Chapter 13: Initial Dispositions

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In this chapter. . .

This chapter discusses the requirements for initial dispositions. Following a plea or trial, a court may take jurisdiction over a child. At an initial disposition hearing, the court will enter orders regarding the child's placement and the treatment and conduct of the respondents and other adults. In many cases, a child will have been placed outside his or her home following a preliminary hearing. See Chapter 8. In such cases, the court may continue the child's placement. The agency supervising a child's placement must create or update a services plan, which contains requirements for respondents and the agency to ensure a safe return of the child to parental custody. This chapter discusses procedural requirements for initial dispositional hearings, dispositional options, and Case Service Plans. Section 13.15 sets forth required procedures when additional allegations of child abuse or neglect are made during the dispositional phase of proceedings.

A petitioner may request termination of parental rights at an initial disposition hearing. See Sections 18.1(A) and 18.9.

13.1 The Dispositional Phase of Child Protective Proceedings

*See Chapters 10 (pleas) and 12 (trials).

The adjudicative phase of child protective proceedings ends following a court's acceptance of a plea by a respondent or, following a trial, a finding that the child is or is not within the jurisdiction of the court. *In re Miller,* 178 Mich App 684, 686 (1989), and *In re Mathers,* 371 Mich 516, 532–33 (1963).*

*See Chapters 16 (dispositional review hearings and progress reviews), 17 (permanency planning hearings), and 18 (hearings on termination of parental rights).

In child protective proceedings, the dispositional phase encompasses initial dispositional hearings, dispositional review hearings, permanency planning hearings, and hearings on termination of parental rights. See MCR 3.973–3.977.*

No right to jury trial exists during the dispositional phase of proceedings, even where a supplemental petition is subsequently filed containing new allegations of abuse or neglect. MCR 3.911(A), *Miller, supra, In re Hubel,* 148 Mich App 696, 699 (1986), and *In re Oakes,* 53 Mich App 629, 632 (1974).

13.2 Purpose of Initial Dispositional Hearings

MCR 3.973(A) states as follows:

> "(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."

If the court finds that the child concerning whom a petition has been filed is not within the court's jurisdiction, the court must enter an order dismissing the petition. MCL 712A.18(1).

*See Section 13.9, below, for a list of these dispositional alternatives.

If the child has been found to be within the jurisdiction of the court, the court may order one or more of the dispositional alternatives contained in MCL 712A.18(1) that are appropriate for the child's welfare and society in view of the facts proven and ascertained. MCR 3.973(F)(1) and MCL 712A.18(1).*

*See Chapter 8 (placement) and Section 13.7, below (Case Service Plans).

If placement was ordered following the preliminary hearing, services may have already been provided to the parent and child.* The agency charged with the care and supervision of the child must submit an Initial Service Plan setting goals for the parent and child. However, participation in this initial plan is voluntary. See MCR 3.965(E)(2) and MCL 712A.13a(8)(b) and (c). If the child is found to be within the court's jurisdiction, the court may order

participation in the Case Service Plan, and substantial failure to comply with the plan may result in termination of parental rights. See MCR 3.973(F)(2), MCR 3.976(E)(1), and MCL 712A.19a(3).

In *In re AMAC*, 269 Mich App 533 (2006), the Court of Appeals reversed the trial court's order terminating respondent's parental rights, finding the trial court's failure to afford respondent a dispositional hearing constituted error. Following the child's birth, the Department of Human Services filed a petition seeking termination of respondent's parental rights based on prior voluntary terminations of her parental rights and other grounds. At the conclusion of the adjudicative hearing, the trial court issued a written opinion and order terminating respondent's parental rights without conducting a dispositional hearing. The Court of Appeals emphasized that "[t]he dispositional phase is particularly important when permanent termination of parental rights is sought and the respondent entered a plea of admission or a plea of no contest, or when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase, because it provides the respondent with an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child." *Id.* at 538–39. The failure to afford respondent a dispositional hearing precluded her opportunity to present evidence that may have been either inadmissible or irrelevant in the adjudicative phase of the proceedings to convince the trial court that termination is clearly not in the child's best interests, a right afforded by MCL 712A.19b(5). The Court of Appeals further noted the failure of the trial court to address the child's best interests in its opinion, as required by MCL 712A.19b(1). Consequently, respondent's rights pursuant to MCL 712A.19b(5), MCR 3.973, and MCR 3.977(E) were wrongfully denied, and the Court of Appeals vacated the order terminating respondent's parental rights and remanded the case to the trial court for a dispositional hearing. *AMAC, supra* at 540.

13.3 Time Requirements

"The interval, if any, between the trial [or plea hearing] 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." MCR 3.973(C).*

*See Sections 10.7 and 12.2 for discussion of combined adjudicative and disposition hearings.

13.4 Parties Who May Be Present at Initial Dispositional Hearings

"The child may be excused from the dispositional hearing as the interests of the child require." MCR 3.973(D)(1). MCL 712A.12 states that ". . . the court in its discretion may excuse but not restrict children from attending the hearing."

"The respondent has the right to be present or may appear through an attorney." MCR 3.973(D)(2). "The court may proceed in the absence of parties provided that proper notice has been given." MCR 3.973(D)(3).

13.5 Rules of Evidence and Reports at Initial Dispositional Hearings

MCR 3.973(E) sets forth the rules of evidence applicable to an initial disposition hearing and requirements for examination of reports. That rule states as follows:

"(E) Evidence; Reports.

*MCL 722.631 also preserves the priest-penitent privilege under certain circumstances. See Section 11.3.

"(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 parent, 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)."

MCL 712A.18f(4) specifies that the court must consider information regarding "the appropriateness of parenting time . . . ."

> **Note:** It may avoid delay to require the petitioner to list evidence that will be tendered by written report, and to provide that list to the attorneys for the respondent and child. If either attorney wants to cross-examine the author of a report, that attorney may subpoena him or her.

13.6 Required Case Review and Testimony by Child's Physician

To ensure that the Case Service Plan addresses the child's medical needs in relation to abuse and neglect, the Department of Human Services (DHS) is required to review the case with the child's attending or primary care physician if a physician has diagnosed the child's abuse or neglect as involving one or more of the following:

- failure to thrive;
- Munchausen Syndrome by Proxy;
- Shaken Baby Syndrome;
- a bone fracture that is diagnosed as being the result of abuse or neglect; or
- drug exposure.

MCL 712A.18f(6)(a)–(e).

Definition of "failure to thrive."

> "Failure to thrive is the condition in the child when he has failed to gain weight as expected for normal growth. This may mean either that (a) the child has actually lost weight, or (b) the child's rate of gaining weight is inadequate. Failure to thrive may be the result of a disease, or the result of inadequate nutrition in an otherwise healthy child. When it is the result of inadequate nutrition, it is called Non-Organic Failure to Thrive.

* * *

> "[However], [i]t is very important to realize that non-organic failure to thrive is not only a nutritional problem. It cannot be 'fixed' by instruction alone. It is a pervasive problem of the mother being unable to perceive her baby's needs. She rejects her baby and may often be frankly hostile."

Cantwell & Rosenberg, *Child Neglect* (Reno: University of Nevada, National Council of Juvenile and Family Court Judges, 1990), p 58.

Definition of "Munchausen Syndrome by Proxy."

> "Munchausen Syndrome by Proxy (MSBP) is a rare but serious form of child abuse/neglect wherein the parent, overwhelmingly the mother, falsifies illness in the child and then repeatedly presents the child for medical care, disclaiming any knowledge as to the cause of the child's illness. For example, the mother may surreptitiously administer massive doses of laxative to the child, and then claim to the doctor that the child is always ill with uncontrollable diarrhoea."

Cantwell & Rosenberg, *Child Neglect* (Reno: University of Nevada, National Council of Juvenile and Family Court Judges, 1990), pp 67–68.

Definition of "Shaken Baby Syndrome."

> "The term 'shaken baby syndrome' (SBS) was developed to explain those instances in which severe intracranial trauma occurred in the absence of signs of external head trauma. SBS is the severe intentional application of violent force (shaking) in one or more episodes, resulting in intracranial injuries to the child. Physical abuse of children by shaking usually is not an isolated event. Many shaken infants show evidence of previous trauma. Frequently, the shaking has been preceded by other types of abuse."

Alexander & Kleinman, *Diagnostic Imaging of Child Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997), p 6.

Physician testimony. If a child is placed outside of his or her home and the DHS is required to review the child's case with a physician, the court must allow the child's attending or primary care physician to testify regarding the Case Service Plan at a judicial proceeding to determine if the child is to be

returned home, which includes an initial dispositional hearing. The court must notify each physician of the time and place of the hearing. MCL 712A.18f(7).

13.7 Case Service Plans

"'Case service plan' means the plan developed by an agency and prepared under section 18f of this chapter that includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. The case service plan may be referred to using different names than case service plan including, but not limited to, a parent/agency agreement or a parent/agency treatment plan and service agreement." MCL 712A.13a(1)(d).* The "agency" may be the DHS or another agency supervising the child's placement. "'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." MCL 712A.13a(1)(a). In *In re Trejo,* 462 Mich 341, 346 n 3 (2000), the Michigan Supreme Court explained the role of the "parent-agency agreement" as follows:

*See DHS *Services Manual,* CFF 722-8c, for a detailed description of a "Parent-Agency Treatment Plan and Service Agreement."

> "Parent-agency agreements are voluntary agreements between the caseworker and the parent that obligate each to steps specifically tailored to the family's needs. However, as in this case, the requirements of parent-agency agreements often become part of the court order that implements the case service plan. MCR 5.973(A)(5)(b). Case service plans provide guidance to the agency, parent, and court in assessing a parent's progress toward reunification. They typically outline the services that will be provided and the expectations of the parents regarding services and visitations. MCL 712A.19; MSA 27.3178(598.19). Failure to substantially comply with a *court-ordered* case service plan 'is evidence that 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.' MCR 5.973(C)(4)(b)." (Emphasis added.)

The agency must prepare a Case Service Plan and make it available to the court and all parties. MCL 712A.18f(2). Before the court enters an order of disposition, it must consider the Case Service Plan. MCL 712A.18f(4) and MCR 3.973(F)(2).

The Case Service Plan must 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. MCL 712A.18f(3) and MCL 712A.1(3) (if removed from home, child should receive care as nearly as possible equivalent to the care that should have been given).

*See DHS *Services Manual,* CFF 721, 722-6, 722-8, and 722-9, for additional information on Case Service Plans.

The Case Service Plan must include, but not be 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." MCL 712A.18f(3)(a)–(e).*

*See Section 8.7 for further discussion of parenting time or visitation.

Note: The Case Service Plan should specifically address the conditions leading to the child's removal from his or her home, the child's safety, and parenting time. It should not be "formulaic" but should give the parent specific direction on how to improve the condition leading to the child's removal.

13.8 Required "Reasonable Efforts" Determination

MCL 712A.18f(1) states as follows:

> "(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."

MCR 3.973(F)(3) states:

> "(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."

See also MCL 712A.18f(4), which contains a substantially similar requirement.

Requirements to establish federal Title IV-E funding. Federal law and regulations require courts to make "reasonable efforts" determinations in order to establish partial federal funding of a child's foster care placement. See Sections 8.10 and 14.1.

The Americans with Disabilities Act, 42 USC 12101 et seq. (ADA), and child protective proceedings. In *In re Terry,* 240 Mich App 14, 23–28 (2000), the Court of Appeals addressed the application of the ADA to child protective proceedings. Terry set forth the pertinent provisions of the ADA and related federal regulations:

> "'Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.' [42 USC 12132.]

> "'A 'qualified individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.' [42 USC 12131(2).]
>
> "Pursuant to 28 CFR 35.104, mental retardation is a 'disability' within the meaning of the ADA." *Terry, supra* at 24.

The Court of Appeals first held that because termination of parental rights proceedings do not constitute "services, programs, or activities" within the meaning of 42 USC 12132, a parent may not raise a violation of the ADA as a defense to termination of parental rights proceedings. *Terry, supra* at 25. However, DHS, as a public agency, must make reasonable accommodations for disabled individuals when providing family reunification services and programs. *Id.* The Court of Appeals saw no conflict between the ADA and the Juvenile Code. MCL 712A.18f(4) requires that a court determine whether reasonable efforts have been made to rectify the conditions that led to a child's removal from his or her home, and this is consistent with ADA's requirement that a person's disabilities be reasonably accommodated. "In other words, if the DHS fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Terry, supra* at 26.

The Court of Appeals also established time requirements for raising a violation of the ADA:

> "Any claim that the FIA is violating the ADA must be raised in a timely manner, however, so that any reasonable accommodations can be made. Accordingly, if a parent believes that the FIA is unreasonably refusing to accommodate a disability, the parent should claim a violation of her rights under the ADA, either when a service plan is adopted or soon afterward. The court may then address the parent's claim under the ADA. Where a disabled person fails to make a timely claim that the services provided are inadequate to her particular needs, she may not argue that petitioner failed to comply with the ADA at a dispositional hearing regarding whether to terminate her parental rights. In such a case, her sole remedy is to commence a separate action for discrimination under the ADA. At the dispositional hearing, the family court's task is to determine, as a

> question of fact, whether petitioner made reasonable efforts to reunite the family, without reference to the ADA." *Id.*

13.9 Dispositional Options Available to Court

MCR 3.973(F)(1) requires a court to "enter an order of disposition as provided in the Juvenile Code and these rules." MCL 712A.18(1) of the Juvenile Code states that "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 . . . ."

The court's dispositional options are discussed in the following subsections.

A. Warning to Child's Parents and Dismissal of Petition

The court may warn a child's parents, guardian, or custodian and dismiss the petition. MCL 712A.18(1)(a).

B. In-Home Placement With Supervision

The court may "[p]lace the juvenile . . . under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in MCL 712A.18(1)(b), "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." MCL 712A.18(1)(b).

*See Section 8.2 for a discussion of required procedures before placing a child in a relative's home.

MCL 712A.18(1)(b) also requires the court to order terms and conditions of supervision, including rules governing the conduct of parents, guardians, or custodians. "The court shall order the terms and conditions of . . . supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court deems necessary for the physical, mental, or moral well-being and behavior of the juvenile." *Id.**

In *In re Brown,* 171 Mich App 674 (1988), the Court of Appeals affirmed the trial court's placement of the children with their father, where custody had previously been awarded to the respondent-mother in divorce proceedings, but where the respondent-mother pled no contest in the child protective proceeding to physically abusing one of the children.

C. Placement in Foster Care

The court may place a child in a suitable foster care home not subject to the court's supervision. MCL 712A.18(1)(c).

"'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." MCR 3.903(C)(4).

MCL 712A.13a(1)(e) contains a substantially similar definition of "foster care."

In *Mayberry v Pryor,* 422 Mich 579, 586–87 (1985), the Michigan Supreme Court described the purpose of foster care placements:

> "Finally, the goal of foster care is not to create a new 'family' unit or encourage permanent emotional ties between the child and foster parents. Foster care is designed to provide a stable, nurturing, noninstitutionalized environment for the child while the natural parent or caretaker attempts to remedy the problems which precipitated the child's removal or, if parental rights have been terminated, until suitable adoptive parents are found." (Citations omitted.)

However, two types of foster care placements may be permanent. A child may be a party to a "permanent foster family agreement," or be placed with a relative in a placement intended to be permanent. These types of placements alter the schedule of required review hearings. See MCL 712A.19(4).*

*See Section 16.1 for these time requirements. See also Section 8.2 for required procedures before placing a child in a relative's home.

A "permanent foster family agreement" is 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 DHS. MCL 712A.13a(1)(i). The agreement must be among all of the following:

- the child;
- if the child is a temporary ward, the child's family;
- the foster family; and
- the child placing agency responsible for the child's care in foster care.

MCL 712A.13a(1)(i)(*i*)–(*iv*). For the requirements for Permanent Foster Family Agreements, see DHS *Services Manual,* CFF 722-7.

D. Appointment of Guardian for Child

In response to a petition filed with the court by a person interested in a child's welfare, the court may appoint a guardian under MCL 700.5204. MCL 712A.18(1)(h).* Note, however, that this provision does not allow the court to appoint a guardian unless a petition is filed by the prospective guardian. If the court appoints a guardian in response to a petition filed by a person interested in the child's welfare, it may enter an order dismissing the petition under this chapter. *Id.*

*See Section 4.12 for a brief discussion of guardianships.

E. Placement in or Commitment to a Private Institution or Agency

MCL 712A.18(1)(d) states as follows:

> "(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."

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24.

The religious affiliation of the child must be protected by placement in or commitment to a private child-placing or child-caring agency or institution, if available. MCL 712A.18(1)(e).

Special requirements when a child is placed outside of Michigan. MCL 712A.18a sets forth special requirements for placing a child in or committing a child to a private institution or agency outside of Michigan. That statute states:

> "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."

F. Commitment to a Public Institution or Agency

MCL 712A.18(1)(e) states in part:

> "Except as otherwise provided in this subdivision, [a court may] 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. . . . 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. . . ."

Children may be committed to a county DHS office "for placement and care" under MCL 400.55(h). See SCAO Form JC 17. MCL 400.55(h)

requires a county office of the DHS to provide supervision of or foster care services to children under the Family Division's jurisdiction when ordered by the court.

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24.

G. Orders for Health Care

The court may 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 as the court considers necessary. MCL 712A.18(1)(f).

A provision of the Child Care Organizations Act, MCL 722.124a, limits the authority of persons other than parents to consent to non-emergency medical treatment. MCL 722.124a applies when a child is "placed in out-of-home care."* MCL 712A.18(1)(f), on the other hand, allows a court to order medical treatment as "the court considers necessary." Moreover, when the court has taken jurisdiction over a child, parental rights are effectively suspended, with the court acting in the place of a parent.

*See Section 8.4 for further discussion of this statute.

H. Orders to Parents to Refrain From Conduct Harmful to Child

The court may 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 the court's jurisdiction, or that obstructs placement or commitment of the juvenile pursuant to a dispositional order. MCL 712A.18(1)(g). See also MCL 712A.6 (Family Division has jurisdiction over adults and may make such orders affecting adults as the court finds necessary for the physical, mental, or moral well-being of children under its jurisdiction).*

*See Section 4.17.

In *In re Macomber,* 436 Mich 386, 393, 398 (1990), the Michigan Supreme Court found that the trial court's authority to make dispositional orders extends beyond remedies listed in MCL 712A.18. The Court stated the following:

> "Thus, we hold that the Legislature has conferred very broad authority to the probate court. There are no limits to the 'conduct' [under MCL 712A.18(1)(g)] which the court might find harmful to a child. The Legislature intended that the court be free to define 'conduct' as it chooses. Moreover, in light of the directive that these provisions are to be 'liberally construed' [under MCL 712A.1(3)] in favor of allowing a child to remain in the

home, we find these sections supportive of the court's order prohibiting the father from living with his daughter." *Macomber, supra,* at 393.

*See Chapter 5 for discussion of notice and service requirements.

Notice and hearing requirements. "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 [the Juvenile Code] 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 [the Juvenile Code]." MCL 712A.18(4).*

13.10 Orders to Comply With Case Service Plans

The court may order compliance with all or any part of the Case Service Plan, and the court may enter such orders as it considers necessary in the interest of the child. MCL 712A.18f(4) and MCR 3.973(F)(2).

Court-ordered compliance with Case Service Plan by "nonparent adult." The court may issue an order that affects a "nonparent adult" and that does one or more of the following:

- requires the "nonparent adult" to participate in the development of a Case Service Plan;
- requires the "nonparent adult" to comply with a Case Service Plan; and/or
- permanently restrains the "nonparent adult" from coming into contact with or within close proximity to the child.

MCL 712A.6b(1)(a), (b), and (d).

A "nonparent adult" is a person 18 years old or older 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 MCL 712A.2(b):

- the person has substantial and regular contact with the child;
- the person has a close personal relationship with the child's parent or with a "person responsible for the child's health or welfare";* and
- the person is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

*See Section 2.1(C) for the definition of "person responsible for the child's health or welfare."

MCL 712A.13a(1)(h)(*i*)–(*iii*).

13.11 Provision of Records to Child's Foster Care Provider

MCR 3.973(F)(4) states:

> "(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."

*These requirements may have been complied with prior to the initial dispositional hearing if the child was placed in foster care following the preliminary hearing. See Section 8.3.

Within 10 days after receipt of a written request, the agency must provide the foster care provider 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. MCL 712A.18f(5) and MCL 712A.13a(13).

Moreover, the court must include in its initial placement order:

- 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, and
- 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.

MCL 712A.13a(14)(a)–(b).

13.12 Scheduling Review Hearings

MCR 3.973(G) states as follows:

> "(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

*See Chapter 16.

(2) review the progress of a child at home pursuant to the procedures of MCR 3.974(A).”*

*See Section 16.1.

Accelerated review hearings. At the initial dispositional hearing, the court must decide whether it will conduct the next review hearing before it is required under MCL 712A.19(2)–(4). MCL 712A.19(9) and MCR 3.975(D).*

13.13 Revising Case Service Plans

If the child continues in placement outside of his or her home, the Case Service Plan must be updated and revised at 90-day intervals. MCL 712A.18f(5).

When revising and updating the Case Service Plan, the DHS must consult with the foster parent and attach a summary of the information received from the foster parent to the revised Case Service Plan. Updated and revised Case Service Plans must be available to the court and all parties. MCL 712A.18f(5). See also DHS *Services Manual,* CFF 722-9.

13.14 Supplemental Orders of Disposition

*See Section 13.9, above (court’s dispositional options).

If a child remains under the jurisdiction of the court, a cause may be terminated or an order of disposition may be amended or supplemented in accordance with MCL 712A.18* at any time the court considers necessary and proper. Such an amended or supplemented order is a “supplemental order of disposition.” MCL 712A.19(1). See SCAO Form JC 19.

13.15 Additional Allegations of Abuse or Neglect

“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 . . . , the agency shall file a supplemental petition with the court.” MCL 712A.19(1).

MCR 3.973(H) sets forth the required procedures when additional allegations of abuse or neglect are made. That rule states:

“(H) Allegations of Additional Abuse or Neglect.

*See Section 18.10.

“(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."*

*See Chapter 16.

Thus, proceedings regarding additional abuse or neglect are dispositional in nature. The Court of Appeals has stated:

> "Once a case enters the dispositional phase, any subsequently filed petition which alleges new instances of abuse or neglect of the minor children does not create an entirely new case which requires the probate court to redetermine jurisdiction and thus afford the respondent the right to a jury trial. The new charges fall within the continuation of the original proceeding. The hearing on such a petition is dispositional in nature, and no right to a jury trial exists." *In re Miller,* 178 Mich App 684, 686 (1989).