



**Ten Cases We All Should Know**

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**In re Sanders, 494 Mich. 394 (2014)  
(one-parent doctrine)**

- All parents are constitutionally entitled to a hearing on their fitness prior to their children being removed from their custody (412)
- Court overrules one-parent doctrine. All parents have a right to an adjudication trial (422)
- Incarcerated parents can direct the care of their children by arranging for someone else to care for them (420-421)

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**In re Rood, 483 Mich. 73 (2009)  
(Reasonable efforts; Notice)**

- Procedures to ensure due process to a parent include DHS policies/procedures (93, concur at 125)
- Reasonable efforts required by 712A.19a(2) unless aggravated circumstances (99-100, 118, concur at 123, 127)
- Failure to make reasonable efforts is defense against TPR (113-15, concur at 123, 125, 127)
  - Creates "hole in the evidence" (127)
- Notice of nature & import of proceedings and fair opportunity to participate are required (113-14, 115, concur at 125)

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**In re Mason, 486 Mich. 142 (2010)  
(Incarcerated parent)**

- Must engage incarcerated parent. Can't ignore. Reasonable efforts required (152)
- Telephone participation in all proceedings, adequate notice (152-53)
- Right to participate in service plan (159)
- Can't exclude parent, then terminate rights based on missing info due to lack of participation (159-60, see *Rood* at 119, 127).
- Mere incarceration is not grounds for TPR. Three conditions must be met under 19b(3)(h) (160-61)
- DHS can't use unsupported opinion that it will take a certain amount of time for the parent to become fit after release. Too speculative (162)
- Requirements under (3)(h) encompass those in (c)(i) and (g) (165)
- Criminal history not sufficient for TPR under (j) (165)
- Child's placement with relatives is a factor that weighs AGAINST TPR (164)

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**In re LeFlure, 48 Mich.App. 377  
(1973) (Anticipatory neglect)**

- Anticipatory neglect: how a parent treats one child is probative of how that parent may treat other children (392)
- Liberty interest in custody of child (385)
- Clear and convincing evidence required for TPR (386)
- Continuous record, evidence considered in all subsequent hearings (391)

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**In re JK, 468 Mich. 202 (2003)  
(Compliance with PAA; Due Process Rts)**

- Compliance with parent-agency agreement is evidence of ability to provide proper care and custody (214)
  - PAA is presumed adequate to remedy problems.
- Parent has due process right to companionship, care, and custody of the child (210)
- Adoption cannot be finalized until COA and S.Ct. affirm TPR order if appealed (216-17, 219)

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**In re Terry, 240 Mich.App. 14 (2000)  
(Disabled parents, ADA)**

- ADA does not provide a direct defense to termination (25)
- ADA does require that services reasonably accommodate parent's disability (25)
- If services don't reasonably accommodate, then reasonable efforts cannot be found (26)
- Must raise need for accommodation/claim of ADA violation, in timely manner (ASAP) (26)
- Reasonable accommodations stop somewhere short of full-time, live-in assistance (27-28)
  - Parent must be able to meet minimum parental responsibilities.

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**In re AP, 283 Mich.App. 574 (2009)  
(Custody proceedings)**

- Juvenile court orders supersede any existing custody orders (593)
- When juvenile proceedings end, custody orders spring back into force (594)
- Juvenile court judge can decide custody matters if motion brought (595, 598-99)
  - All part of family court. One family, one judge.
  - Must follow all procedures, including best interests analysis, burden analysis, custody case name and number.
- Child has due process interest in family life, right to support, education, care (591)

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**In re JL, 483 Mich. 300 (2009)  
(ICWA)**

- "Active efforts" requirement: affirmative, more proactive, not passive, efforts. More than "reasonable efforts" (321)
- Need not be current efforts. But can't be in distant past. Must be relevant to current circumstances (324-25)
  - Determine by reference to grounds for TPR and relevance to parent's current situation (325)
- Need not be efforts in relation to child at center of present proceeding. But efforts must permit current assessment of fitness (325)
- Declined to adopt fertility test for ICWA cases (326-27)
- In JL, prior services found to be extensive, relatively recent, and tailored to meet parent's specific needs (330)

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**In re Morris 491 Mich 81 (May 2012) – (ICWA)**

The standard for triggering the notice requirement of 25 USC 1912(a) must be “a cautionary one.”

Held:

- ♦ Sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement.
- ♦ A parent of an Indian child cannot waive the separate and independent ICWA rights of an Indian child’s tribe and that the trial court must maintain a documentary record including, at minimum, (1) the original or a copy of each actual notice personally served or sent via registered mail pursuant to 25 USC 1912(a) and (2) the original or a legible copy of the return receipt or other proof of service showing delivery of the notice.

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**In re Morris 491 Mich 81 (May 2012) – (ICWA)**

- Proceeding must be halted for at least 10 days after receiving verification of tribe’s receipt of notice.
- The proper remedy for an ICWA-notice violation is to conditionally reverse the trial court and remand for resolution of the ICWA-notice issue.

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**In re Brock, 442 Mich. 101 (1993) (Confrontation/X-exam)**

- Sixth Amendment right of confrontation does not apply in child protection cases (108)
- Right to cross-examine child may be curtailed if judge finds it necessary to do so (115)
- Alternative modes of testimony (e.g., video dep) may be used, including questioning by neutral examiner outside of presence of parents and their counsel (115)
- Also found that MCL 722.631 abrogates confidentiality in child welfare cases.

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**Bonus case – People v Tennyson,  
487 Mich 730 (2010) – (Jurisdiction  
Grounds)**

- Police found heroin and guns in the house.
- “Criminality per se, or even criminality in a home per se, is insufficient to support a finding of neglect under § 2(b)(2).”
- “There was simply no evidence presented that the illegal drugs or firearms at issue had any impact on the child’s “mental well-being” or his “health and morals,” as there was no evidence at all that he was even aware of these items, much less of their illegality. The child’s awareness of the illegal items is critical, if not dispositive, in this case because the overall evidence is so very sparse.”

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