



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

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Kelly Howard
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MEMORANDUM

DATE: August 7, 2014

TO: Chief Circuit Court Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators
Probate Registers

FROM: Kelly Howard, Director of Child Welfare Services

RE: *In Re Sanders*, One-Parent Doctrine in Child Protective Proceedings

On June 2, 2014, the Michigan Supreme Court ruled in *In Re Sanders*¹ (“the opinion”) that application of the “one-parent doctrine” impermissibly infringes on the fundamental rights of unadjudicated parents without providing adequate process, and deemed the doctrine unconstitutional under the Due Process Clause of the Fourteenth Amendment. The one-parent doctrine allowed the court to obtain jurisdiction over a child based on the adjudication of one parent, yet enter dispositional orders regarding both parents. The opinion expresses that due process requires a specific adjudication of a parent’s unfitness before the state can infringe on that parent’s constitutionally protected parent-child relationship.²

A work group was established to consider the implications of the opinion with regard to existing Michigan statutes and court rules. In addition, to facilitate uniformity in caseload reporting and case management practices, we recommend that courts consider the following:

¹ 495 Mich 394 (2014).

² “Because the one-parent doctrine [derived from *In re CR*, 250 Mich App 185 (2002),] allows the court to deprive a parent of th[e] fundamental right [to direct the care, custody, and control of his or her children] without any finding that he or she is unfit, it is an unconstitutional violation of the Due Process Clause of the Fourteenth Amendment.” *In re Sanders*, 495 Mich 394, 422 (2014), overruling *In re CR*, 250 Mich App 185 (2002). “[D]ispositional hearings are constitutionally inadequate; due process requires that every parent receive an adjudication hearing before the state can interfere with his or her parental rights.” *Sanders*, 495 Mich at 422. MJI Impact, June 9, 2014.

I. Court Procedures

- A. Jurisdiction:** The opinion will impact court procedure in abuse and neglect cases where only one parent is named as a respondent. Although the opinion did not change the court's authority to assume jurisdiction over a child on the basis of the adjudication of only one parent, it extinguished the court's authority to enter dispositional orders that interfere with an unadjudicated parent's right to care for, have custody of, and exert control over the child.³ Consequently, the court must conduct an adjudication of any parent not previously named as a respondent to the proceedings before it can order that parent to participate in services or terminate that parent's rights.
- B. Jury Trial:** MCL 712A.17(2) provides that "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." Because each parent is constitutionally entitled to a fitness hearing and a parental-fitness hearing qualifies as a noncriminal hearing under the juvenile code, MCL 712A.17(2) affords him or her the statutory right to demand a jury trial.
- C. Filing Petitions:** If a parent was not listed as a respondent on the original petition and the petitioner wishes to bring allegations against him or her, the petitioner should take the following actions:
- i. **Amended Petition:** If the court does not yet have jurisdiction over the child, the petitioner should file an amended petition.
 - ii. **Supplemental Petition:** If the court has assumed jurisdiction over the child based on allegations against only one parent, the petitioner should proceed by filing a supplemental petition.⁴ If the court finds a preponderance of evidence that one or more of the allegations in the supplemental petition is true and the allegations meet the jurisdictional provisions in MCL 712A.2b, the court shall enter a supplemental order of disposition to include that parent.
 - iii. **Incorrectly Filed Petitions:** If the court receives an amended petition to include a nonrespondent parent postadjudication, the petition should be processed as a supplemental petition. Alternatively, if the court receives a

³ Whether a dispositional order regarding the child's participation in specific services interferes with a parent's rights in a constitutionally permissible way is a decision to be made by the courts on a case-by-case basis and is outside the scope of this memorandum.

⁴ Filing petitions in this manner will not impact how cases are counted for caseload reports. For purposes of caseload reporting, calculation begins when the first petition is authorized and ends when it is disposed of. See, circuit court caseload instructions for [Part 1](#), [Part 2](#), and [Part 4](#).

supplemental petition to include a nonrespondent parent before adjudication, the court should process the petition as an amended petition.

- iv. **Hearing Procedure:** Michigan court rules do not require the court to hold a preliminary hearing in order to authorize an amended or supplemental petition. However, holding an additional preliminary hearing would allow the court to make findings regarding placement, while providing the parent an opportunity to address the allegations contained in the amended or supplemental petition.

II. Child Custody Orders: In response to the opinion, DHS policy emphasizes early engagement of nonrespondent parents in child protective proceedings.⁵ Agency workers must now evaluate both parents to determine whether the child can safely reside with either. They must also contact the friend of the court (FOC) to determine whether a custody order exists and if it contains specific orders that affect placement decisions. As a result, judges who preside over child protective proceedings may be deciding child custody matters more frequently. In these circumstances, the court should consider the following:

- A. Jurisdiction:** Once the court obtains jurisdiction over the child under the Juvenile Code, orders entered in the child protective proceeding supersede all prior custody orders.⁶ However, if the nonrespondent parent files a motion for custody under the Child Custody Act, the family division judge presiding over the child protective proceeding has the authority to decide the motion as long as it follows the procedures outlined in the Child Custody Act.⁷ If the court terminates its jurisdiction in the child protective proceeding, the orders entered pursuant to the Child Custody Act remain in full force and effect.⁸
- B. Prior Court Orders:** Michigan court rules require the petitioning party in a child protective proceeding to notify the FOC of the pending action and to anticipate working together for administrative efficiency.⁹ The FOC file will include any custody and parenting time evaluations of the parents and the resulting orders.
- C. Child Support:** When issuing an order affecting child custody or parenting time, the court should consider the resulting impact on any child support obligation.

⁵ DHS issued an informational memorandum to instruct child welfare workers how to comply with the opinion (attached as Appendix A).

⁶ *In re AP*, 283 Mich App 574, 598; 770 NW2d 403 (2008).

⁷ MCL 600.1021 provides the family division of circuit court sole and exclusive jurisdiction over the following cases: cases of divorce and ancillary matters set forth in statutes; these include abuse and neglect cases as well as child custody matters. MCL 600.1021(3). Additionally, MCL 600.1023 provides that “When 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.”

⁸ See *In re AP*, 283 Mich App at 598 (“There is no authority to preclude a circuit judge from determining custody pursuant to the CCA ancillary to making determinations under the juvenile code. . .”).

⁹ See MCR 3.205 and Notice to Prior Court of Proceedings Affecting Minors form [[MC 28](#)].

The number of overnights spent with a parent affects the child support obligation. If the court changes the number of overnights either parent will spend with the child (or changes custody), the court may recompute the child support obligation pursuant to the Michigan Child Support Manual, or make a referral to the FOC to conduct a support review and modification.¹⁰

- III. Impact on time guidelines.** The method of calculating compliance with time guidelines will remain the same. For the purpose of case age disposition, the clock starts when the original petition is authorized and stops when both adjudication and disposition have been completed. The courts should be aware that processing amended petitions to add nonrespondent parents may cause delays in adjudication and disposition and, therefore, may impact compliance with time guidelines. These cases should be closely monitored to avoid unnecessary delays. The court can track timeliness by running regular case age and Permanency Indicator Reports (PIRs) to identify potential for delay, and adjust scheduling practices accordingly.
- IV. Impact on Permanency Indicator Reporting.** The PIR measures timeliness at various stages of a child protective proceeding involving a child who is removed from home primarily based on the removal date and hearings related to the child's permanency. The opinion is not expected to have a substantial impact on PIR if the court monitors these cases closely to ensure that hearings are conducted in a timely manner based on the child's removal date. Note that if a child is moved from foster care to the nonadjudicated parent, that is not considered an out-of-home placement.

Contact Kelly Howard at howardk@courts.mi.gov or 517 373-8671 with questions about policy. Contact Jodi Latuszek with questions about procedural practices at latuszekj@courts.mi.gov or 517 373-2451. Contact your system provider with questions about data entry.

¹⁰ See [Ordering Child Support in Child Protective Proceedings, SCAO Admin Memo 2008-02](#) for more information.

 <p>Michigan Department of Human Services</p> <p>CSA</p> <p>Children's Services Administration Communication Issuance</p>	Type: <input checked="" type="checkbox"/> Informational Memorandum (IM) <input type="checkbox"/> Program Instruction (PI) <input type="checkbox"/> Policy Guide (PG)	
	Issuance Date:	Obsolete Date:
	Response Due:	
	Log No.:	
	Contact: Colin Parks; parksc@michigan.gov	
	Originating Office: Children's Protective Services	
	Subject/Title: One Parent Doctrine	
	Distribution: <input checked="" type="checkbox"/> DHS Child Welfare Staff <input checked="" type="checkbox"/> Private Agency Child Welfare Staff <input checked="" type="checkbox"/> CSA Central Office Managers/Staff <input checked="" type="checkbox"/> Native American Tribes <input type="checkbox"/> Data Management <input checked="" type="checkbox"/> DHS County Directors <input type="checkbox"/> Adult Services Staff <input type="checkbox"/> Other:	
	<input checked="" type="checkbox"/> BCAL	<input checked="" type="checkbox"/> CWTI
	<input checked="" type="checkbox"/> SACWIS	

On June 2, 2014, the Michigan Supreme Court rendered its opinion in re Sanders. This opinion addressed the constitutionality of the One Parent Doctrine. The One Parent Doctrine permitted courts to obtain jurisdiction over a child(ren) based on adjudication of only one parent and then allowed dispositional orders with respect to both parents.

In the Sanders opinion, the Supreme Court ruled that the One Parent Doctrine is unconstitutional in regard to issuing dispositional orders with respect to the non-adjudicated parent and that the court may assume jurisdiction over a child on the basis of the adjudication of one parent, *however, the court cannot enter an order against a non-offending parent without some form of adjudication.*

Effective immediately, workers in conjunction with their supervisors will be required to take the following steps on all current and future CPS cases with a potential for court involvement:

New or Current Cases Prior to Filing a Petition

- Evaluate both parents to determine whether the child can safely reside with either, including the non-perpetrator parent.
- Consider voluntary placement options with both parents, if this option is feasible and will assure child safety.
- Contact Friend of the Court (FOC) to determine whether a custody order exists and if it contains specific orders or concerns that affect current placement decisions. This information must be incorporated into the investigation report and in petitions.
- Discuss at the Family Team Meeting the ability of placement with the non-perpetrator/parent. Include input from family members who can speak to the appropriateness of this placement.
- Initiate a CPS complaint if abuse or neglect is now suspected by the non-perpetrator parent.
- Include facts and allegations pertaining to both parents in petitions filed with the court.
- Engage an incarcerated parent as a part of every investigation and for case service planning and placement consideration. A parent's incarceration does not preclude them from assisting in and planning for the out-of-home placement of their child(ren). A parent's incarceration, in and of itself, is

not a sufficient basis for removal (if that parent is providing for the care of their child during incarceration), or for the termination of parental rights.

- Utilize the Absent Parent Protocol if the non-perpetrator parent cannot be located. The Protocol provides guidance for locating and engaging parents as early as possible in child protection proceedings (www.michigan.gov/dhs-publications PSM 715-3 in the Children's Protective Services policy manual and FOM 722-6G of the Foster Care policy manual).

Current Cases in Pre-Adjudication Phase

- Evaluate both parents to determine whether the child can safely reside with either, including the non-perpetrator parent.
- Contact FOC to determine whether a custody order exists and if it contains specific orders or concerns that affect current placement decisions. This information must be incorporated into the investigation report or USPs and in amended petitions when filed.
- Discuss at the Family Team Meeting the potential likelihood of placement with the non-perpetrator/parent. Include input from family members who can speak to the appropriateness of this placement.
- Develop a plan with the non-perpetrating/appropriate parent for placement of the child if it is determined through FTM that the child can either safely reside with that parent or someone appropriate of the parent's choosing.
- Initiate a CPS complaint if abuse or neglect is now suspected by the non-perpetrator parent.
- The CPS worker will file an **amended** petition in consultation with the attorney representing the department, if necessary. If not addressed in the petition that was initially filed, the amended petition should include pertinent factual information and allegations that the court should consider pertaining to the other parent.
- Engage an incarcerated parent as a part of every investigation and for case service planning and placement consideration. A parent's incarceration does not preclude them from assisting in and planning for the out-of-home placement of their child(ren). A parent's incarceration, in and of itself, is not a sufficient basis for removal (if that parent is providing for the care of their child during incarceration), or for the termination of parental rights.
- Utilize the Absent Parent Protocol if the non-perpetrator parent cannot be located. The Protocol provides guidance for locating and engaging parents as early as possible in child protection proceedings (www.michigan.gov/dhs-publications PSM 715-3 in the Children's Protective Services policy manual and FOM 722-6G of the Foster Care policy manual).

Current Cases in Post-Adjudication Phase

- Evaluate both parents to determine whether the child can safely reside with either, including the non-perpetrator parent.
- Contact FOC to determine whether a custody order exists and if it contains specific orders or concerns that affect current placement decisions. This information must be incorporated into the investigation report or USPs and in amended petitions when filed.
- If a court has taken jurisdiction based on adjudication of only one parent, the worker must take the following proactive steps:
 - Immediately assess the possibility of placement of the child(ren) in the other parent's home (including, but not limited to a home visit, interview with the parent(s), central registry and criminal history clearance of all household members and assessment of any concerns raised which may impact child safety). Convene a Family Team Meeting, if helpful in this assessment.

- Initiate a CPS complaint if abuse or neglect is now suspected by the non-perpetrator parent.
- The CPS worker will file an **amended** petition in consultation with the attorney representing the department. If not addressed in the original petition, the amended petition should include pertinent factual information and allegations that the court should consider pertaining to the other parent.
- Engage an incarcerated parent as a part of every investigation and for case service planning and placement consideration. A parent's incarceration does not preclude them from assisting in and planning for the out-of-home placement of their child(ren). A parent's incarceration, in and of itself, is not a sufficient basis for removal (if that parent is providing for the care of their child during incarceration), or for the termination of parental rights.
- Utilize the Absent Parent Protocol if the non-perpetrator parent cannot be located. The Protocol provides guidance for locating and engaging parents as early as possible in child protection proceedings (www.michigan.gov/dhs-publications_PSM_715-3 in the Children's Protective Services policy manual and FOM 722-6G of the Foster Care policy manual).

Incarcerated or Unavailable Other Parent

Parents have a right and legal responsibility to protect and care for their children. A parent's right to direct the care of their child does not end when the parent is incarcerated or otherwise not available due to current or temporary circumstances (for example, inpatient hospitalization/ treatment, military duty, work or travel overseas). The following steps must be considered when deciding whether to file a petition on a child whose non-perpetrator/parent is not available to protect and care for the child:

- Contact FOC to determine whether a custody order exists and if it contains specific orders or concerns that affect current placement decisions. This information must be incorporated into the investigation report or USPs and in amended petitions when filed.
- Consult with the unavailable parent about his/her plan for the child. Ask whether a suitable relative can provide care for the child through temporary voluntary legal guardianship or other suitable legal arrangement.
- Determine whether the parent's plan for temporary care of the child is adequate.

***Note:** A power of attorney document typically delegates responsibility temporarily for decisions related to health and education. Delegation through power of attorney is not intended to substitute for long-term parental care and beyond a brief period of time (from a few days to weeks) and does not constitute an appropriate care plan for a child. The worker may determine, or the court may require the petitioner to add allegations against an absent, incarcerated, or unavailable parent. The worker may raise these concerns at each court proceeding, including adjudication, so long as questions remain related to the parents' circumstances and ability to care for or permanently plan for the child. It may become necessary and statutory grounds may exist to terminate parental rights when the length of a parent's incarceration deprives a child of a home for a period exceeding two years and there is no reasonable expectation that the parent will be able to provide care within a reasonable time.

In the coming weeks, additional guidance will also be provided in regards to the changes that will result in training, policy, and MiSACWIS. In the interim, questions about the application of this change on new and existing petitions should be first brought to CPS supervisors, foster care supervisors and/or program managers, and discussed with your local prosecutor's office.