

# Preliminary Hearing

MCR 3.965 | SCAO Form JC 11a

*If a child is in protective custody or the petitioner requests out of home placement of the child, a preliminary hearing must be conducted. The court makes two major decisions at a preliminary hearing: whether to authorize the filing of the petition, and if so, whether to order pretrial placement of the child.*

## Procedural Issues

Must hold hearing within 24 hours of removal, excluding Sundays and holidays.

Was legally sufficient notice given to the parties?

Appoint counsel for child and parent(s).

If there is only one respondent parent, what is status of other parent? What specific steps has the agency taken to locate/engage the other parent?

If a parent is in prison, can he or she participate in person or via telephone/video conference?

Is the child present in court? If not, why?

Inquire if the child is an Indian child. See the ICWA/MIFPA bench card.

Advise parties of rights.

## Out of Home Placement Standards MCL 712A.13A(9)

The court may place a child into foster care if it finds all of the following conditions:

- Substantial risk of harm to the child's life, physical health, or mental well-being.
- No service or other arrangement is reasonably available to adequately safeguard the child from the substantial risk of harm.
- Continuing child's residence in the home is contrary to the child's welfare.
- Reasonable efforts were made to prevent/eliminate the need for removal.
- Conditions away from the parent are adequate to safeguard the child's health and welfare.

If the child is an Indian child, must find clear and convincing evidence, based on qualified expert witness testimony, that the child would be at risk of serious physical or emotional damage unless removed. MCL 712B.15

## Contrary to the Welfare to Remain in the Home

*Federal funding regulations require this finding to be made in the first court order authorizing removal.*

Is it contrary to the child's welfare to remain in the home?

What specific conditions make the home an unsafe place for the child, requiring removal?

Is the parent intellectually, emotionally, and physically able to protect the child given the threats?

What prevents the child from remaining/returning home today?

Can the caregiver articulate a feasible and realistic plan to protect the child?

## Reasonable Efforts to Prevent Removal

*Federal funding regulations require this finding to be made within 60 days of removing the child from the home.*

Has the agency provided reasonable efforts to prevent the child's removal from the home?

- Reasonable efforts are not required if aggravated circumstances exist. MCR 3.965(D)(2)

What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services related to the safety threat?

If the child is an Indian child, has the agency provided active efforts to maintain the child in the home?

(See MCL 712B.3 for definition of "active efforts".)

*Continued on reverse*

# Preliminary Hearing (cont.)

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## Parenting Time

*The court should order parenting time and sibling visitation in a frequency and duration appropriate to maintain the parent-child and/or sibling bond. Parenting time should not be used as a punishment for noncompliance with the case service plan.*

Is the parenting time clearly defined in the order, including possible electronic contact (email, phone, etc.).

Does parenting time incorporate continued parental responsibilities such as attendance at appointments, school events, and/or extracurricular activities.

Is parenting time at a location other than the agency appropriate?

If supervised parenting time is requested, what are the safety risks preventing unsupervised parenting time?

## Placement and Permanency

Have the non-custodial parent, putative father, or other relatives (paternal and maternal) been identified and considered for placement? What efforts have been made to locate and engage them?

If there is a putative father, has he been advised of his right to establish legal paternity?

Does the child have siblings who are already in foster care? If so, can the children be placed together? If the children cannot be placed together, is there a plan for sibling visitation?

Does the child's placement allow the child to maintain school placement and other important family and social connections?

If the child is an Indian child, is the child placed in compliance with MIFPA placement preferences?

## Educational Well-Being

Is the child currently enrolled in school or a preschool program?

Are there any barriers to the child remaining enrolled at his/her current school?

## ★ Required Judicial Findings/Orders

Determine if there are statutory grounds to authorize the petition (*probable cause* that 1 or more of the allegations in the petition are true).

Determine if the child should be placed in foster care pending trial:

- Out of home placement standards are met (see page 1).
- Place child with DHS for care and supervision.
- Order parenting time.
- Order specific evaluation/services to be provided to parent(s) and child.

Reasonable efforts to prevent removal were made (or active efforts for an Indian child). Describe the efforts.

Order the parent to execute a medical release to the agency including medical provider information.

Schedule next hearing.