1] The lawyer-guardian ad litem has some responsibilities derived from the attorney-client relationship, and some responsibilities that are derived from the guardian ad litem's position. A L-GAL's purpose is to determine and advocate for a child's best interests. The L-GAL's powers and duties are explained in this protocol.
- **Attorney:** In addition to appointment of a L-GAL, an "attorney" may be appointed to represent a child's expressed wishes where the L-GAL's determination of the child's best interests conflicts with the child's expressed wishes. The procedure for appointing an "attorney" is discussed in this protocol. "'Attorney' means, if appointed to represent a

[1] MCL 712A.13a(1)(f), MCL 712A.17c(7), and MCL 722.630.

child in a [child protective proceeding under the Juvenile Code], an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney . . . owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client."[2]

- **Court Appointed Special Advocate:** If available in the jurisdiction and appropriate in a given case, the court may appoint a Court Appointed Special Advocate or CASA. A CASA is a volunteer who investigates the child's circumstances and makes recommendations to the court concerning the best interests of that child. A CASA does not need to be an attorney. A CASA must maintain regular contact with the child, investigate the background of a case, collect information regarding the child, provide written reports to the court and parties before a hearing, and testify when requested by the court.[3]
- **Guardian ad litem:** Like a CASA, a guardian ad litem (GAL) may be appointed to investigate the child's circumstances and make recommendations to the court regarding the child's best interests. A guardian ad litem's duty is to the court, not the child. "'Guardian ad litem means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney."[4]

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[2] MCL 712A.13a(1)(b).

[3] MCR 3.917.

[4] MCL 712A.13a(1)(e).

2. Protocol Contents

This protocol describes the authority and responsibilities under MCL 712A.17d of the Juvenile Code of a L-GAL appointed to represent a child in child protective proceedings. A L-GAL must be appointed for a child who is the subject of child protective proceedings.[5] A L-GAL may be appointed in guardianship proceedings, proceedings under the Safe Delivery of Newborns Law, and child custody proceedings, and MCL 712A.17d also applies to L-GALs appointed in those proceedings.[6] A L-GAL's role in those specific proceedings may differ from the L-GAL's role in child protective proceedings.

This protocol contains the following parts:

A. Text of MCL 712A.17d. The complete text of MCL 712A.17d, the statute that contains the duties and authority of L-GALs. The statute also provides for appointment of an attorney to advocate for a child's expressed wishes where the L-GAL's determination of the child's best interests and the child's determination of his or her own interests conflict.

B. Discussion. This portion of the protocol contains a discussion of the duties and authority of L-GALs under MCL 712A.17d. It contains sections on the role of the L-GAL, explaining that role to the child, conducting an independent investigation of the facts of the case, duties pertaining to hearings in the case, and determining

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[5] MCL 712A.17c(7) and MCL 722.630.

[6] MCL 700.5213(5), MCL 700.5219(4), MCL 712.1(2)(i), MCL 712.2(1), and MCL 722.24(2). In guardianship and custody proceedings, a L-GAL may file with the court a written report and recommendation, which may only be admitted into evidence upon stipulation of all parties. The parties may also use the report and recommendation at a settlement conference.

and advocating for the child's best interests. Throughout the discussion, the reader will find recommendations of the Advisory Committee intended to facilitate reasonable compliance with the dictates of MCL 712A.17d, including the requirements for visiting and observing the child and reviewing the case file. Statutes, court rules, ethics rules and opinions, and case law relevant to performance of a L-GAL's duties are also noted.

C. Appendixes. Attached to this protocol are the following materials intended to provide further information and guidance for L-GALs and courts:

- *Appendix A:* A list of state and federal statutes, federal regulations, court rules, case law, and other resources relevant to the L-GAL's role in child protective proceedings.
- *Appendix B:* A table containing time requirements applicable to child protective proceedings.
- *Appendix C:* A "Report of Lawyer-Guardian ad Litem for Minor(s)" from Monroe County. This report is used to help ensure L-GAL compliance with MCL 712A.17d.
- *Appendix D:* the Forensic Interviewing Protocol, produced by the Governor's Task Force on Children's Justice and the Family Independence Agency.
- *Appendix E:* A "Foster Parent Review Hearing Report," from Charlevoix and Emmet Counties, used to report information gathered during meetings between a L-GAL and foster parent.
- *Appendix F:* A "Qualified Protective Order" from Marquette County, which is

used to give a L-GAL authority to consent to release of records concerning his or her client, or to consent to an examination or treatment of his or her client.

- *Appendix G:* Donadio & Wilen, "Applying the Realities of Child Development to Legal Representation: A Quick Reference for Lawyers and Judges," 3 *Mich Child Welfare L J* 2 (1999).

3. Text of MCL 712A.17d

"MCL 712A.17d. Lawyer-guardian ad litem's duty; powers

"(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information.

(d) Before each proceeding or hearing, to meet with and observe the child, assess the child's needs and wishes with regard to the representation and the issues in the case, review the agency case file and, consistent with the rules of professional responsibility, consult with the child's parents, foster care providers, guardians,

and caseworkers.

(e) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(f) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(g) To attend all hearings and substitute representation for the child only with court approval.

(h) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(i) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(j) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter.

(k) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

"(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

"(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable."

4. Role of the L-GAL

Nature of the representation. A L-GAL's duty is to the child, not the court. A L-GAL owes the child the duties of competent and zealous representation[7] that an attorney owes to an adult client. A L-GAL's duties, like those of any attorney, include a duty to investigate the facts of the case, appear at hearings on the client's behalf, and examine witnesses. The child is entitled to the effective assistance of counsel.[8] Failure to comply with statutory and other requirements may result in sanctions.[9]

However, as noted in the introduction to this protocol, the L-GAL's role is unique. A L-GAL is required to serve as the independent representative of the child's best interests, not as the representative of the child's wishes or preferences. Although the L-GAL is required to consider the child's wishes and preferences when determining the child's best interests, the L-GAL is not bound by them as in the traditional attorney-client relationship. Nonetheless, to the extent

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[7] See *In re Shaffer,* 213 Mich App 429, 436 (1995) (under a previous version of MCL 712A.17c(7), a child who is the subject of a child protective proceeding is entitled to zealous representation). MCL 712A.17c(7) now states in part: *"In addition to any other powers and duties,* a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d." (Emphasis added.)

[8] To constitute effective assistance of counsel, a child's attorney's conduct must comply with "applicable statutes, court rules, rules of professional conduct, and any logically relevant case law." *In re AMB,* 248 Mich App 144, 226 (2001). (Footnotes omitted.)

[9] Attorneys and certified social workers may be deprived of their professional licenses or certifications for violations of law and applicable ethical rules. See *Grievance Administrator v Carson,* Case No. 02-53-6A (September 5, 2002) (revocation of license to practice law for failure to visit child, consult with social worker, visit foster parent, establish a permanency plan for the child, or make reasonable efforts to expedite the proceedings) and *Becker-Witt v Dep't of Consumer & Industry Services,* ___ Mich App ___ (April 24, 2003) (revocation of social worker's certification for failure to report suspected sexual abuse of the client's child).

possible, the L-GAL must maintain a normal attorney-client relationship with the child. If there is a conflict between the child's expressed wishes and the L-GAL's perception of what is in the child's best interests, the L-GAL should notify the court, and the court may appoint an additional "attorney" who will advocate for the child's wishes.[10]

A L-GAL must provide the child with competent representation.[11] Before accepting appointment, a L-GAL should have an understanding of the procedural and substantive law governing child protective proceedings, child development (including the effect of abuse or neglect on development),[12] and the agencies that provide services to children and families. In any given case, a L-GAL may need to gain knowledge, through consultation with others or study, in a specialized area, including medical aspects of child abuse and neglect, child sexual abuse, substance abuse, mental illness, domestic violence, foster care regulations, funding issues, governmental benefit programs, applicable federal law (including the Indian Child Welfare Act), evaluation of psychological reports, education law, and social and cultural issues related to child-rearing practices.[13] When necessary, the L-GAL should request appointment, at public expense, of an expert witness. To help ensure that a L-GAL provides children with competent representation, the L-GAL and court should keep caseloads at a reasonable level.

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[10] See MCL 712A.17d(2), which is discussed on pages 37-39.

[11] See MRPC 1.1 and Comment.

[12] See Appendix G for an article that provides a brief overview of child development concepts.

[13] A good overview of many of these issues is contained in Baker, et al., *What I Wish I'd Learned in Law School: Social Science Research for Children's Lawyers,* ABA Center on Children and the Law, 1997. See also Appendix A, which contains a list of resources intended to guide a L-GAL's initial investigation of these and other specialized areas.

A L-GAL must be diligent and prompt, and expedite the case consistent with the child's needs and interests.[14] The L-GAL must be familiar with the time requirements in the law governing child protective proceedings.[15] Adjournments should be granted only for good cause, after taking the child's best interests into consideration, and for as short a period as necessary.[16]

When a child is removed from his or her home, a L-GAL must seek to reduce the trauma resulting from separation of child and parent. This may be done by objecting to removal in an appropriate case, advocating for placement with a relative, seeking an early return of the child home, and helping to maintain, to the extent possible, a child's normal school and other activities.

Confidentiality and the attorney-client privilege. MCL 712A.17d(1)(a) states that a L-GAL's duties include "[t]he obligations of the attorney-client privilege." The obligations of the attorney-client privilege include those imposed by the rules of professional conduct governing confidentiality and by the common-law attorney-client privilege. The relevant rule of professional conduct, MRPC 1.6, states as follows:

> "**(a)** 'Confidence' refers to information protected by the client-lawyer privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

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[14] MRPC 1.3 and 3.2.

[15] See Appendix B for a table containing these time requirements.

[16] MCR 3.923(G).

"**(b)** Except when permitted under paragraph (c), a lawyer shall not knowingly:

(1) reveal a confidence or secret of a client;

(2) use a confidence or secret of a client to the disadvantage of a client; or

(3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

"**(c)** A lawyer may reveal:

(1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;

(2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;

(3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;

(4) the intention of a client to commit a crime and the information necessary to prevent the crime; and

(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

"**(d)** A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (c) through an employee."

The common-law attorney-client privilege limits the admissibility of the client's confidential communications to his or her attorney for the purpose of obtaining legal advice.[17] "The purpose of the attorney-client privilege is to permit a client to confide in the client's counselor, knowing that the communications are safe from disclosure."[18] The privilege belongs to the client; only the client may waive the privilege.[19] Although it may help the child to feel comfortable to have a person whom the child knows present at the first meeting between a child and a L-GAL, the child's meaningful exercise of the attorney-client privilege requires the L-GAL to meet with the child without other parties present. The presence of a third party during communications between attorney and client destroys the privilege, unless the third party is an agent of the attorney or client.[20]

A conflict between a L-GAL's duty to preserve the child's confidences and secrets and a L-GAL's duty to advocate for the child's best interests may arise in certain circumstances, such as when the child discloses to the L-GAL that he or she has been subject to additional abuse or neglect, or that he or she is preparing to run away from placement. A L-GAL is not a "mandatory reporter" under MCL 722.623(1) of the Child Protection Law, and running away from a placement is not a criminal offense.[21] An attorney must not disclose a client's confidential

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[17] *Alderman v People,* 4 Mich 414, 422 (1857).

[18] *Co-Jo, Inc v Strand,* 226 Mich App 108, 112 (1997).

[19] *Leibel v General Motors Corp,* 250 Mich App 229, 240 (2002).

[20] *Grubbs v Kmart Corp,* 161 Mich App 584, 589 (1987).

[21] It may be a status offense. See MCL 712A.2(a)(2). If the child discloses that he or she intends to commit a criminal offense in conjunction with running away from placement, the L-GAL may be permitted to disclose such information to the court pursuant to MRPC 1.6(c)(4). . .

communications without the client's consent unless disclosure is required by law or court order.[22] In these circumstances, the L-GAL should counsel the child and encourage him or her to allow the L-GAL to disclose the confidential information to the court.[23] The L-GAL may also request the appointment of a guardian ad litem or CASA if available in the jurisdiction. Such circumstances exemplify the unique role and responsibilities of the L-GAL. Preservation of attorney-client confidentiality is an important interest; however, a L-GAL may need to strike a balance between traditional attorney roles and responsibilities and the legislatively mandated responsibility to represent a child's best interests. The Advisory Committee for this protocol recognizes that L-GALs must counsel and advise their clients based on the circumstances of individual cases. In doing so, the Advisory Committee fervently hopes that L-GALs will be guided by a recognition of the unique vulnerabilities of abused and neglected children, and a recognition that a fundamental goal of child protective proceedings is that children emerge from the process in safe and permanent home settings.

Pursuant to MCL 712A.17d(1)(h), a L-GAL must inform the court of the child's wishes and preferences, but such communication must be "[c]onsistent with the law governing attorney-

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Courts are required to institute expedited procedures in cases involving children absent without leave from a court-ordered placement. See Michigan Supreme Court Administrative Order 2002-4.

[22] MRPC 1.6(b)(1) and (c)(1) and (2).

[23] A L-GAL may also seek guidance from the State Bar of Michigan. The State Bar of Michigan Ethics Hotline number is (517) 485-ETHX. Neither the Michigan Legislature nor Michigan appellate courts have addressed a L-GAL's liability in a subsequent negligence action for injuries to the child. See MCL 691.1407(6) ("A guardian ad litem is immune from civil liability for an injury to a person . . . if he or she is acting within the scope of his or her authority as a guardian ad litem").

client privilege." "A lawyer[-guardian ad litem] who is asked to produce information that is covered by the attorney-client privilege or that contains confidences and secrets within MRPC 1.6, and with regard to which the client does not consent to disclosure, must await a subpoena, exercise the attorney-client privilege, and await the presiding judge's instruction of whether to release the information."[24]

Neither the court nor another party may call a L-GAL as a witness to testify regarding matters related to the case, and a L-GAL's case file is not discoverable.[25]

Participation in the proceedings. A L-GAL is "entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child."[26] A L-GAL must attend all hearings, including the preliminary hearing.[27] If the FIA is considering filing a petition requesting termination of parental rights at the initial disposition hearing, the L-GAL should attend the conference required by MCL 722.638(3) to determine an appropriate course of action. A L-GAL should attend local Foster Care Review Board meetings involving a review of the child's or a sibling's case. The L-GAL should attend mediation sessions if held.

Substitution may occur only for sufficient cause and only with court approval.[28] Courts

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[24] RI-318 (March 22, 2000).

[25] MCL 712A.17d(3).

[26] MCL 712A.17d(1)(b).

[27] See MCR 3.915(B)(2)(a) (court must appoint L-GAL for child at every hearing, including preliminary hearing) and MCR 3.965(B)(2) (L-GAL must attend preliminary hearing).

[28] MCL 712A.17d(1)(g).

and L-GALs should discourage the routine use of substitution by "emergency house counsel" or any other attorney for the L-GAL appointed to represent the child. Frequent substitution of L-GALs undermines the purpose of MCL 712A.17d.

A L-GAL should ask the court for permission to withdraw from the representation only if a conflict of interest arises[29] or if the L-GAL is unable to communicate with the child for reasons other than age.

A L-GAL should seek the truth, not defend a preordained position; file necessary pleadings and other papers, including appropriate motions; and file a witness list and call witnesses independently from the petitioner. A L-GAL's position may shift during the course of the proceedings. A L-GAL's position regarding the child's best interests may mirror, wholly or in part, a parent's or the agency's position, but the L-GAL must still independently develop a theory of the case and fully participate in the proceedings rather than merely endorsing another party's position. A L-GAL should insist on his or her status as an independent representative of a party. For example, the L-GAL should insist that he or she not be required to sit with either the prosecuting attorney or a parent during a hearing.

A L-GAL should present to the court relevant and admissible evidence and information. A L-GAL may file a motion or petition for review of the child's placement when the L-GAL finds that placement to be inappropriate or unsafe.[30] If necessary, a L-GAL may also file a report

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[29] See MRPC 1.7.

[30] See MCR 3.966(A)-(B). A L-GAL may also file a complaint with the Children's Ombudsman pursuant to MCL 722.925. Go to www.michigan.gov/oco for further information. The L-GAL may also file a complaint with the Department of Consumer and Industry Services against a licensed foster care home, agency, or institution. For the complaint form, go to http://www.michigan.gov/documents/comp__frm_50821_7.pdf.

of suspected child abuse or neglect with FIA. At trial, at the conclusion of the proofs, the L-GAL may make a recommendation to the fact finder as to whether one or more of the statutory grounds in the petition have been proven by a preponderance of the evidence.[31] Before entering dispositional orders, the court must consider any written or oral information concerning the child provided by the L-GAL.[32] A L-GAL may file a petition on behalf of the child seeking court jurisdiction or termination of parental rights.[33]

A L-GAL may seek review of a decision or order by filing a request for review of a referee's recommended findings and conclusions, a petition for rehearing, or an appeal.[34]

Child's attendance at a hearing and child's testimony regarding abuse. A child has a right to attend a hearing.[35] A child who attends a hearing may understand that the issues surrounding his or her custody are being taken seriously. However, the court may determine, based on the child's age and maturity and the nature of the testimony at the hearing, that the child's interests require that he or she be excused from attending part or all of a trial or a

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[31] MCR 3.972(D).

[32] MCL 712A.18f(4), MCL 712A.19(11), and MCL 712A.19a(9).

[33] MCL 712A.11(1), MCL 712A.19b(6), and MCR 3.977(A)(2)(b)-(d). The L-GAL may seek input from the prosecuting attorney before filing a petition but is not bound by a prosecuting attorney's decision not to file a petition.

[34] See MCR 3.991, 3.992, and 3.993.

[35] MCL 712A.12 (". . . the court in its discretion may excuse but not restrict children from attending the hearing").

disposition hearing.[36] The L-GAL may counsel the child regarding attending a hearing, including informing the child that his or her attendance at a hearing will not invariably result in returning home.

A L-GAL must decide whether a child should testify at a hearing regarding alleged abuse. When deciding whether the child should testify, the L-GAL may consider the child's need or desire to testify, the necessity of the child's testimony, the use of a hearsay exception to obviate the need for the child's direct testimony, and the child's ability to provide testimony and to withstand cross-examination. The L-GAL should be familiar with the law governing competence of witnesses. If the child is to testify, the L-GAL should prepare the child prior to his or her appearance in the courtroom by showing the child the courtroom, allowing the child to sit in the witness stand, providing a booster seat if necessary, telling the child where others will sit, and the like. If the L-GAL determines that it is not in the child's best interests to testify, the L-GAL should seek a stipulation from the other parties not to call the child as a witness. If the child will be called as a witness by another party, the L-GAL should explore the use of alternative procedures to obtain the child's testimony in the least detrimental manner.[37] The L-GAL may file a motion to ensure developmentally appropriate questions and should make every effort to prevent cross-examination by leading questions. In all cases, the L-GAL should seek direction from the court.

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[36] MCR 3.972(B)(1) and MCR 3.973(D)(3).

[37] See MCL 712A.17(7) and MCL 712A.17b. A pretrial motion must be filed before using such alternative procedures. See MCR 3.922(E). A L-GAL may also request that an impartial person address questions to a child-witness at a hearing.

Case plan development and services to family. The L-GAL should be notified of the date and time of a case plan development conference to allow him or her to participate in constructing a case plan and parent-agency agreement. However, the L-GAL should not be present at the conference with a respondent unless that respondent's attorney is also present or has been made aware that the L-GAL will attend the conference. As required by the Michigan Rules of Professional Conduct, the L-GAL must first contact a respondent's attorney and ask permission to speak with that respondent.[38] A L-GAL should obtain the attorney's permission in writing or confirm it in writing once permission has been granted. Parents should be informed that they are not obligated to discuss the case with the L-GAL, and that the L-GAL may be required to use the information gained against the parent in representing the child.

A L-GAL must inform the court "if . . . services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose." The L-GAL may do so immediately, by motion, or at a scheduled review hearing. The L-GAL may also attempt to remedy the problem by contacting the caseworker, service provider, and parent's attorney.

Cooperative resolution. MCL 712A.17d(1)(j) requires a L-GAL to identify common interests among the parties and, consistent with the rules of professional conduct and to the extent possible, to promote a cooperative resolution of a case. Cooperative resolution prior to trial may allow faster implementation of a case plan and parent-agency agreement. Because the L-GAL represents and advocates for the child's best interests, he or she may be particularly

[38] MRPC 4.2.

helpful in negotiating a cooperative resolution regarding the permanency plan for the child. The L-GAL may suggest that the case be referred to permanency planning mediation if available.[39]

On the other hand, a L-GAL should not hesitate to advocate a position contrary to another party's position. The L-GAL should participate in plea negotiations between the prosecuting attorney or other attorney for the petitioner and the respondent's attorney. The court has discretion to allow a respondent to plead to an amended petition "provided that the petitioner and the attorney for the child have been notified . . . and given the opportunity to object before the plea is accepted."[40] The court may allow amendment of a petition as the interests of justice require,[41] and the L-GAL should ensure that such amendments are consistent with the child's best interests.

Requesting court authorization to pursue other issues on the child's behalf. MCL 712A.17d(1)(k) requires a L-GAL "[t]o request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment." The L-GAL should pursue issues related to the child protective proceeding, such as custody, guardianship, paternity, termination of parental rights, adoption, and appeals. In addition, the L-GAL may request court authorization and payment by the court to pursue issues on behalf of the child that do not arise

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[39] Go to http://courts.michigan.gov/scao/dispute/odr.htm for further information.

[40] MCR 3.971(A).

[41] MCL 712A.11(6).

specifically from the court appointment. Those issues include:[42]

- child support;
- delinquency or status offender matters;[43]
- social security and other public benefits;
- personal injury;[44]
- school/education issues, especially for a child with disabilities;
- mental health proceedings;
- name change;
- medication issues;
- abortion;
- estate planning;
- tribal membership; and
- employment.

Depending upon the particular need and the resources available in the community, a L-

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[42] This list of issues is based in part on American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996), D-12.

[43] A L-GAL representing a child in delinquency or status offender matters may cause practical problems. For example, the L-GAL may be required to confer with parents regarding the delinquency or status offender matters, but the parents may be represented by counsel in the child protective proceeding. Attorneys are forbidden from talking directly to a represented party. MRPC 4.2. It should also be emphasized that a L-GAL and an attorney functioning as defense counsel for a juvenile in delinquency proceedings have very different goals and may be advocating contradictory positions in the two proceedings.

[44] See CI-1016 (July 9, 1984) (it is not unethical for a court-appointed guardian ad litem to represent a child in a separate action alleging a violation of the mandatory reporting requirements of the Child Protection Law).

GAL may seek assistance to pursue such issues on the child's behalf. For example, a L-GAL may seek support and assistance from a CASA, a member of the private bar who offers appropriate services pro bono, a Legal Aid office, or a local tribal services office.

Length of L-GAL appointment and L-GAL duties. A L-GAL must serve until discharged by the court, and the court shall not discharge the L-GAL "as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the [L-GAL] for good cause shown on the record."[45] In most cases, this will entail representing the child in appeal proceedings.[46] Following termination of parental rights, a L-GAL must ensure that reasonable efforts are made to finalize a child's adoption or other permanent placement.[47] If the child has been committed to the Michigan Children's Institute (MCI), the L-GAL may consult with the MCI superintendent regarding that commitment, the child's placement, and permanency planning for the child. If the L-GAL has an objection regarding these issues, the L-GAL and MCI superintendent must consult with one another.[48]

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[45] MCL 712A.17c(9).

[46] Check local court practice.

[47] See MCL 712A.19c and MCR 3.978, which contain the procedures for post-termination review hearings.

[48] MCL 400.204(2).

Building relationships with others. Building good working relationships with child protective services workers, foster care workers, foster parents, and mental health or other professionals involved with the child may help the L-GAL to efficiently and competently perform his or her duties. For example, a L-GAL may wish to meet regularly with the foster care workers who are assigned to the same children as the L-GAL. This would allow the L-GAL and foster care workers to get to know one another and to exchange information and insights regarding the children. A L-GAL may also wish to organize and speak to a group meeting of foster parents so that the L-GAL becomes familiar to them. Foster parents are often invaluable sources of information regarding the children in their care, and establishing relationships with them will allow L-GALs access to such information.

5. Explaining the Role of the L-GAL to the Child

Establishing rapport with and explaining your role to the child. A L-GAL is required to explain his or her role to the child, "taking into account the child's ability to understand the proceedings."[49] The L-GAL should meet with and explain the L-GAL's role to the child as soon as possible after appointment. A L-GAL must establish rapport with the child. The initial meeting should occur in surroundings that are comfortable for the child, preferably in his or her home. A person whom the child knows may be present to make the child more comfortable and

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[49] MCL 712A.17d(1)(e). The Forensic Interviewing Protocol, attached as Appendix A, contains several general recommendations regarding talking with children. See also Walker, *Handbook on Questioning Children: A Linguistic Perspective,* 2d ed, ABA Center on Children and the Law, 1999.

allow the L-GAL and child to become familiar with one another. A caseworker may facilitate meaningful communication between the L-GAL and child. However, others should only be present when non-confidential information is discussed.[50] The L-GAL should also ask the child if there is anything he or she wants from home, such as a favorite toy or book.

The L-GAL should use developmentally appropriate language and concrete examples illustrating the L-GAL's role in the proceedings. The L-GAL should consider the child's age, education level, cultural context, and degree of language acquisition when providing this explanation. After explaining the L-GAL's role, the L-GAL may ask the child to state his or her understanding of what the L-GAL has said to ensure that the child understands. The L-GAL should also allow the child ample time to ask questions. The L-GAL should also explain his or her role to the child's foster parent or guardian.

The L-GAL's explanation should include the following:

- that the L-GAL's purpose is to decide and advocate for the child's best interests, and that the L-GAL will take into account the child's wishes but is not bound to follow them;
- the procedure for addressing conflicts between the child's wishes and the L-GAL's assessment of the child's best interests;
- that the child's statements will be kept confidential unless the child consents to allow the L-GAL to tell others or an exception to confidentiality applies;
- the issues to be considered by the court, and the possible outcomes of the court proceedings; and

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[50] The presence of a third party during communications between attorney and client destroys the privilege, unless the third party is an agent of the attorney or client. *Grubbs v Kmart Corp,* 161 Mich App 584, 589 (1987).

- the substance and effect of dispositional orders and other orders entered in the case, and whether the orders may be challenged or modified in the future.

6. Conducting an Independent Investigation of the Case

Importance of independent investigation. A L-GAL must "determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing reports and other relevant information."[51] An independent investigation is necessary to competently represent a child and formulate a conclusion as to the child's best interests. Although the FIA is charged with conducting an investigation of the case, the L-GAL must conduct his or her own independent investigation, interviewing persons and reviewing the petition and reports. Nonetheless, the L-GAL may wish to contact the caseworker at regular intervals to help the L-GAL stay informed regarding events in the case. A thorough independent investigation requires time, and the L-GAL should commence his or her investigation to allow time for its completion prior to a hearing.

Interviewing the child regarding the allegations in the petition and using a forensic interviewing protocol. Multiple interviews of the child regarding the allegations in a petition must be avoided. The L-GAL should encourage the use of videotaped interviews.[52] Law enforcement personnel, FIA personnel, L-GALs, attorneys for respondents, and others must cooperate with one another to ensure that they are all present during a single interview of the

[51] MCL 712A.17d(1)(c).

[52] See MCL 712A.17b.

child in a neutral location regarding the allegations. When a child is interviewed regarding the allegations in the petition, the interviewer must use a forensic interviewing protocol based on the model Forensic Interviewing Protocol attached as Appendix D.[53]

The L-GAL should also interview persons involved with the child, including the child's friends, school personnel, caseworkers, foster parents, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and potential witnesses.

Court-Appointed Special Advocates (CASAs). Where a CASA has been appointed, the L-GAL may interview the CASA. A CASA must consult with a L-GAL.[54] L-GALs should collaborate with CASAs. Because they conduct investigations and submit reports to the court, CASAs may serve as a useful source of information regarding the child, thus helping to meet the L-GAL's statutory obligation to conduct an independent investigation of the case. When appropriate, the L-GAL may call the CASA as a witness.

Reviewing reports. When appropriate, the L-GAL should review reports necessary to effectively advocate for the child, including a parent's and the child's social services, psychiatric, psychological, drug, medical, law enforcement, school, court, and other records. The L-GAL must resolve discrepancies or conflicts in written information and prepare to present evidence in

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[53] See MCL 722.628(6). A L-GAL should determine if the county in which he or she practices has developed a forensic interviewing protocol pursuant to MCL 722.628(6).

[54] MCR 3.917(E). See also www.abanet.org/child/clp/Court Appointed Special Advocates/Top Ten Tips for Attorneys Working with CASA Volunteers.htm.

support of the L-GAL's position. That position may be contrary to a determination contained in a report.

Obtaining access to a child's confidential records. A L-GAL is "entitled to . . . access to all relevant information regarding the child."[55] The L-GAL may obtain access to the child's confidential records via access to a caseworker's file or pursuant to court order. A FIA caseworker investigating suspected child abuse or neglect may obtain a child's confidential medical or counseling records.[56] Federal regulations permit disclosure of health care provider records pursuant to court order.[57] A L-GAL may obtain access to a child's school records pursuant to court order.[58] A "qualified protective order" authorizing a L-GAL to consent to the disclosure of records concerning a child is attached as Appendix C. The L-GAL must obtain such records in order to present an informed recommendation to the court regarding the child's best interests.

Obtaining access to a parent's confidential records. When fulfilling his or her duty to review all relevant reports and other information, a L-GAL's access to a parent's medical,

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[55] MCL 712A.17d(1)(b).

[56] See MCL 722.627(2)(j) (L-GAL access to FIA central registry), MCL 722.626(2) (contents of a physician's written report to FIA concerning suspected abuse or neglect), MCL 333.16281 (procedure for FIA to obtain medical and counseling records), and MCL 330.1748(5) and MCL 330.1748a (procedure to obtain mental health records).

[57] 45 CFR 164.512(e)(1)(i).

[58] See 20 USC 1232g(b)(2)(B) and MCL 600.2165.

counseling, or other records may be limited by confidentiality provisions. However, there are several exceptions to the confidentiality of such records of which a L-GAL should be aware. An FIA caseworker investigating suspected child abuse or neglect may obtain a parent's confidential mental health records pertinent to the investigation.[59] A parent's confidential mental health records may also be obtained by court order or subpoena.[60] Under federal law, a parent's substance abuse treatment and counseling records may be disclosed pursuant to court order.[61] An FIA child protective services worker must be given access to Friend of the Court records related to investigation of suspected child abuse or neglect.[62]

Obtaining authorization to release confidential information or requesting court order. If necessary, the L-GAL should obtain authorizations for release of confidential information. If necessary, the L-GAL should use subpoenas, discovery under MCR 3.922, or the procedures set forth in MCR 3.923(A) to obtain records or other information regarding the child, a sibling, or a parent. MCR 3.923(A) allows the court to order production of other evidence "at any time the court believes that the evidence has not been fully developed."

A L-GAL may also ask the court to order an examination or evaluation of a child, parent, guardian, or legal custodian. MCR 3.923(B) allows the court to order an examination or

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[59] MCL 330.1748a.

[60] MCL 330.1748(5)(a) and MCL 722.631.

[61] 42 USC 290dd—2(2)(c) and 42 CFR 2.63(a)(1). See also *In re Baby X,* 97 Mich App 111, 120-21 (1980) (where drug treatment records are necessary and material to the state's proof of child neglect, a court may authorize disclosure of confidential information in such records).

[62] MCR 3.218(D).

evaluation of a minor, parent, guardian, or legal custodian, and MCR 3.973(E)(1) and MCR 3.975(E) provide that privilege may not be used to prevent the receipt and use of materials prepared pursuant to a court-ordered examination, interview, or course of treatment at a disposition or review hearing.

Abrogation of testimonial privileges. "Any legally recognized privileged communication except that between attorney and client . . . is abrogated and shall [not] constitute grounds for . . . excluding evidence in a civil child protective proceeding.[63] The abrogation of privileges under MCL 722.631 does not depend upon whether the person who reported the suspected abuse or neglect was a "mandatory reporter," or whether the proffered testimony concerned the abuse or neglect that gave rise to the child protective proceeding in which the testimony is introduced.[64]

7. L-GAL Duties Prior to Hearings

Reviewing the agency case file. MCL 712A.17d(1)(d) requires a L-GAL to review the agency's case file before each proceeding or hearing. The FIA or agency caseworker must make

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[63] MCL 722.631. See also MCL 333.16281(2), which provides that the physician-patient, dentist-patient, counselor-patient, and psychologist-patient privileges do not apply to records or information released to FIA during an investigation of suspected child abuse or neglect.

[64] *In re Brock,* 442 Mich 101, 115-20 (1993). In *Brock,* the parents' neighbor, who baby-sat for the children, reported suspected abuse. At trial, testimony of a psychologist and a physician was admitted to show the respondent-mother's history of emotional difficulties. The Michigan Supreme Court held that abrogation of privileges under MCL 722.631 does not depend upon whether reporting was required or not, or whether the proffered testimony concerned the abuse or neglect that gave rise to the protective proceeding. *Brock, supra* at 117. Instead, the testimony must result from a report of abuse or neglect and be relevant to the proceeding. *Id.* at 119–20. The Court stated that "[i]t is in the best interests of all parties for the factfinder to be in possession of all relevant information regarding the welfare of the child." *Id.* at 119.

the case file available to the L-GAL. A L-GAL may read the file in conjunction with a visit with the child, and a L-GAL need not review material in the file that he or she has read previously.

Consulting with persons. Before each proceeding or hearing, a L-GAL must "consult with the child's parents, foster care providers, guardians, and caseworkers." As required by the Michigan Rules of Professional Conduct, the L-GAL must first contact a party's attorney and ask permission to speak with that party.[65] A L-GAL should obtain the attorney's permission in writing or confirm it in writing once permission has been granted. Parents should be informed that they are not obligated to discuss the case with the L-GAL, and that the L-GAL may be required to use the information gained against the parent in representing the child. However, the L-GAL may contact the FIA caseworker without obtaining the consent of the prosecuting attorney, assistant attorney general, or other attorney representing the agency.[66] If the prosecuting attorney or assistant attorney general denies access to the FIA caseworker, the L-GAL should seek a court order.

Meeting with and observing the child. MCL 712A.17d(1)(d) requires a L-GAL to meet with and observe the child before each proceeding or hearing to assess the child's needs and wishes regarding the representation and issues in the case. This requirement may present financial or practical problems for the L-GAL. For example, the child may be placed in another

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[65] MRPC 4.2.

[66] RI 316 (December 13, 1999), citing the commentary to MRPC 4.2, which allows communications authorized by law, including "the right of a party to a controversy with a government agency to speak with government officials about the matter."

county or state and the court that appointed the L-GAL will not reimburse L-GALs for their actual expenses in meeting with and observing a child who has been placed outside of the county. Nonetheless, meeting with and observing the child is a very important element in providing the child with competent representation and in protecting the child from further abuse or neglect. The L-GAL must visit with and observe the child before each proceeding or hearing unless alternative arrangements have been approved by the judge in writing or on the record prior to the hearing or proceeding in question.

The following are practice suggestions aimed at both meeting the L-GAL's duties to the child and ameliorating possible financial or practical problems of compliance with MCL 712A.17d(1)(d).

- Meetings with and observations of the child should occur in the child's living environment or in a place where the child is comfortable.
- A L-GAL may visit the child in his or her home environment early in the case and outside that environment later in the case. If the child remains in his or her home or has been returned home, interviewing the child in that environment may inhibit the child from disclosing information to the L-GAL.[67]
- Although meetings with and observations of a child should not occur in the hallway outside of the courtroom just prior to the hearing, the court may require the person with custody of the child, an agency caseworker, or an FIA caseworker to make the child

[67] See also MCL 722.628c, which prohibits interviewing a child in the presence of the person suspected of abusing or neglecting the child.

available to the L-GAL at the courthouse several hours before a hearing.

- A L-GAL may ask the child's foster parent or foster care worker to take the child to a comfortable meeting place "half-way" between the child's foster home and the court.
- If a child has been placed in another county, the court may appoint co-counsel located in the other county to meet with and observe the child in the child's living environment. Co-counsel would then file a report with the L-GAL.
- A L-GAL may visit with and observe the child during parenting time sessions, especially where the child's siblings will also be present.
- A L-GAL may meet with the child at his or her school, after school hours but before the child goes home.
- A L-GAL may meet with the child at the agency to avoid distractions and to assure that the meeting will occur in private.
- A L-GAL may meet with the child at a psychologist's or counselor's office after the child's appointment with the psychologist or counselor.
- Unless it is physically impossible to do so, a L-GAL must meet with and observe the child *before* a hearing or proceeding. For example, if an emergency removal hearing has been scheduled, the L-GAL may be unable to meet with the child before the emergency removal hearing. In such circumstances, the L-GAL should meet with the child as soon as possible after the hearing, preferably no later than a week after the hearing.
- The L-GAL must visit with and observe a very young or non-communicative child prior to a hearing. In addition to allowing a L-GAL to become familiar to and gather positive information about the child, an in-person visit may protect the child from being abused or

neglected while in foster care. In conjunction with an in-person visit, the L-GAL should consult with the child's foster parents to gain information about the child.

Adjourned or continued hearings. If a hearing is commenced and continued or adjourned, the L-GAL is not required to visit the child before that hearing is re-commenced unless otherwise directed by the court or the circumstances require additional contact.

Maintaining communication with the child. The L-GAL must maintain communication with the child.[68] Although the caseworker is not required to arrange meetings between the child and L-GAL, a caseworker may be very helpful in arranging such meetings and in other ways. Courts, FIA, and child-placing agencies must assure that a L-GAL is kept informed regarding any change in the child's placement or address.

8. Determining and Advocating for the Child's Best Interests

MCL 712A.17d(1)(h) requires a L-GAL

"[t]o make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes

[68] MRPC 1.4 and Comment.

according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences."[69]

Importance of investigation. Prior to making a determination regarding the child's best interests, the L-GAL must gather detailed information regarding the child's needs, development, and behavior, and whether the child is benefitting from or being harmed by his or her current living arrangement.

Defining a child's best interests. The Juvenile Code does not contain a definition of the "best interests of the child." Although not directly applicable to child protective proceedings, the Child Custody Act and Adoption Code contain lists of factors that courts use to determine a child's best interests in custody and adoption proceedings, and a L-GAL may refer to those factors to guide his or her determination of a child's best interests in child protective proceedings. The factors contained in the Adoption Code are as follows:

"(f) 'Best interests of the adoptee' or 'best interests of the child' means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or . . . the putative father and the adoptee.

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[69] See pages 11-15 for discussion of the attorney-client privilege.

(ii) The capacity and disposition of the adopting individual or individuals or . . . the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

(iii) The capacity and disposition of the adopting individual or individuals or . . . the putative father[] to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence as a family unit of the proposed adoptive home[] or . . . the home of the putative father.

(vi) The moral fitness of the adopting individual or individuals or . . . of the putative father.

(vii) The mental and physical health of the adopting individual or individuals or . . . of the putative father, and of the adoptee.

(viii) The home, school, and community record of the adoptee.

(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.

(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings.

(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody."[70]

A L-GAL must identify a child's best interests given the available dispositional options in the case. This may involve identifying the dispositional option that is least detrimental to the child. The L-GAL should focus on the child's particular needs and interests, not on the needs and interests of all children of similar age or developmental level. A L-GAL should consider the child's needs for food, clothing, and shelter; nurturance, stability, and continuity; physical safety; and maintenance, to the extent possible, of relationships with siblings, extended family members, and non-biological caretakers.

Using objective criteria to determine the child's needs and interests. When determining the child's best interests, the L-GAL should avoid imposing his or her values when evaluating the child's needs and interests. A L-GAL must be familiar with the cultural norms and values regarding a child's family. The L-GAL may rely on reports by and consult with experts in determining the child's needs and interests, and in weighing those needs and interests against one another.

Determining the child's competence and maturity. When determining a child's

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[70] MCL 710.22(f). The factors applicable to child custody cases may be found at MCL 722.23. In child protective proceedings, it is inappropriate to compare a child's parent's home or abilities to a relative's or foster parent's home or abilities. Although a court is not required to make findings regarding the "best interests" factors when deciding whether to terminate parental rights, several of the factors in the Adoption Code and Child Custody Act may be relevant in a given child protective case. *In re JS & SM,* 231 Mich App 92, 99-103 (1998), overruled on other grounds 462 Mich 341 (2000).

competence and maturity and deciding how much weight should be assigned to the child's wishes and preferences, the L-GAL may consider the following:

- the child's age (younger children often express the desire to return home regardless of the home's condition);
- the child's developmental stage (cognitive ability, socialization, and emotional development);
- the child's ability to articulate a relevant position and reasons supporting that position;
- the child's decision-making process, including the presence of influence, coercion, or exploitation, the child's conformity to others' positions, and the variability or consistency of the child's position; and
- the child's ability to understand the consequences of the decision, including the risk of harm to the child and the finality of the decision.[71]

The L-GAL may obtain information regarding several of these factors from a psychological evaluation of the child if one has been conducted.

A child may be competent to make some decisions regarding the representation but not others. Moreover, a child's competence may change over the course of a case. A L-GAL's position may come to mirror the child's position, and the L-GAL's role then becomes similar to the traditional attorney's role.

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[71] This list is taken in part from *Proceedings of the Conference on Ethical Issues in the Legal Representation of Children,* 64 Fordham L R 1281, 1313 (1996), Recommendations of the Conference, V.A.8.

Resolving conflicts between a child's interests and a L-GAL's determination of a child's best interests. A L-GAL must inform the court of a child's wishes and preferences.[72] MCL 712A.17d(2) gives the court discretion to appoint an attorney for the child where the L-GAL's best interests determination is inconsistent with the child's identification of his or her interests. That provision states:

> "(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem."

The L-GAL may inform the court of the child's position verbally or in writing. An in-camera proceeding may be appropriate to protect confidential information.[73]

If appointed, the "attorney" serves "as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney . . . owes the same duties of undivided loyalty, confidentiality, and zealous

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[72] A L-GAL's statements to the court must be "consistent with the law governing attorney-client privilege . . ." MCL 712A.17d(1)(h). See pages 11-14 for further discussion.

[73] See *Powell Products, Inc v Jackhill Oil Co,* 250 Mich App 89, 101 (2002).

representation of the child's expressed wishes as the attorney would to an adult client."[74]

[74] MCL 712A.13a(1)(b).

Guidelines for Comprehensive Assessment of Infants and Their Parents in the Child Welfare System

Michigan Association Infant Mental Health

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PREFACE

This document is a revision of the publication "Guidelines for Assessing Parenting Capabilities in Child Abuse and Neglect Cases with Special Reference to Infants of Mentally Ill and Mentally Impaired Parents," disseminated in 1985. That document was originally developed by a joint committee of the Children's Charter of the Courts of Michigan and the Michigan Association for Infant Mental Health. Because of changes in statutory procedures and understanding of development and relationships, as well as vast improvements in presentation, the Michigan Association for Infant Mental Health formed a work group to update and revise the Guidelines.

This revision, as in the first edition, provides a state-of-the-art description of infant mental health principles and a recommended protocol for assessing parenting abilities as well as the parent-infant relationship. It is directed to the following groups of professionals: the legal profession, mental health practitioners, child welfare workers, and protective services workers.

The Guidelines are applicable for assessments involving any infant and parent coming to the attention of the child welfare agency or the Court, as well as for assessments involving older children. The Guidelines are particularly useful in assessing the capacities of parents with mental illness or developmental disabilities. They are of use in divorce custody cases as well.

Assessments of parenting capabilities are often undertaken within a context that does not realistically meet the needs and expectations of the Courts and does not appropriately use the expertise of the mental health professional. The purpose of these Guidelines is to:

- facilitate the protection of the health, well-being, and social-emotional development of infants in families where parents have come to the attention of the Court system because of allegations of child abuse or neglect
- influence a balanced focus in legal determinations to include what is, indeed, in the best interest of the child, while respecting the rights of parents
- further, for mental health practitioners serving as expert witness, the consistent knowledge base concerning high quality assessments and evaluations of parenting capabilities
- foster a more effective utilization of mental health practitioners by the Courts
- educate those requesting assessments as well as those performing them
- broaden the scope of the Guidelines written in 1985 in terms of their applicability

The persons responsible for this revision were infant mental health specialists in Michigan from community mental health entities in Northeast Michigan, Ottawa County, and Marquette County, and from PACT in Wayne County and the University of Michigan. The Workgroup consisted of Gregory Proulx, chairman, and Kathy Albright, Kathleen Baltman, Mary K. Peterson and Mary Beth Reimer. Contributions were provided by Carla Barron, Janna Hack, and Nichole Paradise from PACT. Julie Meyers, Alpena County Family Court, provided useful insights. Chapter II reflects material from an article written by Frank E. Vandervort, Michigan Child Welfare Resource Center at the University of Michigan Law School, originally published in the *Infant Crier*, No. 98, January-March 2002, as well as chapters in *Infant Mental Health Services: Supporting Competencies/Reducing Risks*, 2002, published by the Michigan Association for Infant Mental Health. Mark Rains, Bangor Maine Mental

Health Center reviewed the manuscript. It was edited by Betty Tableman, formerly director of Prevention Services, Michigan Department of Mental Health, and currently associated with University-Community Partnerships, Michigan State University. Melanie Smith was responsible for the formatting and processing of the manuscript. The Michigan Association for Infant Mental Health is indebted to all who contributed to this second edition.

Julie Ribaudo, President
Michigan Association for Infant Mental Health
November, 2004

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A vast body of research on infant growth and development exists, including findings on just how critical the early parent-child relationship is in forming a foundation for a variety of developmental outcomes having tremendous impact to society at large. We understand the prevalence of child abuse and neglect, its damaging effects, and believe that it often can be prevented. We have also come to a more complete understanding of the damage that results from moving children from one caretaker to another, as often occurs in the permanency planning process. Infants need to have an attachment with a nurturing person, and they need to begin and sustain this process early. We now know that it is in the best interest of the infant to resolve placement issues as early as possible—either arranging for the mother to keep the infant or terminating parental rights and allowing the child to be adopted into a permanent family.

All states have an established system for protecting children from abuse or neglect in accordance with federal and state statutes. There are laws that govern mandatory reporting of child abuse and neglect. The child protective services staff of the child welfare agency (known as the Department of Human Services (DHS) in Michigan) is responsible for investigating abuse and neglect and suggesting services and/or corrective actions. The State may find it necessary to intervene coercively, through the due process of law, to protect children. When this occurs, the Court system has the difficult task of protecting the rights of both the alleged abusive caregiver and the child victim.

Individuals with mental illness and developmental disabilities have moved out of institutional settings and have rights like anybody else. Those who have children and raise families are like most people: Some are excellent parents; others are fine parents with a little help; some do not possess adequate parenting skills; and others may be abusive or neglectful toward their children. The conditions of mental illness or mental impairment of a parent cannot, and should not, be sufficient cause for the State to intervene into the privacy of a family. Neglect or abuse are the grounds for the Court to take jurisdiction over children, without regard to the parent's mental condition. It would be unjust to have a higher set of acceptable parenting standards for citizens with mental illness or impairment than we do for others. However, there are some special considerations in these situations, particularly in the areas of assessing the capacity to learn and integrate new parenting behaviors and in predicting future behavior.

Predicting whether a parent—with or without mental illness or developmental disabilities -- has the capacity to be a parent is undertaken through an assessment or evaluation. This is performed by a qualified professional who presents the findings as an expert witness in Court and/or to the child protective services staff for integration into a family treatment plan.

Unfortunately, this type of comprehensive assessment is not routinely ordered. Professionals without expertise in child development are often relied upon when a more appropriately trained professional grounded in the principles of infant mental health should have been identified. In addition, expert mental health practitioners may not be able to present their findings in Court if they are not asked the appropriate questions. Rigid adherence by the Court to maximum time limits between steps of the Court process may mean that infants are separated from their attachment figures during critical periods in their development.

Definitions

Infants as used in these *Guidelines* are defined as children three years of age or less. The early years are the most important for psychological attachment between infant and caregiver, with the first four months of life laying a critical foundation for the formation of attachment.

Primary caregivers are defined as biological parents. For some infants, the primary caregiver is in fact a grandparent, adoptive parent, or unrelated adult who has legal and or de facto responsibility for his or her health and well-being.

Child abuse under the Federal Act means harm or threatened harm to a child's basic rights to health and welfare by a person responsible for the child, which occurs through non-accidental physical or mental injury.

Child neglect means harm to a child's health or welfare by a person responsible for the child which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter or medical care.

I. ASSESSMENT AND THE COURT PROCESS

The professional undertaking an assessment and expecting to testify in court should be familiar with the applicable state statutes. In Michigan, the Child Protection Law (MCL 722ff) defines abuse and neglect and requires reporting, and the Juvenile Code (MCL 712 ff) specifies the process outlined below. All states operate under general procedures defined in the federal *Child Abuse Prevention and Treatment Act of 1996* (P.L. 104-235), but there will be differences in statutes and applications between states.

✦*Intake and Investigation*

Instances of suspected abuse or neglect to a child by primary caretakers are reported to CPS by (1) professionals, who are obligated by law to report, or (2) concerned citizens. In Michigan, CPS must undertake a preliminary investigation within 24 to 48 hours and determine whether or not an allegation of abuse or neglect can be substantiated in accordance with a five-tiered determination (see Appendix B). Sometimes pregnant women who have had a previous child removed will come under CPS jurisdiction.

Only a small percentage of substantiated cases are brought to the attention of the Court. This is because many families voluntarily accept services offered by CPS.

If the child is in immediate danger, the law allows a police officer to take a child into custody without a Court order. In some Michigan jurisdictions, CPS can request a Court order to remove the child before a Preliminary Hearing is held.

✦*The Court Process*

When a child and parents are brought to the attention of the court, the legal process involves the steps outlined below.

Preliminary Hearing or Preliminary Inquiry. In all jurisdictions, CPS must present a petition to the Family Court. The Preliminary Hearing determines whether the child is

removed from the home. The Preliminary Inquiry proposes to leave the child in the home but make the child a Court ward. Preliminary Hearings or Inquiries are conducted to inform parents of the nature of the proceedings and their legal rights (including appointment of legal counsel), and to determine whether grounds exist for authorizing the filing of the petition.

Many Courts proceed quite informally at the Preliminary Hearing, allowing hearsay testimony within reasonable limits (i.e. not requiring strict adherence to the general rules of evidence, providing the testimony comes from a reliable source). Many Courts will admit written reports from experts and other supporting witnesses as well as hearsay statements as to what persons not present in the Courtroom have seen that is relevant to the question of whether a petition ought to be authorized or a child removed.

The Court will

- dismiss the case or
- authorize filing the petition, thus recognizing "probable" or "reasonable" cause to believe that the alleged facts constitute abuse or neglect.

Preliminary Orders. If the petition is accepted, the Court must decide whether the home conditions present a "substantial risk of harm to the child". The Court cannot remove the child if there are services available that would protect the child in the home. The Court may leave the child in the home but order a parent or other adult out of the home

If the Court determines that the child should be removed from the home, the Court must determine that the conditions in the out-of-home placement will protect the child. The Court may place the child in licensed foster care, with another family member, or known adult (fictive care).

The Court may also enter orders for visitation, orders specifying the conditions and terms for placing the child back in the home, orders for medical care and treatment of the child. The Court may order physical and mental examinations of the parents and/or the child to obtain information relevant to the allegations of abuse and neglect and to questions of the child's safety.

Pretrial Hearing. The parent may admit that one or more of the allegations in the petition is true or may ask the Court to set a trial date for the Court to hear all of the evidence.

The Adjudication Hearing or Trial. This phase determines whether the Court has the authority (or jurisdiction) to take action regarding the long-term care of the child. If the child is out of the home, the hearing must be held within 63 days of the initial removal of the child. If the child is in the home, the trial must be held within six months of the petition being authorized. The hearing may be before a referee, a judge, or may be held with a jury. An attorney is appointed to represent the child. The petitioner, i.e., CPS represented by the prosecuting attorney, must present witnesses and other evidence to prove its case by a preponderance of the evidence – this means that a little more than one-half the evidence must document that the child has been abused or neglected.

The testimony of a witness is ordinarily restricted to facts within his or her personal knowledge. If the Court determines that specialized knowledge would assist in understanding the evidence or determining a fact in issue, the Court may permit an expert to provide his/her opinion.

If the Court takes jurisdiction of the child after the trial, the parent, the state or the child's trial lawyer can appeal the decision.

Initial Disposition. The Court at this hearing must decide what action it will take. The Court

will direct the parents to participate in those services and activities that the Court thinks will permit the child to be safely returned to the home. The Court may consider any information that is relevant. The Court must consider the service plan prepared by the foster care worker as well as any information about the child that the parent, foster parent, or the child's lawyer may offer.

A child may be placed in the permanent custody of the Court at the initial dispositional hearing, provided proper notice was given to the parents, if it is established by clear and convincing evidence that the abuse/neglect is permanent or the child is seriously threatened by abuse/neglect for the long-run future.

Dispositional Review Hearing. The Court must hold this hearing (often referred to as a Statutory Review Hearing) every 91 days after the initial disposition. The Court may consider any evidence that it thinks is relevant to the case. Each party to the case, as well as the foster parent, has the right to be heard by the Court. The Court must consider the services offered to the family, the parent's compliance with and benefit from services, the visitation pattern, and the likely harm to the child if continued in care outside the home or if returned to the parent's custody. The task for the Court is to determine whether enough progress has been made to enable the child to return home safely.

Permanency Planning Hearing. This hearing must be held if the child remains in out of home care for one year after the petition was initially filed. The Court may hold a Permanency Planning Hearing earlier than 364 days. At this hearing, the Court must determine whether the child can be safely returned home. If the child is not returned home, the Court may determine that the child is to remain in foster care for a limited specific period of time or for the long-term. The Court may order the child welfare agency to file a petition to terminate the parents' rights. That petition must be filed within 42 days.

Termination of Parental Rights. Michigan law specifies a number of situations that would warrant termination of parental rights. These include:

- there is not a reasonable expectation that the parent can assume care within a reasonable period of time, when the child has been in foster care or the parent has been unable to provide proper care for a period of more than one year because of a mental illness or developmental disability
- abandonment of the child without identification for a period of at least six months and inability to locate the parent
- child has been left in the care of another person without provision for his support or without communication for a period of at least six months
- conviction of a felony indicating unfitness for future custody or imprisonment for more than two years

The Court must first find that there is clear and convincing evidence (i.e., 75 percent of the evidence) that a legal basis for termination exists, and then decide whether termination of parental rights is in the best interest of the child. Each party may appeal the Court's decision.

Post Termination Review Hearings. If the Court terminates parental rights, the child welfare agency will be responsible for seeking an adoptive home. The Court must hold a hearing every 91 days to monitor the agency's progress.

Adoption Hearing. When the placement process is complete, the Court will hold a hearing to finalize the adoption.

✦*The Role of the Professional*

1. Request for an Assessment

The professional trained in infant mental health principles may be asked by the Court, Children's Protective Services (CPS), the lawyer for the parent or the lawyer for the child to undertake an assessment. The results of the assessment will be a report. In addition, the professional may be asked to testify in court. Chapter IV outlines the considerations and limitations that should be understood by those making a request.

Useful Steps To Take In Preparation

1. Contact your local juvenile officer or Court referee for individual variations in Court procedures by county.
2. In Michigan, consult the Binsfeld legislation; copies may be obtained from the CPS staff.
3. See Appendices:
   - Appendix A: Michigan CPS Five Category Disposition Decision Tree. Read *Guidelines for Achieving Permanency in Child Protective Proceedings*. Consult with a representative from your local Court system.
   - Appendix B for the narrative of the Michigan Five Category Disposition.
   - Appendix C for the Children's Protective Services Safety Assessment.

2. The Report

The report of the assessment findings is provided before the Court hearing to the person making the request. The report should contain:

- a brief description of the assessment process
- factual information concerning the results of the assessment
- reasonable recommendations

3. Testimony

Limitations. Ordinarily, in formal Court proceedings, the testimony of a witness is restricted to facts within his/her personal knowledge. If the Court determines that specialized knowledge would assist the judge or jury to understand the evidence, or determine a fact in issue, the Court may permit an expert in the field to provide his/her opinion. The Court must first be convinced that the individual is qualified by reason of knowledge, skill, experience, training, or education to render an expert opinion on the subject. An expert will be permitted to render an opinion only on matters on which he/she is an expert.

Testimony from an infant mental health professional about information obtained in a previous treatment relationship is <u>not</u> admissible in a Court without written permission from the parent. Testimony may be admitted without parental permission when a mental health assessment is Court-ordered.

Identification. Persons requested to provide expert opinion will be asked to identify themselves with respect to

- name
- occupation
- profession

- degrees
- agency of employment
- length of employment
- other measures of competency to serve as an expert witness (e.g., endorsement as an infant mental health specialist)

Relationship to Family. Questions will cover the role of the witness and, if relevant, details of involvement such as number of sessions, mode of intervention, presenting problem, and progress to date.

Questions concerning the assessment will cover

- observations concerning the infant's strengths
- the relationship capacities of both the infant and parent
- concerns and predictions for the infant in each of the possible outcomes
- recommendations for action

The last twenty years have brought enormous progress in understanding infancy and early childhood development. Knowledge about what infants need for normal and optimal development has expanded beyond the easily understood food, clothing, and shelter to such aspects as

- secure attachment of the infant to the caregiver
- contingent responsiveness between infant and caregiver
- positive emotional response on the part of the caregiver
- experiences and activities that foster cognitive growth and emotional development

This chapter covers what are considered to be the essential needs of the infant and primary parenting capacities. These needs and capacities should be of special concern to judges, lawyers, child protective service workers, and mental health professionals, as well as anyone with an interest in the outcome for the child's developmental process.

✦*The Needs of the Infant*

1. **Psycho-social and cognitive growth** during the first three years of life sets the stage for the infant's subsequent life trajectory. Brain development occurs most rapidly during that early period and is constrained or potentiated by environmental factors.
2. To develop normally, the infant requires a **nurturing situation** that meets his/her needs for:
   - safety and protection
   - physical care, including adequate nutrition and health care, medical necessities, shelter, clothing
   - adequate sensory stimulation, including visual, auditory, tactile, and olfactory
   - stability, consistency, and predictability in caregiving
   - responsiveness and emotional availability of a primary caregiver, allowing for the unfolding of the infant's secure attachment to the caregiver

3. **Attachment of the infant to the caregiver** (parent or other nurturing adult) is a powerful determinant of the infant's physical and emotional well being.
   a. Secure attachment establishes the base for the infant to develop
      - the ability to trust
      - the ability to relate to others
      - healthy self-esteem
      - the ability to explore and to develop cognitively
      - impulse control
   b. Insecure attachment may be a precursor for serious disturbance in an infant's social-emotional development

4. **Attachment occurs in the context of the caregiving relationship**
   a. Where caregiving is stable, consistent and responsive, a positive attachment develops, evidenced in the interaction between infant and caregiver and in the infant's use of the caregiver as a secure base from which to explore and to which to return when distressed.

      If the infant shows signs of secure attachment to a parent/caregiver, every effort should be made to support and maintain this important relationship to prevent later emotional disturbances.

   b. When caregiving is unstable, inconsistent and non-responsive, the infant will show the signs of insecure attachment in anxious, avoidant, or disorganized behavior.

      Because the quality of the attachment relationship so significantly affects the infant's physical, mental and emotional development, evidence of a disturbed relationship should not be ignored. While a troubled relationship may be repaired through professional treatment, a dangerous relationship, placing the infant's life and health in jeopardy, requires removal of the infant.

   c. Security of attachment should only be assessed by a trained/qualified professional (such as an infant mental health specialist).

5. **Loss of an attachment figure** can be destructive to an infant's well-being and should be avoided. While many infants and young children may recover if they are in a loving, caring, and consistent environment, each subsequent loss has increasingly severe and permanent effects.
   a. Assessment and any support/intervention provided to assess the parent's capacity to change should be **undertaken promptly** and a determination made promptly so that the infant's caregiving situation can be stabilized as rapidly as possible.

      If a change in the caregiver has to be made for a very young infant, it should be done early, preferably at birth or in the first month in order that the course of attachment can proceed without interruption.

   b. **Abrupt transitions** between a known and unknown caregiver should be avoided.

      (1) If possible, the parent should accompany the infant being placed in a foster care home. The infant should be permitted to take along familiar belongings. Foster parents should be given as much information as possible about the infant's established routines and unique characteristics of interaction (such as preferred comforting techniques or sensitivity to certain types of stimulation or feeding.).

      (2) When an infant is to move from a foster home to an adoptive home, there

should be a **transitional period** allowing for bridging, i.e., providing the infant with an opportunity to become acquainted with and shift to the new caregiver through visits of the adoptive parent in the foster home, short periods of caregiving, longer periods of caregiving, and finally visits of the foster parent in the adoptive home after the infant has been transferred.

c. **Multiple sequential placements and caregivers** (whether in foster care, kinship care, or other placement) should be avoided for any child but particularly for infants.

d. **Early and very frequent visitation by the parent** to an infant in placement should be supported and encouraged, not just as a "parental right" but to support the attachment and to minimize the emotional consequences for the child who is experiencing loss of a parent. The practice of delaying the first parental visit for several weeks may be damaging to the infant and should be discouraged.

(1) Visits should occur in **comfortable surroundings**, e.g., the foster home or caregiver home. Visits of one hour a week in child welfare offices—a common practice—are too minimal and the surroundings have aversive connotations that inhibit comfortable communication between parent and infant.

(2) Visits should be **scheduled** to allow for regular involvement of the parent in the daily feeding, sleeping, bathing, and play routine of the infant, and as little disruption as possible in the infant's eating and sleeping routines.

✦*Parental Capacities*

The following parental capacities are minimally necessary for the healthy growth and development of the infant:

1. Capacity to **carry out parenting responsibilities**. Social skills and adaptive capabilities, not IQ, are relevant.
2. Capacity to be aware of and to respond to the infant's **physical needs** and the ability to protect and provide a **safe environment**
3. Capacity to be aware of and to respond appropriately to the infant's **developmental needs**, including the sensory, motor, cognitive domains
4. Capacity **to invest emotionally** in the infant and emotional energy to invest in caregiving
5. Ability to perceive and **accurately read the infant's cues and communications** about needs and to respond appropriately and consistently
6. Ability to **delay gratification, tolerate frustration, and cope with the resulting stress,** avoiding intense anger and resentment toward the infant
7. Ability to **experience the infant as a separate person** with his or her own needs, not as an extension of the parent
8. **Capacity to meet own needs** for self-gratification and self-esteem independent of the infant
9. Ability to **recognize when assistance is needed** and to accept it when offered
10. Ability to **respond appropriately to emergency situations**

✦*Parental Needs After Termination of Parental Rights*

Any caregiver that loses an infant without her or his consent will grieve. If possible, counseling should be available to the parent in adjusting to this painful experience. Parents cope with loss in many ways: becoming pregnant again, becoming self-destructive, isolating, moving away are all common reactions. Counseling can assist the parent to accept the decision as in the best interests of both parent and infant, complete the grieving process, and move toward a healthy outcome.

Table 1. Basic Principles Guiding the Assessment and Treatment of Infants and Families

- Infants, toddlers and parents develop optimally within the context of **nurturing relationships**.
- The birth of a baby into a family offers the **hopefulness** of new relationships and possibilities for growth and change.
- Early relationships and events that occur in the **first years of life** are significant to the course of development throughout one's life.
- **Negative life events and unresolved relationship losses** can interfere with parental sensitivity. This undermines the developing attachment relationship.
- Parents with a diagnosis of a **mental illness or a significant emotional disturbance** benefit from the therapeutic presence, understanding and support of infant mental health specialists in preparing for and caring for young children.

III. The Assessment Process

✦*Who Should Assess*

Comprehensive assessment of parental capacity and infant behavior and development typically requires the specialized training and experience of a professional who either is licensed in a mental health field or qualifies as an expert witness on the basis of clinical experience and education. The expertise of a mental health professional is especially critical in cases involving a mentally impaired or mentally ill parent or involving an infant with special physical, developmental or emotional needs.

In any case involving an infant, it is very important for the evaluator to possess specialized training and experience in infant observation and assessment. This is necessary for the evaluator to be competent in identifying unique needs and reactions of the infant that may be crucial in helping to determine a parent's capacity to care for that infant.

✦*What Should Be Assessed*

As part of the Court-related process of safeguarding an infant and determining if an infant would be at continuing risk of abuse or neglect if returned home following removal, the

Court requires

- a full understanding of the precipitating events or conditions leading up to a family's involvement with the Court.
- a determination if similar events or conditions are likely to recur.

Once a particular family is a focus of concern, the Court's interest goes beyond the precipitating circumstances. The immediate situation might signal that a family's functioning is more in jeopardy than what has already been shown.

Before the Court can conclude that, indeed, an infant would be safe and secure living at home, the capacity to parent must be determined in relation to the particular infant who has become the center of the Court's concern. The Court requires:

- a thorough assessment of the **capacities of the parent** or set of parents.
- a thorough assessment of **the infant**.
- a functional description of what goes on in the **interaction between infant and parent**; it is here that one may determine how adaptive/maladaptive the 'working models' of relationships might be. The *Parent-Infant Relationship Global Assessment Scale*, (Lieberman, Wieder, & Fenechel, 1997), may be a useful tool in structuring one's reasoning about adaptive-maladaptive dimensions of relationships.

The results of such an assessment may be used in making custody decisions or determining the need for intervention and developing an intervention plan. In each case, the Court needs to know if the parent or set of parents will be able to provide a suitable home life that meets the infant's physical, developmental and emotional needs. Despite this rather clear mandate, the comprehensive assessment of a particular parent or set of parents in relation to a particular infant is a rather complex undertaking. It requires an integration of findings concerning

- parent characteristics and functioning
- infant characteristics and functioning
- the life circumstances of the family, and
- the quality of parent-infant interaction and attachment.

It is not that uncommon for one child, such as an unwanted infant, to become the target of abuse or neglect by a parent, while siblings are spared this fate. This emphasizes the importance of evaluating the unique aspects of the parent-child relationship in any assessment of parental capacity.

✦*General Guidelines*

The guidelines and questions in this and the following sections specify important aspects of a comprehensive assessment in abuse and neglect cases involving infants. They may serve as an outline of important areas to consider in conducting, reporting upon, or reviewing such an assessment.

Details concerning the actual method and process of conducting such an assessment in a competent manner are minimally referenced in these *Guidelines*. In selecting which and/or how much of the various published assessment protocols to employ, the assessor will rely upon what is available to her/him and what she/he is experienced in utilizing. The issue of what is a recognized or acceptable assessment protocol may also come into question.[1]

[1]See American Academy of Child and Adolescent Psychiatry (1997) and Lieberman, Weider and Fenichel (1997) in the Bibliography.

Any specific situation, by virtue of its unique characteristics, might call for a highly specialized or individualized line of investigation in addition to the more general guidelines that follow. As stated at the outset of this section, it is imperative that a full understanding is achieved concerning the precipitating events or conditions marking an infant as at risk of abuse or neglect.

Pre-Assessment

A comprehensive assessment requires multiple observations in natural settings of parent-child interactions, in the context of the family, the community, and the family life cycle. Possible options for accomplishing the assessment should be considered:

- brief versus an extended assessment
- solo versus team assessments

Before Committing to Undertake an Assessment

It is essential for the assessor to clarify with the contractor

- what is wanted.
- what can be given. *It is important to educate referral sources about what they can expect from an assessment.*
- how the information will be useful to the worker/family/Court in terms of placement decisions and/or intervention planning.
- difference between intervention and focused assessment, if an intervention is being carried out at the same time. *A focused assessment differs widely from an intervention: the former is an organized system for providing information upon which decisions may be made; the latter is a service to a family in order to attain desired outcomes.*

Reclarification may be needed as the assessment process proceeds.

Maintaining effective working relationships with referral sources and decision makers is important if the information provided by the assessor is going to be listened to and utilized.

When the Court Makes the Referral for an Assessment

- Ask for identifying information, *e.g., date of birth.*
- Ask why the infant and parent(s) are in the system, *i.e., reason for foster care placement.*
- Inquire about the infant's health/medical status. Indicate what documents will be helpful to protective services or Court staff and, depending on the reason for the assessment, helpful in completing the assessment.
- Ask for relevant information about parent(s), e.g., *caregiving history.*
- Ask about placement history re

  foster care placements

  other placements or separations from parent(s).
- Ask why the referral is being made, *i.e., what is wanted.*
- Inquire about official goals for this family and "unofficial" goals. *Know that they do exist and know that the protective services worker's impressions about the case will influence how the assessment will/won't be used.*

- Clarify again what the assessment can do and what it can't do. Indicate that the family's strengths as well as problems will be assessed
- Clarify what site opportunities will be needed in order to complete the assessment wanted, *e.g., foster home, birth home, relatives home, day care*
- Gather logistical information re observation/assessment opportunities (when and how) and current visitation schedule
- Ask what the birth and foster parent(s) have been told about the assessment and ask about their response/understanding about the purpose and process
- Ask the foster care worker to lay the groundwork for the assessment with birth and foster families
- Ask the preferred way to contact birth parent(s) and foster parent(s)
- Get addresses/directions to birth and foster parent homes and/or other assessment sites

When Meeting the Parent(s) and Foster Parent(s):

- Clarify what the assessor will/won't be doing, *i.e., role and boundaries*
- Talk about timelines, *e.g., four weeks, eight weeks*, and appointments for observation
- Map out agreed-upon timelines, schedules, and content. Show/give copy to families and CPS worker
- Gather information regarding the infant's birth history from parent(s)
- Gather information regarding the infant's medical/health background, as appropriate, from parent(s) and foster family
- Develop a relationship with the parent(s) within which to define the focus and scope of the assessment. Wonder with the parent(s) about the meaning of observations and interactions

Developing a supportive relationship with the family is critical to effectiveness in implementing an assessment and gathering information that could be useful. Uncertainty early in the assessment about what data will emerge and what it will mean complicates the relationship; for example, one does not know whether recommendations will lead to renewal or separation in infant-parent relationships. Sometimes the person undertaking the assessment is also currently or potentially involved in providing intervention and support to the family. Developing a partnership with a parent and then having to take what could be perceived as an adversarial role on the stand could affect the future of an intervention relationship.

Post-Assessment

Once the assessment is complete

- Express the preference for a meeting with agency staff, lawyers, and parent(s). Generally include foster parents.
- Discuss/determine the assessor's Court involvement, *e.g., Will a written report be given to attorneys? Will the assessor be asked to testify?*

Caution: Give educated opinions, but not pronouncements.

✦*Assessing Parental Capacity*

While background history from multiple sources is critical in any assessment of parental functioning, it is not sufficient, in and of itself. Detailed interviews of the parent, with the aim of understanding his or her unique parenting views and style, and direct observation of the parent in relationship with the infant are required for a more comprehensive assessment. **The assessment must look at the actual functioning of the parent as a parent.** Other information, such as a record of attendance at counseling sessions or parenting classes, may be of some interest but certainly does not constitute real evidence of the parent's actual level of functioning.

At least three major dimensions—Parental Competence, Psychological and Adaptive Functioning, and Life Circumstances as well as the Interconnections between them—are important to consider in assessing a person's overall capacity to function adequately as a parent. It is crucial to assess not only the abilities that a person might possess as a parent but also the likelihood that these can be realized given the internal and external forces operating upon that person.

Parental Competence

Competence in performing the role of parent consists of a combination of skills, and is always expressed in relation to a particular infant's characteristics and the type of challenge these characteristics present. Since actual behavior can be at variance with stated intentions, it is crucial to include expressed views, self-reports, and direct observation in assessing parental competence.

Psychological and Adaptive Functioning

Psychological and adaptive functioning refers to a person's characteristic patterns in thought, feeling, and behavior. Such patterns have great significance for how well a person is able to cope with the responsibilities and stresses of life in general, and with the added responsibilities of being a parent. Response patterns, attachment processes, and lifestyle choices are especially important areas to assess in trying to come to an understanding of a person's psychological and adaptive functioning as a parent.

Life Circumstances

Life circumstances include the parent's milieu and physical surroundings, the unique set of life stresses that she or he faces, and the material and social resources available in carrying out her or his parental role and responsibilities.

Interconnections

Identified parental capacities and difficulties need to be considered together and in relation to one another.

For example, does an area of difficulty (such as severe and chronic substance abuse in relation to which the parent resists treatment) outweigh observed parental strengths?

Alternatively, do a number of strengths or resources, including supportive services, compensate for an area of difficulty? Again, the identified difficulty might be a pattern of substance abuse but, in this contrasting example, the parent is clearly motivated to participate in intensive inpatient treatment and has substantial support from extended family members who can provide care for the infant.

It is also important to determine the underlying reasons for areas of difficulty in order to assess how easily these might be addressed and ameliorated.

For example, a parent may show a willingness to participate in parenting classes in order to improve his or her competence but then demonstrate consistent inability to empathize with the infant due to his or her own childhood history of abuse and neglect.

Infant Needs

In addition to these considerations, any assessment of parental capacity should center around the infant's immediate and long-term needs in four major, albeit overlapping, areas:

- safety and protection
- physical care and nurturing
- appropriate stimulation
- emotionally invested, responsive, and stable care which allows for human attachment

In other words, we want to know if the parent is, or can be helped to become, an adequate protector, provider of care, stimulator, and attachment figure. Again, the unique characteristics and functioning of the infant should be considered, for infants vary considerably in the degree of challenge they present to parents.

✦*Questions for Assessing Parental Capacity*

Safety and Protection

Does this parent display the capacity to:

___ provide this infant with adequate shelter and a safe home environment?

___ recognize safety hazards and potentially dangerous situations in order to keep this infant physically safe and secure?

___ recognize the infant's developmental capacities and changes in order to take appropriate steps in keeping this infant from self-harm or harm arising from exploratory behavior?

___ protect this infant from being harmed by others?

___ control his/her own sexual and aggressive impulses with respect to this infant?

___ make appropriate judgments and respond according to this infant's needs in an emergency situation, such as a medical or housing crisis?

Physical Care and Nurturing

Does this parent display the capacity to:

___ know the infant's likes and dislikes in terms of being handled, engaged socially?

___ acquire necessary resources and supplies in order to provide for the infant's physical and health care needs?

___ recognize the infant's basic physical needs?

___ carry out routine caregiving activities in order to provide for this infant's physical care needs?

___ provide for specialized services and necessary care if the infant has special needs?

Appropriate Stimulation

Does this parent display the capacity to:

___ provide an environment that is adequately stimulating and developmentally appropriate for this infant?

___ respond consistently to the infant's needs for sensory stimulation and learning?

___ make appropriate adjustments in the amount and type of stimulation provided to the infant, taking into account developmentally changing needs, varying states and unique preferences of the infant?

___ recognize when the infant is over stimulated and alter behavior in order to help the infant regulate?

Emotionally Invested, Responsive, and Stable Care

Does this parent display the capacity to:

___ provide an environment that is emotionally secure for the infant?

___ accurately perceive and appropriately respond to the infant's cues and communications?

___ fulfill the infant's needs for emotional engagement and a sense of belonging?

___ form and sustain an attachment with this infant and invest emotionally in the infant's care?

___ experience the infant as having his or her own unique set of needs that are distinct and separate from those of the parent?

___ avoid intense anger and resentment toward the infant, realizing that the infant should not be expected to conform to the parent's desires for control or provide gratification and self-esteem for the parent?

___ cope with stress, handle frustration, control impulses and delay gratification in order to prioritize the infant's emotional needs, meet these needs, and buffer the infant from environmental stressors?

___ handle day-to-day problems and meet the organizational demands of life in order to stay psychologically available for this infant to a reasonable extent?

___ recognize when assistance might be needed in carrying out parenting responsibilities and show a willingness to seek and accept help, as well as an ability to benefit from such help, including intervention services?

✦*Assessing Infant Characteristics and Functioning*

Three areas are considered in assessing the infant:

- Health, growth, development, and self-regulation
- Behavior and adaptation
- Relationship formation and attachment process

Tables 2 and 3 on the following pages provide basic information concerning age-related expectations and behavior.

Table 2. Landmarks of Infant and Toddler Development

By	*Perception*	*Motor Skills*	*Language*	*Social Skills*
3 months	Follows person with eyes. Turns toward sound.	Raises head. Moves arms and legs. Grasps objects.	Babbles and coos.	May notice own hands. Smiles at people.
6 Months		Good head control. Reaches and obtains objects. Sits with support.	Laughs out loud. Imitates own sounds.	Interested in interaction games, (ie. Pat-a-cake, peek-a-boo).
9 Months	Vision and hearing integrated. Has mastered visually guided reach.	Transfers object from hand to hand. Sits without support. Crawls, creeps, or scoots.	Sounds become more complex. Says " Ma ma, ba ba, and da da."	Responds to own name.
12 Months		Pulls to stand. May walk. Shows fine motor control (finger and thumb coordination). Opens drawers and pulls toys.	Jabbers expressively. Uses 1-3 words. Understands " No"	Begins to feed self using fingers. Follows simple directions. Is aware of caregiver separations. Is aware of strangers. Rudimentary imaginative play and imitation.
18 Months		Walks well, may run. May walk backward.	Imitates new words. Uses 2-word sentences. Can name some body parts.	Feeds self. Engages in pretend play, and may involve others. May scribble with crayons.
24 Months		Runs. Climbs stairs. Turns pages in a book. Drinks from a cup.	Uses 3-word sentences. Asks for things by name. Imitates adult language.	Points to familiar objects. Explores and manipulates the environment. Imitates adult behaviors (ie. sweep the floor, hit).
2 1/2 Years		Kicks a ball. Throws. Proficient climber.	Follows 2-step directions. Has up to 50 word vocabulary.	Can accomplish simple self- dressing. Can perform simple hygiene tasks.
3 Years		Good balance and coordination, but is sometimes reckless in rowdy play.	Speaks clearly.	Effectively feeds self using utensils. Plays complex, imaginative games.

TABLE 3. HEALTHY AND UNHEALTHY INFANT DEVELOPMENT

The Child's Task	*What a Child Needs*	*What Happens When They Receive What is Needed*		*What Happens When They Don't*	
		Developmentally	*Actions*	*Developmentally*	*Actions*
BIRTH TO 12 MONTHS					
To make sense of the world through repetition and consistency.	Caregiving that is positive, responsive and consistent.	Begins to develop a sense of self and trust in specific caregivers. Learns what actions are needed in order to have needs met.	Receptive, responsive, engaging, securely attached. Shows increasing curiosity in environment.	Experiences confusion, anxiety, apathy. Developmental delays in one or more domains (i.e. motor, language, social, emotional, cognitive).	Excessive crying, sleep/regulatory disturbances. Withdrawal.
12 MONTHS TO 12 YEARS					
To learn about self and caregiving environment and organize knowledge in a way that will enable him to communicate effectively and to practice self care.	Caregivers who recognize and reinforce the toddler's developing self and respond sensitively to encourage practicing and developmental mastery.	The toddler learns to communicate his needs and strengthen trust in those who meet them. He develops a foundation from which he can venture out and explore based on the support he receives from others.	Toddler will explore, yet periodically check to ensure that primary caregivers are available. She will practice and build communication skills.	If there is no sense of self the toddler is unable to self regulate. Doubts worthiness of efforts. Learns shame and embarrassment.	He may become a " rag doll" in order to stay close to caregiver and makes no attempt at communication. He may also throw tantrums, exhibit recklessness, cry to attempt self comfort or be unable to calm himself enough to sleep at night.
2.5 TO 5 YEARS					
To move with confidence into more complex, purposeful activities and relationships.	Safe and secure, stimulating environment. Access to peer group and adult reinforcement.	Able to broaden caregiving world. Seeks knowledge, forms friendships, seeks appropriate assistance from caregivers. Fantasy play serves to clarify reality. A sense of self worth evolves.	Child pursues activities, playmates and knowledge. Uses adults as resources. Imitates adult behaviors/ activities in play situations. Play is dominant medium for learning.	Child is distrustful. Experiences confusion, communication failures. Turns against self (low self-esteem) or others (manipulation/exploita-tion).	In the pre-school setting the child may not socialize well with others: acts out, bites, takes things or does not interact at all. These children are at high risk for day care expulsion from daycare.

Developed by K. Baltman. (PACT) and K. Rogers, 10/07/1999. (Wayne County Family Independence Agency and adapted with permission.

✦*Questions for Assessing Infant Characteristics and Functioning*

Health, Growth, Development and Self-Regulation

Does this infant display:

___ Signs of normal health, growth, development and self-regulation?

___ Substantiated health or medical problems?

___ Signs of a suspected constitutional difficulty or medical problem?

___ An abnormal pattern of growth and, if so, did this correspond with a change in caregiver?

___ Lagging development in sensory-motor, cognitive, communicative, social, or emotional realms?

___ Signs of a significant delay or deviation in development?

___ Signs of having a difficult temperament, which makes him or her a particularly challenging infant to parent?

___ A predictable pattern of tension or fussiness and, if so, what circumstances appear to cause him or her difficulty?

___ Eating or sleeping difficulties?

___ Other difficulties regulating, such as in calming or attending and reacting to sensory stimulation?

___ Any significant change in health condition, pattern of growth, developmental rate or ability to self-regulate and, if so, what seems to explain this change?

Behavior and Adaptation

Does this infant display:

___ Patterns of normal attention, reaction, exploration, interaction and play, as expected for developmental level?

___ Unusual patterns of responding to objects or other features of the environment?

___ Unusual patterns of responding to familiar or unfamiliar people?

___ Unusual but developmentally comprehensible patterns of responding to people or the environment, given his or her life circumstances?

___ Symptoms of depression or patterns of shutting down to human interaction?

___ Clinically significant distress reactions or difficulty recovering from stressful events?

___ Clinically significant patterns of affective expression and regulation?

___ Clinically significant patterns of self-harm, aggression, or recklessness?

___ Clinically significant patterns of social withdrawal, precocious self-reliance, or resistance to assistance from the parent or other adult caregivers?

___ Clinically disturbing expressions of his or her subjective experience, either behaviorally or through symbolic representation with words or play?

___ Significant problems in behavior or adaptation that are clearly attributable to the parent's past or present treatment of the infant?

___ Any other maladaptive behavior patterns?

___ Is there any evidence that the infant's attachment to the parent has been harmed

because of disruptions in the parent-infant relationship, such as removal. or due to the parent's past or present behavior toward the infant?

___ Does the infant exhibit any physical difficulties, developmental deficits, an attachment disorder, or significant emotional or behavioral problems that are attributable to the parent's treatment of him or her, including prenatal drug exposure?

Relationship Formation and Attachment Processes

Does this infant display:

___ Patterns of normal social initiation, response, interaction, and attachment (caregiver proximity seeking and contact maintaining) as expected for developmental level and circumstance?

___ Developmentally lagging patterns of showing social preferences, relating to familiar people in discriminating ways, and selecting an attachment figure or figures?

___ Difficulty seeking attention and nurturing from his or her parent when needed, such as in finding comfort when distressed?

___ Difficulty in using his or her parent as a secure base of support and exploration?

___ Difficulty attaching to the parent despite sufficient opportunity to do so?

___ Distress, avoidance, ambivalence or other signs of difficulty with respect to separations from, and reunions with, the parent? *This may be indicative of the disturbing effect of separations on the relationship, not a measure of the level of security of that relationship.*

___ Distress or other signs of difficulty caused by a significant disruption in the parent-infant relationship?

___ Abnormal patterns of responding to attempts at physical care, nurturing, stimulation, or social and affective engagement by the parent?

___ Signs of difficulty in accepting physical care, nurturing, stimulation, or social and affective engagement from an alternative caregiver?

___ Patterns of wariness, avoidance, vigilance, anxiety, fearfulness, or trauma-related behavior in relation to the parent?

___ Patterns of wariness, avoidance, or vigilance, anxiety, fearfulness, or trauma-related behavior in relation to an alternative caregiver?

___ Clinically significant symptoms of an attachment disorder and, if so, to what is this attributable?

✦*Questions Integrating Risk and Prognosis*

Removal of the Infant

___ Upon investigation, does it appear that removal of this infant from parental care was warranted?

___ Has this parent demonstrated a pattern of abusive or neglectful behavior toward other children besides this infant? Was the infant removed because of a record of abuse and neglect of previous children?

___ *If yes.* Is this parent now ready to become an adult and to parent in a way that was not available to her previous children?

___*If not,* what clarifying information has come to light concerning this infant's removal?

___ Was this infant removed because of abusive or neglectful parental behavior impacting him or her directly?

___ Has the infant ever been in a life-threatening condition or situation secondary to the parent's abusive or neglectful treatment?

___ Does the parent accept responsibility for his or her behavior or role in the circumstances leading to the removal of this infant?

___ Has the parent been able to develop a plan to safeguard this infant and prevent such circumstances from occurring in the future?

Life Stressors

___ Have there been any traumatic events or notable stressors in the life of the infant or parent influencing functioning?

___ Is there a known history of difficult experiences with this infant, including experiences during pregnancy and birth?

___ Is the parent so preoccupied that capacities and competencies cannot be mobilized for parenting much of the time?

___ Under optimal circumstances, what is the parent's overall level of functioning and capacity as a protector, provider of care, stimulator, and attachment figure?

___ Does the parent appear to be a reliable reporter of events and information about the infant's development and personal history?

___ Did the parent meaningfully participate in the assessment, which then allowed for an adequate assessment of parental functioning?

Mental Disability

___ Does the parent demonstrate poor reality testing or worrisome patterns of denial?

___ Does the parent have a mental illness, including a character disorder, such that the capacity to nurture is severely impaired?

___ If there is a psychotic diagnosis: what is the need for treatment, the ability to benefit from treatment, and the effect of medication?

___ If the parent has a mental illness, is this worsened by close contact with the infant or by demands to meet parental responsibilities (e.g., delusional thinking centering on the infant)?

___ If the parent has a history of psychosis, is the infant at the center of the parent's delusional thinking or do the infant's needs trigger difficulty for the parent?

Motivation, Skills, Capacity

___ Is parental functioning severely limited due to multiple or overlapping forces?

___ What specific forces have previously interfered with parental functioning or distracted from the care of this infant?

___ Do the parents' past experiences as a child, such as physical abuse, neglect, sexual abuse, loss of parents, and foster care, affect parenting and the relationship with the infant?

___ Does this parent currently display the desire and sufficient motivation to assume full parental responsibility in relation to this infant?

___ Is the developmental or maturity level of the parent sufficient for her to take full-time responsibility and the assumption of a parenting identity? Or, is the parent more like a teenager: capable of adequate babysitting, but not prepared to parent alone.

___ Is the teenager struggling with a number of family-of-origin issues projected onto the service system, because she is not developmentally or psychosocially ready to be an adult yet? For example, she has not individuated from her family.

___ Does the past history, current life circumstances, and current behavior and functioning of the parent indicate sufficient areas of strength to maintain adequate parenting in relation to this infant if additional support or intervention is provided?

___ Does the parent express a clear willingness to deal with or resolve forces that have been identified as interfering with or distracting from the care of this infant?

___ What specific changes have been made in the parent's behavior, functioning or circumstances to suggest progress toward being better able to fulfill her or his parenting responsibilities?

___ Has the parent displayed the capacity to deal with or resolve forces that have been identified as interfering previously with, or distracting from, the care of this infant?

___ If the infant were to be returned home to the parent, are there continuing forces, including unique aspects of this particular parent-infant relationship which would likely interfere with or distract from the care of this infant?

___ Is it reasonable to anticipate a stable level of parental functioning that would continue to meet this infant's basic needs for safety and protection, physical care and nurturing, appropriate stimulation, and emotionally invested care, with or without support, and how much?

___ If the parent does not appear capable of providing adequate and stable care for this infant, what specific difficulties or life stresses are anticipated if the infant were to be returned home to the parent?

___ Are the difficulties or life stresses that interfere with parenting likely to resolve naturally, without additional support or intervention, and in a reasonable amount of time?

Social Support

___ Is the parent socially isolated to an extent that jeopardizes the well-being of the parent and the infant?

___ Has a reasonable level of support and intervention been provided that has already failed to assist the parent in making required changes to better meet the needs of this infant?

___ Is there strong and effective extended family support for parenting during the time needed to grow into adulthood?

___ Has support and intervention previously been provided that has successfully assisted the parent in developing increased competence, achieving more adaptive functioning or improving life circumstances, and securing resources to better meet the needs of this infant?

___ Do the past history, current life circumstances, and current behavior and functioning of the parent indicate sufficient areas of strength to maintain adequate parenting in relation to this infant without additional support? If not, what level of support is indicated?

___ Is the infant's development and adaptive functioning likely to progress normally in the absence of intervention or support?

___ What specific levels of support will be most helpful? Assistance with stress management, skills knowledge, healthy relationship development, psychotherapy, or others should be identified.

___ What is the extent and duration of community resources that appear to be required to scaffold parental functioning with respect to this infant?

___ Does the parent demonstrate willingness to accept assistance, sufficient positive motivation to make needed changes and the ability to benefit from education and support or more intensive intervention?

___ Does the parent have adequate adaptive skills required for accessing needed developmental supports and opportunities for this infant?

Timing

___ Has there been a change in the infant's development and functioning that now allows the parent to better meet this infant's needs?

___ What conditions must be met to ensure this infant's health, continuing growth, developmental progress, adaptive functioning, and processes of attachment?

___ Is it realistic to expect changes in this parent's circumstances, behavior or functioning that are necessary to safeguard this infant from physical and emotional harm?

___ If the parent appears capable of making needed changes, is it realistic to anticipate that such changes are possible in time to meet this infant's developmental and relationship needs?

___ Might the parent be able to improve some day but not quickly enough or sufficiently enough to meet this infant's specific needs?

In accordance with the law in Michigan, termination of parental rights requires a significant level of concern in a situation where:

- the risk to the infant (i.e., expectation of physical and/or emotional damage) is overwhelming, or
- significant physical and/or emotional developmental damage has already occurred because of inadequate parenting
- an indication that available resources and intervention will not substantially modify parental behavior

In recommending termination, consideration should be given to the question: *Do the psychological/emotional risks of removing a child from the home outweigh the physical risks of remaining in the home?* (See also pages 10 and 15.)

✦*Court Scheduling*

[ ] 1. Can the steps in the Court process be scheduled so that permanent placement can occur during early infancy (0-6 months, as the process of infant-caregiver attachment commences early in this phase)?

[ ] 2. If the infant is more than six months of age, can the steps in the Court process be scheduled so that permanent placement can occur as rapidly as possible?

✦*Removal, and Visitation*

[ ] 1. Could services be provided which could maintain the infant safely in its own home?

[ ] 2. Could the parent accompany the child to the foster home? Receive supervision/ support there?

[ ] 3. Has provision been made for frequent visitation by the parent in a comfortable setting?

✦*Assessment Process*

[ ] 1. Has an assessment been ordered?

[ ] 2. Is the person selected to do the assessment:

   a. a professional qualified by specialized training and clinical experience to assess parental functioning, parent-infant interaction and attachment, and infant behavior/development?

   b. capable of rendering an expert, objective opinion?

[ ] 3. Does the request for the assessment include:

   a. a developmental assessment and evaluation of the infant?

   b. observation of the parent-infant relationship?

   c. social history and assessment of the parent's level of functioning and nurturing capabilities?

   d. assessment of available and potential support systems?

[ ] 4. Is any additional, specialized assessment required in this case?

[ ] 5. Is a court order necessary to provide access to historical data in clinical and/or medical records?

[ ] 6. Has the assessment been thorough and objective such that:

   a. the assessor had access to both parents and the infant together?

   b. the assessment was undertaken in a natural home setting?

   c. the assessment took place over several sessions?

   d. the assessor obtained information from other persons' observations of parent-infant interaction in typical situations?

✦*Results of the Assessment*

[ ] 1. Did the parent(s) cooperate/participate in the assessment process?

[ ] 2. Do the results of the assessment show that the parent is capable of meeting the infant's needs for :

a. safety and protection?

b. physical care and nurturing?

c. appropriate stimulation?

d. emotional availability, responsiveness, and stability of care to allow for the development of attachment?

[ ] 3. Are there any unanswered questions regarding the parent's level of functioning?

[ ] 4. Are there any unanswered questions regarding the infant's quality of care or level of functioning?

✦*Prognosis*

[ ] 1. Is it realistic to anticipate change in parental behavior?

[ ] 2. Is change in parental behavior possible in time to save the infant from physical injury or emotional deprivation?

[ ] 3. Might the parent be able to improve some day but not in time for this infant's particular needs?

[ ] 4. Are natural support systems available to assist the parent(s)?

[ ] 5. Has the parent made use of community intervention and support systems? What was the outcome?

[ ] 6. If the infant remains in the home, what is the level of community resources required? Over what period of time?

[ ] 7. Can the functioning level of the infant be sustained in the absence of intervention or support?

[ ] 8. Is termination of parental rights indicated on the basis of continuing and substantial risk for abuse or neglect?

[ ] 9. Has it been shown that available resources and intervention will not substantially modify parental behavior in time to meet the infant's needs?

[ ] 10. Is termination of parental rights indicated on the basis of significant physical/ emotional/developmental difficulties already evident in the infant and an indication that available resources and intervention will not substantially modify parental behavior?

✦*Termination of Parental Rights*

[ ] 1. Has provision been made for a transitional period for the infant to allow for bridging between the known and the unknown settings?

[ ] 2. Can a change in caregivers be made prior to the fourth month, with permanent placement by six months of age?

[ ] 3. Has there been any counseling of the parent(s) regarding termination of the parental rights? Has provision been made for continued counseling of the parent(s)?

VII. RELATED RECOMMENDATIONS FOR MICHIGAN

In the course of developing the *Guidelines* the Committee identified several related needs and issues that go beyond the scope of the material presented. These recommendations are integral to accomplishing the intent of the *Guidelines*.

✦*Ongoing Contracts for Assessments*

The Committee recommends that the Child Welfare Agency and the Court **negotiate an ongoing contractual relationship** with a community agency with qualified professional staff for assessments. This arrangement would have the advantages of stability and continuity, resulting in the development of expertise both in assessment and in serving as an expert witness related to the needs of infants and young children.

✦*Intervention and Support Services*

The Committee recognized that intervention and support services are unevenly available throughout the state. If parents who have limited capabilities are to raise their children successfully, community support and intervention services must be available to substitute for their deficits, support their strengths, and to reduce the stress on the parents and the risk to the child.

a. It is the responsibility of the state and community mental health, child welfare and public health agencies as well as non-profit community agencies to provide home-based and center-based programs in support of families.

   The Committee recommends that concerted efforts continue to be undertaken through state department and Children's Trust Fund funding to **develop proactive prevention programs to support high-risk families**, beginning during pregnancy or at the time of birth, before the necessity for protective services and Court involvement.

b. Services should have **universal eligibility** (i.e. not have income limitations) and should not negatively label participants.

c. Services should be available, if needed, on a long-term basis during the child's infancy and preschool years. The Committee recommends that the Legislature and State departments **review funding practices which limit the number of visits or months of service** and make changes as necessary to allow for adequate services.

d. Those involved in ordering or recommending services should **determine the specific areas requiring intervention**. For example, treatment may be applied toward stress management, skills-knowledge, psychotherapy, or assistance with healthy parent-infant relationships. Too often parenting assessments conclude that the parents need generic "parenting classes" or "therapy" (non-specific) without recognizing the need for other levels of intervention or the need to remediate the relationship with the infant.

✦*Training*

The Committee recommends that the state agencies responsible for mental health, child welfare and judicial training offer training related to these *Guidelines*.

✦*Court Procedure*

The Committee recommends that the judges give **priority in docketing cases** to situations involving out of home placement of infants.

The Committee encourages a **reduction in time between hearings** for cases involving infants.

The Committee recommends that judges **routinely order expert assessments** of parents and infants when neglect or abuse involves parents who are mentally ill or developmentally disabled.

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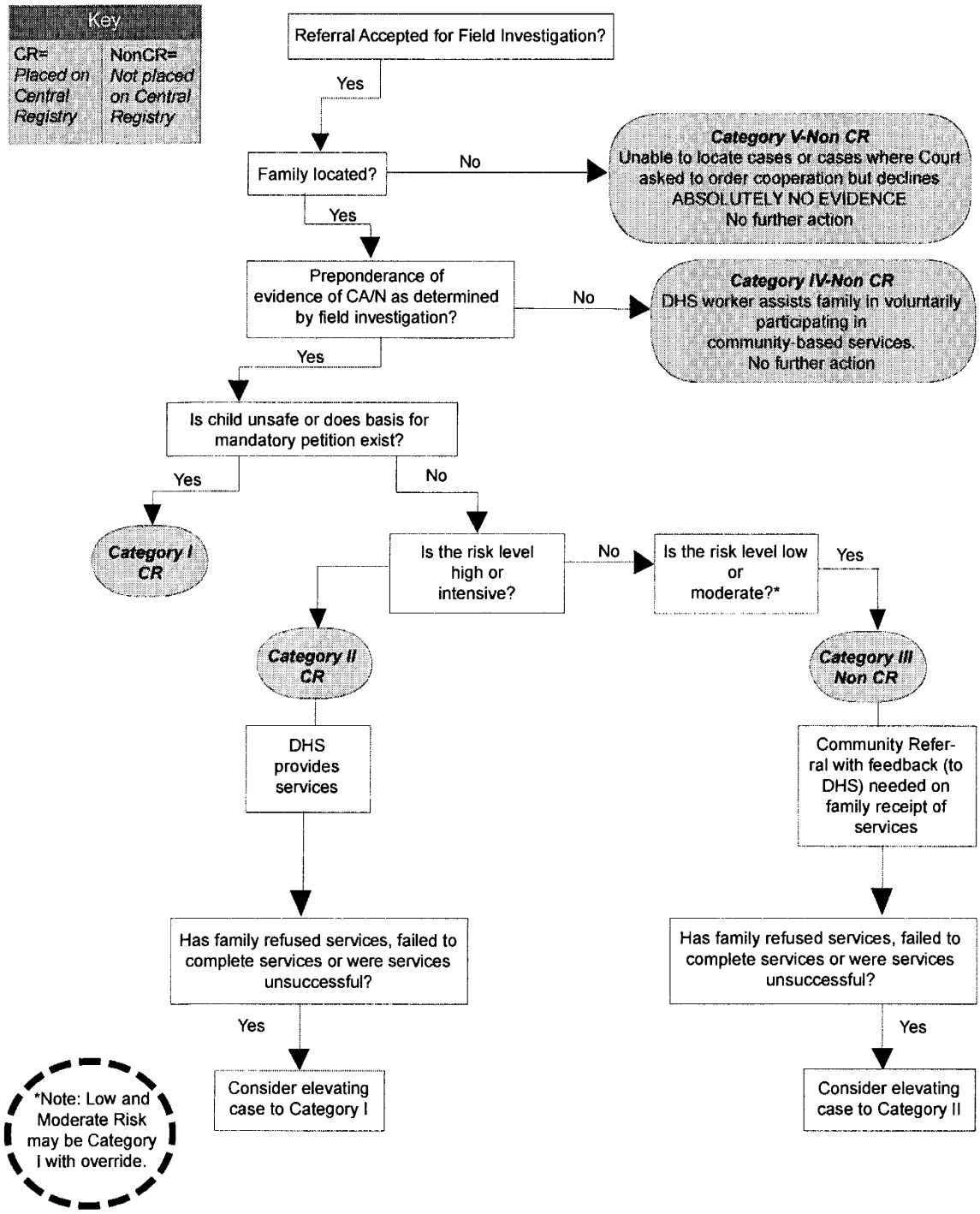
Michigan Children's Protective Services Five Category Disposition Decision Tree



APPENDIX B

Michigan Five Tier Disposition

If the investigation determines that there is **no preponderance of evidence** of Child *Abuse/ Neglect (CA/N), the complaint will fit into either Category V or Category IV.*

Category V

These are cases where

- there is NO EVIDENCE OF CA/N
- the family cannot be located
- the family refuses to cooperate with the investigation and the Court declines to intervene

Category IV

These are families where there is INSUFFICIENT EVIDENCE OF CA/N. The CPS worker is required to offer information on available community services to the family.

If an investigation determines that there is ***a preponderance of evidence*** *that CA/N exists, the CPS worker must complete a risk and needs/strengths assessment to determine the risk level.*

Category III

These are families that score LOW OR MODERATE RISK on the assessment scales and must be placed in Category III. A case which scores low or moderate can NEVER be opened for CPS unless there is a safety risk. The name of a perpetrator identified in a Category III case does not go on the Central Registry.

Category III families must be referred to community-based services and must participate in those services. Those who do not may have their cases escalated to Category II and opened for CPS services.

Community-based services include home visiting services and family resource centers.

Category II

These are families that score HIGH on the assessment scales and must be opened for CPS services. The names of perpetrators are entered on the Central Registry.

Category I

These are families that GO TO COURT, no matter what the risk level. The names of perpetrators are entered on the Central Registry.

APPENDIX C

Michigan Children's Protective Services Safety Assessment

A Safety Assessment must be completed on every CPS investigation except for those that fit within Category V.

In addition, a Safety Assessment must be conducted

- Quarterly
- Prior to case closure
- When removal or intensive in-home services are considered
- When circumstances change

The Safety Assessment looks at factors in the family situation which place the children **at immediate risk of serious harm**:

1. Has the caretaker threatened or caused serious harm to a child in the current investigation?
2. Has the caretaker seriously maltreated a child in a previous incident?
3. Does the caretaker fail to protect the child from serious harm or threatened harm?
4. If the child has been injured, is the caretaker's explanation for the injury unconvincing?
5. Does the family refuse access to the child? Is there reason to believe they may flee? Can we locate the child?
6. Is the child fearful of the caretaker, other family member, or others living in or having access to the home?
7. Does the caretaker provide the supervision necessary to protect the child from harm?
8. Does the caretaker meet the child's needs for food, clothing, shelter, and medical/mental health care?
9. Are the home conditions hazardous and immediately threatening to the child, based on their age and developmental status?
10. Does the caretaker's current substance abuse problem seriously affect his/her ability to supervise, protect, or care for the child?
11. Is the caretaker's behavior toward the child violent or out-of-control?
12. Does the caretaker describe or act toward the child in predominantly negative terms or have extremely unrealistic expectations for the child?
13. Is child sexual abuse suspected and circumstances suggest that child safety may be an immediate concern?
14. Does the caretaker's emotional stability seriously affect his/her current ability to supervise, protect, or care for the child?

If any of these factors are present, the CPS worker must identify the resources available in the family and the community that will help keep the child safe. These could include

- monitoring or direct service by DHS
- use of family resources, neighbors, or other individuals in the community as safety resources
- use of community agencies or services as safety resources
- recommend that the alleged perpetrator leave the home
- recommend that the non-maltreating caretaker move to a safe place with the child
- recommend that the caretaker place the child outside the home
- take legal action to place the child outside the home

APPENDIX D

REFLECTIONS

BY MARY BETH REIMER

Mary Beth Reimer, an Infant Mental Health Specialist, has worked 19 years at the Ottawa County Health Department as Coordinator of Social Work Services

O, I wonder if, given the magnitude of our intimidation *(as professionals confronting the court process)*, we can even begin to imagine the intimidation of the parents involved in these proceedings, or more, the impact of all of this has on the infant. My experience with families going through these proceedings is that the intimidation we as professionals feel pales in contract to what parents experience. They are often without financial resources, family support, education, literacy, or often, even the transportation to get to the hearings. I pause to think if we in any way make this understandable to the very players of this tragedy. It perhaps best boils down to a lack of respect for the parents and the baby. Few of us as professionals would admit that we are disrespectful of our clients. In fact, I believe the disrespect is often the under-girding of the total court experience of our clients. Often, the moment a complaint is lodged with (the state child welfare agency) a punitive, disrespectful tone is taken against the parents. It's often subtle and would be denied by the professionals. Rest assured, the subtlety does not escape the client. As Carl W. Buechner once said, "They may forget what you said, but they will never forget how you made them feel."

I am reminded of the concept of parallel supervision that is so important in our infant and family work. Very simply, each of the players in the drama, i.e., supervisor, therapist, home visitor, parent, and finally the infant, need supportive and nurturing supervision. When it occurs, it has a wonderful trickle down effect. There are winners all the way down the ladder with the grand prize of the baby, ultimately feeling the holding and support. Those of us in this field see this concept working and it energizes us to keep it up with the next case. There are no losers when this works, and there is certainly no intimidation.

I'm never certain if making villains of Protective Service parents makes it easier to do the horrific job of Protective Services. If we can somehow demean the family, it is not as painful to remove the child. I am sensitive to how hard this work is, but feel that we make the situation so much more difficult by losing our ability to be supportive and respectful. Do families ever recover from their experience with Child Protective Services Proceedings? I can say, assuredly that recovery will be easier, more palatable, if we have left the person with their integrity somewhat intact. And as much as we'd like to believe that our treatment of the parent does not impact the child, we know this to be fallacy. I believe Michael Trout has taught us that if we want to help and love babies, we have to help and love their parents. This is the hard part. It is so much easier for us to identify with the wounded child, than to see the wounded child in those adult parents. Am I suggesting that children be left in unsafe, un-nurturing situations? Absolutely not. Am I suggesting that there may be a kinder, gentler, more humane way to deal with families going through the stormy waters of Protective Services Proceeding? Indeed I am. The law and procedures separate us as professionals from the emotional. It helps us avoid the muddiness of emotions. Wouldn't it be terrific if the Courts, which are not a Mental Health system, championed ways to make this all more humane and respectful for families and babies? And wouldn't it be terrific if we, as professionals in Infant Mental Health, Protective Services, Foster Care, etc. remembered this which we already know, i.e., we don't truly respect an infant if we don't respect their parents. How do we show respect? Perhaps by addressing the parents by name. Perhaps by being certain that they understand the Process, that they are provided notification of hearings in a timely

manner, that they have someone to sit with during the long waits in the hallways. Most of all, we must never lose sight of the fact that they are the parents of this child, and that should say it all. We who are versed in Infant Mental Health know that the parent-child connection will be a force to be reckoned with for that child's entire life. This is indeed sacred ground.

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