

## CASE-WORKERS AND THE COURT

What judges want to know from adoption, foster-care and protective services workers

Presenters:

Amy Hartmann-Taylor and Sonia M. Cannon



## TRAINING OBJECTIVES

- Identify a caseworker's roles and responsibilities in child welfare proceedings.
- Reconcile with the anxiety or stress that a caseworker experiences when fulfilling court duties.
- Consider the issue of "preparedness" as it relates to caseworker's courtroom performance.
- Develop or expand a caseworker's presentation, and ability to testify.
- Distinguish between the various hearings and goals in a child protection proceeding.

## CASEWORKER'S ROLE IN COURT

### SUPPORT PERSON TO:

- Families
  - Angry families
  - Confused families
  - Upset families
- Witnesses
  - Unfamiliar with the court system
  - Concerned or worried about their requirement to be in court
  - Irritated that they have to be present
- Other professionals
  - Attorneys

### INFORMATION GIVER:

- Families
  - Unfamiliar with the courtroom protocol and procedure
- Judges
  - Eyes and ears of the court
  - Background information
  - "In between the lines" relevant information
  - Testimony
- Law enforcement and court staff
  - Safety issues and administrative issues
- Witnesses

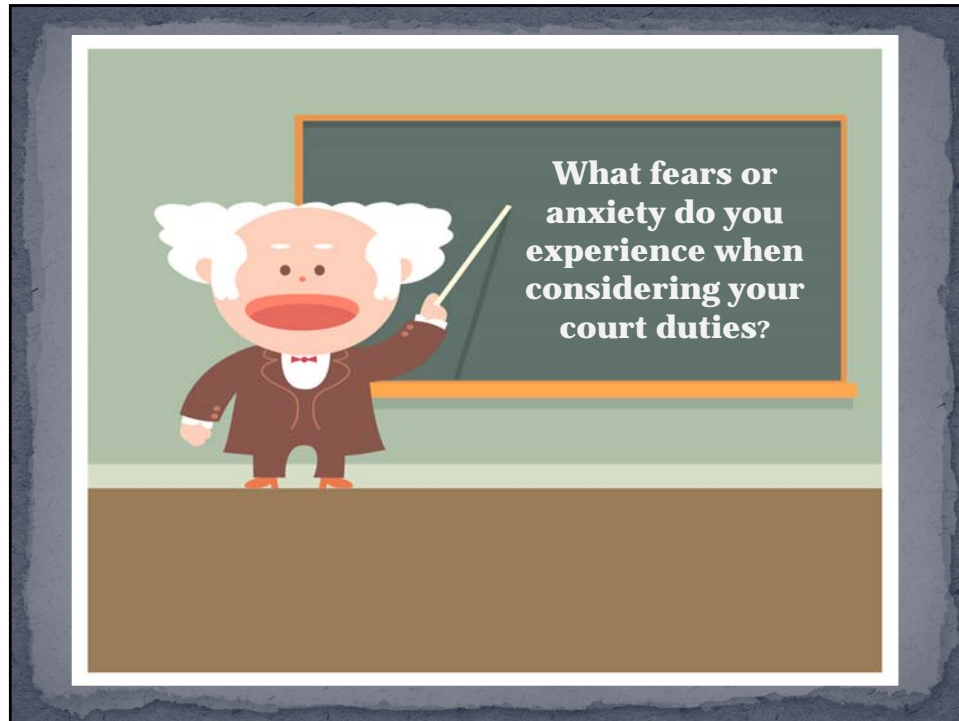
## MOST IMPORTANT ROLE YOU PLAY

You are the Caseworker!

Caseworker's value in child welfare proceedings:

Education  
Experience  
Empathy  
Commitment  
Objectivity





## Embracing the concept of "Preparedness"\*

### WORK YOUR CASE BEFOREHAND

- ❑ Know your family, your case, and essential details without having to look it up.
- ❑ Read the court's prior orders .
- ❑ Know what referrals you made, and when.
- ❑ Be able to articulate what activities and decisions were made and why. Be aware of the child's wishes
- ❑ Address parents' non-compliance with them before the hearing.
- ❑ Consider beforehand the weakness/es of your position, and go over them with a supervisor or co-worker
- ❑ Address any disagreements that you may have with the family or your agency before the hearing. No surprises!
- ❑ Don't make a habit of making "last-minute" referrals.

\*Donna M. Pence, Training and Curriculum Specialist, School of Social Work San Diego California.

**WRITE A GREAT COURT REPORT**

- Know when your court report is due .
- Bring enough copies of the report to court.
- Remember to update basic information like addresses and names.
- Don't submit a report identical to the previous hearing.
- Have sufficient information to update the court of the case's current status.
- Don't burden the court with administrative issues (my computer was down).
- Don't use slang in the report unless you are identifying specific words used by someone.
- Don't identify a communicable disease.
- Be sensitive about address information when there is a history of domestic violence amongst parties.
- Sign your report, and have your supervisor sign it as well.
- In court, ask the court to amend the report if you find that there was an error or oversight.

**GROOM AND PAMPER YOURSELF**



- Observe other trials/hearings.
- Ask your co-worker or management what their experiences have been in similar situations.
- Appreciate the preferences, and styles of different jurists.
- Practice beforehand.
- Talk to the prosecutor or attorney representing you beforehand.
- Adopt meditation or relaxation techniques before and/or after the hearing.
- Address any safety concerns you may have with the proper parties before the court hearing.



### LOOK AND ACT THE PART

- ❑ Dress professional always- even if other parties or professionals don't.
- ❑ Arrive at the scheduled time or earlier, and check-in with the clerk.
- ❑ Be aware of the courtroom decorum whether specific to the jurist or building.
- ❑ Don't chew gum, talk on the cell phone or talk while the court is in session.
- ❑ Do not be discouraged by anyone else's negative behavior(s).
- ❑ Maintain your professional integrity, and exude confidence.




### TESTIFYING IN COURT: DO'S AND DONT'S

DO	DON'T
	
<ul style="list-style-type: none"><li>• Answer the question directly</li><li>• Ask for clarification if you do not understand the question</li></ul>	<ul style="list-style-type: none"><li>• Provide answers outside the scope of the question</li><li>• Describe or qualify your testimony</li></ul>


DO	DON'T
	
<ul style="list-style-type: none"><li>• Accept Responsibility for any case work or administrative oversights</li></ul>	<ul style="list-style-type: none"><li>• Make excuses (i.e. "I just got this case")</li></ul>

**DO**




- Always Answer Truthfully

**DON'T**




- Exaggerate or mislead the court
- Minimize client's failures or accomplishments
- Be afraid to let the court know what is going on

**DO**



- Know the agency approved relief you are requesting on behalf of the agency
- Use DHS policy as an authority in your testimony

**DON'T**



- Do not come to court without addressing disagreements with the supervisor and prosecutor
- Use DHS policy as an excuse or an "out" for your testimony



## GETTING TO THE COURT HOUSE

- The are no short- cuts.
- The quality of your testimony at all stages of the proceedings is directly related to the quality of your casework.

## Leave no stone unturned



- Children and families are entitled to your best investigation.
- When required, have you collaborated with Law Enforcement and complied with all applicable investigative protocols, eg., Forensic Interviewing Protocol, (DHS Pub. 779), Michigan Drug Endangered Children Response Protocol, Munchausen By Proxy (DHS Pub. 17), Model Child Abuse Protocol (DHS Pub. 794)
- Don't be overwhelmed. The complaint checklist, DHS policy, field guide, protocols (county and statewide), co-workers, supervisors, prosecutors, law enforcement and friend of the court are all resources that can help you prepare the petition and lay the groundwork for the best case presentation possible.

## KNOW YOUR HEARINGS

### Pre-adjudication

Preliminary hearings  
Probable Cause Hearings  
Pre-trials  
Permanency Planning  
Trials  
(Original Permanent )  
(Temporary Jurisdiction)  
Best Interest Hearing

### Post-adjudication

Disposition  
Dispositional Review  
Permanency Planning  
Change of Placement  
Supplemental Permanent  
Custody  
Post-Termination Review  
Combined Hearings



### Pre-adjudication

**From the outset, jurists must make sure that the record establishes the necessary Title IVE requirements. Funding depends on it.**

**Be able to articulate reasonable efforts to prevent removal (where applicable)**

**AND**

**Why remaining in the home would be contrary to the welfare of the child.**

## Trials



- Know the elements of the statutory bases for taking jurisdiction and be prepared to testify accordingly. (SEE HANDOUT)
- Actions speak louder than words: Effective monitoring of compliance with the service plan (ISP), where applicable, is the best preparation for adjudication and best interests. Knowing the parents' history of compliance is equally important.
- Measuring the BENEFIT from services is essential. Jurists want and need to know this to make the necessary findings.

## Post-adjudication

- A signed Parent Agency Agreement tailored to the family's individual needs is the roadmap to your testimony
- Without it, any testimony regarding reasonable efforts toward a permanency goal will suffer.



Think outside the checklist! In keeping with the theme of this conference, go beyond the child's obvious physical and mental health needs.

What have you done/what can be done to enrich the child's emotional well-being while he/she is in foster care.

Jurists want to know this.

Have you considered: The child's individual strengths and interests, such as extracurricular activities, mentoring, specialized training; what could ease the child's stress, such as regular sibling visits, timely clothing allowances, keeping lack of personal belongings, contact with relatives and YIT – eligibility.



## WE ARE ALL IN THIS TOGETHER

- You are not alone.
- Collaborate and communicate.
- That will come through in your testimony
- Jurists appreciate your efforts.



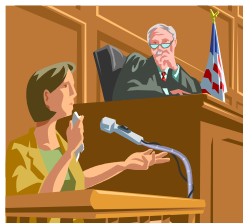
MICHIGAN CHILD PROTECTION PROCEEDINGS  
A CASE WORKER'S GUIDE TO COURT HEARINGS

Amy B. Hartmann-Taylor  
Sonia M. Cannon

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## CASE WORKERS AND THE COURT



As a protective services or foster care specialist your role during child protection proceedings is extremely valuable. Your work and professional judgment are often the highlight of the proceedings. When at court, you should take pride in your career choice and professional duties. It is your time to show the great service you provide to the community. Families, law enforcement, attorneys, court staff, and judges will rely on your statements. They will use your statements to make important decisions regarding a family, and/or individual family members.

Families will rely on you in court. Parents, children, and extended family members may look to you for support and direction. They might be unfamiliar and intimidated by court protocols and formalities. Families may also be angry with you. They may give you dirty looks or even approach you aggressively. If you ever feel threatened or intimidated, you should notify the court or Sheriff's deputy in the building. For the most part, the families will look to you for direction and support.

Attorneys will approach you in court. On some occasions the attorney may be retained by the Department of Human Services, and represent the agency personally. On other occasions the attorneys maybe from the local prosecutor's office. You may also be approached by attorneys for the children, parents and other individuals. There are no rules that prevent these attorneys from approaching you, but you should remember that they represent the interests of their clients. Their ethical duties may conflict with your professional opinions and responsibilities. If you feel uncomfortable speaking with an attorney you can always opt to have the assistant prosecutor, assistant attorney general or DHS counsel present.

Court staff such as clerks, sheriff's deputies and administrative assistants may need basic information from you about the family or proceedings to assist in getting a hearing together. Each courtroom has their own staff with different styles and personalities. It is important to be respectful and patient with court staff as they are often dealing with several cases at one time.

Judges or referees are going to rely on you for important decisions that will be made during that hearing. During the hearing, the judge/referee will rely on your information, investigation and observations. Sometimes the court will expect you to have an enormous amount of information, and other times the court will require only a little information from you. You should be prepared to answer the court's questions. Remember, you are the eyes and ears for the court.

**REMEMBER**, the goal is to **PROTECT CHILDREN**, and **REUNIFY FAMILIES WHENEVER POSSIBLE**. Your professionalism and attitude are of great value.

## WHO IS THAT?

### PARTICIPANTS IN CHILD WELFARE PROCEEDINGS

**PARTIES:** Petitioners are *parties/party* to a case. Usually DHS is the petitioner, but not always. The parties in a child protection proceeding typically include: Department of Human Services, Foster Care Specialist, Protective Services Worker, Assistant Prosecuting attorney or prosecutor's office, and in cases the Lawyer Guardian Ad-Litem. **Minor children** are parties to a case. Parents, non-parent adults, guardians or legal custodians are parties to a case. They may also be referred to as respondents (SEE MCR 3.903A (18)).

**PETITION:** means a complaint or other written allegation, provided to the court in a formal format that alleges that a parent, guardian, non-parent adult or legal custodian has abused or neglected a child (SEE MCR 3.903 (A)(19)).

**PETITIONER:** means the person or agency who requests the court to take action. This can be DHS through the caseworker, Prosecutor's office, and in some cases a Lawyer Guardian Ad- Litem (SEE MCR 3.903 (A)(21)).

**JUDGE:** a judge is someone elected by the community to preside over certain cases. (SEE MCR 3.912)

**RESPONDENT:** A respondent is the person who is being accused of abuse or neglect under the juvenile code. It could be a parent, a legal guardian, a legal custodian or a non parent-adult (SEE MCR 3.915 (B)).

**NON-PARENT ADULT:** A non-parent adult is someone who is not related to the child by blood or by marriage but who has substantial and regular contact with the child because they have a close personal relationship with the child's parent or with the guardian or legal custodian. In other words, this could be the mother's boyfriend, a friend of the family etc.. It should be noted that a non-parent adult may have counsel during the adjudicative stage. Counsel is usually excused post adjudication (SEE MCR 3.903 (C)(6)).

FATHER OR LEGAL FATHER: When the court refers to a father as legal, this is what it means

- a) Man was married to the mother any time from the minor's conception to the minor's birth. Unless the child was legally excluded as issue of the marriage after notice and hearing.
- b) Man legally adopted the child
- c) Man by order of filiation or by judgment of paternity-in other words, there is a child support order in place
- d) Man signed an Acknowledgement of paternity  
(SEE MCR 3.903 (A)(7))

PUTATIVE FATHER: biological father who has not met the requirements of becoming the legal father. A putative father will be notified by DHS for court proceedings but will not have standing in a case unless he establishes legal paternity (SEE MCR 3.903).

LAWYER-GUARDIAN AD LITEM: the court must assign a Lawyer Guardian Ad-Litem (LGAL) for the child. This person advocates for the child's stated interests as well as their best interests. If a child is old enough and desires something his L-GAL does not agree with, the court *may* assign the child a different lawyer. Potentially, a child could have two lawyers sitting at the table with him/her (SEE MCL 712A.13a (1)(f) and MCR 3.916)).

GUARDIAN AD-LITEM for a parent: If a parent has mental health problems or other disabilities that may require them to have additional support the court might assign a GAL for them in addition to their lawyer.

That means a respondent/parent/guardian/custodian could have up to two attorneys representing them during court proceedings. (SEE MCR 3.916)

PETITIONER: person/agency responsible for bringing a family to court based on allegations of child maltreatment. In general the Department of Human Services via their protective services worker and/or foster care worker are the petitioners. However, in some counties, the prosecutor's office is also considered the co-petitioner in some cases. It should be noted that there are cases where a child's Lawyer Guardian Ad-Litem will bring a petition alleging abuse or neglect.

DHS, Protective service specialist and/or a Foster Care: A specialist or investigator assigned case responsibility. A specialist or investigator represents the DHS and their position on a case. The position they advocate is not their own personal opinion but that which is approved by the Department of Human Services as is consistent with policy and statute (SEE MCR 3.903 (A)(21)).

**REFEREE:** a referee is a lawyer appointed by the court to hear juvenile cases. The referee can only make recommendations. His/her recommendations become an order after a judge reviews them and signs them. (See MCR 3.913)

**OFFICER:** means a government official with the power to arrest or any other person designated or directed by the court to apprehend, detain or place a minor. Officers are usually in courtrooms. They are sometimes not present in referee's courtrooms. (See MCR 3.903 (A)(16))

## PRELIMINARY HEARINGS

**Purpose:** When children are removed from their home, the parents or custodian have a right to a hearing within 24 hours of a removal. At that hearing the court will make certain determinations including whether or not it is safe for the child to remain in the parental home. The legal standard requires the court to authorize the petition if probable cause exists to believe one or more of the allegations in the petition are true. The preliminary hearing may be adjourned for further information depending on the court and requests of parties (SEE MCR 3.965).

### **What questions might be asked of me at the preliminary hearing?**

Do you think it is contrary to the welfare of a child to remain placed in the home of the parent? In other words, is it safe for the child to remain placed in the home of the parent?

What reasonable efforts have you made to prevent the child's removal? (I.e. contacted police, put in Families First, referral for counseling)

Why do you think the child should be placed outside of the home?

What risk of harm do you anticipate if children were left in the home?

What would the parents need to do to eliminate the risk of harm?

Do you think the child could be maintained in the home with services in place? In other words, could the child stay in the home with in-home services, open protective services case etc.?

Where is the child placed? Did you do a relative home assessment? Have the proper checks been done? The LGAL will want to know where (the address) he or she can visit with the child. Make sure the information is conveyed off the record, and only to the Legal Guardian Ad-Litem.

What efforts did you make to notify the parents of the preliminary hearing?

Does the child have a history of American Indian Heritage?

What, if any, visitation schedule are you recommending?

Is the child under the jurisdiction of another court? (I.e. another county, another state, probate court etc.)

(continued preliminary questions)

Does the family have a protective services history, if so, what kind of history and when does it date back to? Did the agency provide services to the family?

What compliance with services have the parents exhibited?

Has any court ordered services for the family? What compliance did the parents exhibit?

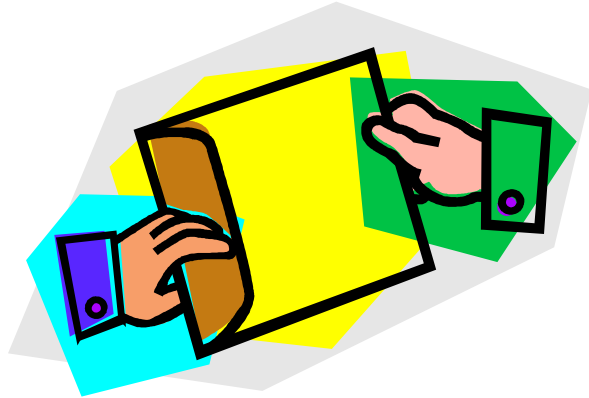
## **PROBABLE CAUSE HEARING**



At a preliminary hearing, a respondent (parent/custodian/guardian) can choose to waive probable cause. If they waive probable cause, the petition is authorized, and a pre trial date is set. A respondent can request a probable cause hearing. IF that happens, DHS has to provide evidence that one or more of the allegations in the petition are true. The protective services worker will most likely be called as a witness in a probable cause hearing. The psw should expect to be questioned about any matter revolving or related to his/her investigation. The other parties may also have witnesses. The legal threshold for showing probable cause is very low. That means the court is likely to authorize the petition (SEE MCR 3.965 (B)(11))

## PRE-TRIAL HEARINGS

**Purpose:** A pre-trial hearing is held to work out what might be considered as legal/administrative issues. The court will usually advise the parents of their rights and advise the parties of the trial date. The court will also make sure that the parties (fathers, mothers etc.) receive proper notice of the proceedings. The parents, guardian or custodian may choose to not have a trial, and make admissions. If they choose to make admissions, the court will still advise them of their rights before they make the admissions. The court might hold a disposition or schedule one for a later date. If a trial date is scheduled, attorneys will also get deadlines for exchanging their discovery information. The court may reconsider decisions or issues discussed at the preliminary hearing. In most cases, a specialist will be asked the least amount of questions at a pretrial hearing.



\*\*\*See section on Dispositions in case your case is resolved at pretrial.

### **What questions might be asked of me at the preliminary hearing?**

Where are the children placed? Foster care or relative placement?

Has visitation been scheduled?

Were the parents able to make visitation with the parents?

Have you sent notification to the proper Indian tribes, when?

What are the addresses for fathers or absent parents?

Have you made an attempt to find the absent parents?

What attempts have you made to locate the absent parent?

Does the child have any needs that require an order of the court? (I.e. medical, emotional etc.)

Who is the foster care worker?

## TRIAL

**Purpose:** When a parent, guardian or custodian disagrees with the allegations having been made against them, they have a right to a trial. They have a right to a trial before a referee or a judge. They can also choose a judge or jury. The jury can only decide whether jurisdiction should be taken of the child. That means the jury can only decide whether or not the parents are responsible for abuse or neglect, and not what should happen because of the abuse and neglect. The judge will decide what happens to the parents and children (i.e. termination of parental rights, treatment plan and placement etc. (SEE MCR 3.972)

**It is important to remember that child abuse and neglect trials are not like the criminal trials you may have seen on television.**



The prosecutor or assigned DHS attorney does not have to prove that a parent is guilty beyond a reasonable doubt. The attorney or State only has to show by a preponderance of evidence that a child was abused or neglected under the juvenile code. In some cases, the court can find that the child comes under the jurisdiction of the court even though the

perpetrator of the abuse is unknown.

**There are two types of trials in child protective proceedings.**

**Original permanent custody trial:** An original permanent custody trial is held in case of serious child abuse and neglect. The request of the court is to terminate parental rights. Depending on the circumstances, these trials tend to last longer and require extensive preparations by both parties.

**Temporary custody trial:** A temporary custody petition is held when the petitioner is asking the court to take temporary custody of a child. Usually it means that the petitioner wants to give the parents an opportunity to work on a treatment plan. Or there may be some other identified long-term plan that does not require the termination of parental rights.

**What questions might be asked of me at a trial?** The questions posed of you will vary depending on the case. It is most important for you to come prepared to answer questions. That means sufficient review of the case and file. So don't come to court without reviewing your 154 and looking through the file beforehand! The following are just some of the questions that may come up...

(continued trial questions)

What was the date you received the referral? What was the basis of the referral?

Do the parents have a prior CPS history? What for? When? What services did they receive? Did the parents comply with the former services? It is critical to have reviewed the family's case file. Judges like to know what happened to the family in the past.

What was the first thing you did after receiving the referral?

The names of people you interviewed for your investigation, including the times and places. You may need to know how long your interview took.

What records did you obtain during the course of your investigation?

Who did you provide the records to, and when? What was the content of the record provided? What opinions and/or conclusions did the authors of the records make?

What was the result of an evaluation (i.e. medical exam, psychiatric or psychological exam, therapy reports, drug testing, school reports and other clinic reports)?

What did the parents state to you (during various points of the interview)?

What did the children state to you during the course of the investigation (dates and times)?

Who was present during your interviews?

What did the home look like?

What did the child look like? Did you notice any marks, scars or bruises?

Did you schedule any appointments for the parents or the children? Why did you schedule the appointments?

Did you make any referrals for the parents or the children?

**In an Original Permanent Custody trial, be prepared to answer the following question?**

**Do you think it is in the best interest of the child/children to terminate parental rights in this case?**

## **BEST INTERESTS**

The court must find clear and convincing evidence in order to terminate parental rights. The statutory basis for termination are delineated under MCL 712A. 19b (3). Once the court finds a statutory basis it must consider whether termination is in the best interest of the child(ren) (See MCL 712A.19b (4)).

A Best Interest Hearing can be simultaneously held with the trial/hearing or as a separate hearing. At that time, the court will consider testimony or evidence that lends itself to the best interest issue. You may be called as a witness to provide testimony regarding the best interest issue.

### **What issues or factors are relevant when considering the issue of best interest?**

- 1) The court will not consider testimony or evidence that compares the child's current placement with the parent's ability to parent the child. For example, you can't tell the court the foster-parent is a better parent.
- 2) The court will consider the child's special needs, and any specialized care the child requires.
- 3) What is the difference in the child's well-being since he/she entered into care. For example, has his/her physical health improved? Have his/her grades improved? Mental well-being?
- 4) What kind of parent-child bond do the child and parent have?
- 5) The court will consider testimony as to the child's long-term stability and permanent plan.

## DISPOSITIONAL HEARING

**Purpose:** Only the first hearing after trial is referred to as the dispositional hearing. Having taken jurisdiction of the child the court holds this hearing to determine what measures to take as it pertains to the child and when applicable, adult. This is the hearing where the court decides what services a family will need to reunify. This could also be a hearing where a judge decides whether to terminate parental rights. At this hearing, the foster care worker will present a report including an initial ISP and parent agency treatment agreement. The court will take these reports into consideration when making their decision(s) (SEE MCR 3.973).

\*\*\*This section deals with dispositional hearings where DHS is not seeking termination of parental rights. When DHS seeks to terminate parental rights a dispositional hearing may be held separately from the trial/adjudication. **That hearing can be referred to as a “Best Interest” hearing.** Please see the section on Best Interest for further information.

### **Questions you might be asked at a dispositional hearing.**



Did you bring a copy of an ISP and Parent Agency Treatment to this hearing?

Did you interview the parents for your reports? Did you provide them with copies of this report? Have they signed the PATA? When did they sign it?

What services are you recommending for the child?

What services are you recommending for the parents?

Why are you recommending a particular service?

Where is the child placed?

What kind of parenting time are you recommending?

How is the child doing?

What is the visitation schedule? What kind of visitation are you recommending?

(continued dispositional questions)

Have you observed visitation between the parent and the child?

What kind of medical needs do they have?

Who is the foster care worker? \*in case they do not appear

Have you visited the parent's home?

Have you visited with the child?

Are you recommending that the child be placed with the parent(s)? What services would you recommend?

In addition to the previous services, are you recommending any new service for the parents or children?

## DISPOSITIONAL REVIEW HEARING

**Purpose:** Dispositional review hearings, sometimes referred to as DRH's are usually held every 91 days after the initial dispositional hearing. The purpose of the hearings is to review the parents, agency and child's compliance with the initial dispositional order. The court will decide whether child needs to remain a court ward. Placement will be considered as well (MCR 3.974).

### **Questions you might be asked at a dispositional hearing?**

What referrals have you made since last being in court?

When did you make the referrals?

Did you advise the parents of the referrals?

Did the parents comply with the referrals?

What progress did the parents make on the service plan?

Have the parents shown benefited from participation in services?

Have you established contact with therapist, psychiatrist, psychologists etc?

Have you obtained copies of their reports and provided them to the court?

Do the parents submit to drug screens? Have they complied with the screens? What were the results of their screens?

What services doe the child need? How is the child doing in school?

Have you obtained a copy of the child's report cards?

Have you visited with the child? Where is the child placed? Does the child's placement meet their needs?

What visitation schedule have the parents been afforded?

How do the visitations go?

Do you recommend any additional services for any member of the family?



## PERMANENCY PLANNING HEARING

An initial permanency planning hearing must be held within 30 days after a judicial determination that reasonable efforts to reunite the family or to prevent removal are not required (i.e. there are aggravated circumstances which require the filing of a permanent custody petition or the parent(s) previously had their parental rights terminated to a sibling of a child). **Otherwise, a permanency planning hearing must be held at least once every twelve months.** (SEE MCL 712A.19a and MCR 3.976).

Sometimes a court will hold what is referred to as a combined permanency planning hearing and dispositional review hearing or post-termination review hearing. The court considers testimony on what the child's long-term plan should be, and what efforts have been made to achieve the long-term plan. 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. The court could change the long-term plan depending on the information received at the hearing.

### **Special Notice Requirements before Permanency Planning Hearings:**

The law requires written notice be provided to the following parties not less than fourteen days before a permanency planning hearing to certain individuals. As the worker you should plan on notifying the child, foster parent, relative placement, and parents. Check with your supervisor, and or local office about your responsibility (if any) to notify any other party.

Parties that require notification of a permanency planning hearing under the law:

- a) the child if they are 11 years of age or older
- b) the foster parent or custodian of the child
- c) the child's parents (if rights have not been terminated)
- d) the guardian
- e) guardian ad litem
- f) elected leader of the Indian tribe
- g) attorneys for the party, and the prosecuting attorney if they have appeared on the case

## **What you might be asked at a permanency planning hearing?**

\*\*\* Refer back to the dispositional review hearing portion, as most of those questions will be asked at a permanency planning hearing. .

What is the long term plan identified by DHS?

What are the child's wishes? How much does the child understand?

What efforts have been made to achieve the long term plan?

(I.e. referrals made, child and family assessment completed)

Is the child old enough to discuss the long-term plan? Does this older child agree with the long term plan?

### **The court ordered DHS to file a permanent custody petition.**

The juvenile code requires a court to order the filing of a permanent custody petition when a child(ren) has been in foster care under the supervision of the court for 15 of the previous 22 months. The court may not order the filing if one of the following criteria are met:

- 1) The child(ren) are with a relative
- 2) Compelling reasons exist that termination would not be in the best interest of the children including the following (but not limited to):
  - a. adoption is not an appropriate permanency goal for the child
  - b. no grounds to file a petition to terminate exist
  - c. child is an unaccompanied refugee as defined by 45 CFR 400.11
  - d. there are international legal obligations or compelling foreign policy reasons
  - e. State of Michigan has not provided the child's family, consistent with the time period in the case service plan, with services the State considers necessary for the child's safe return to his or her home

## SUPPLEMENTAL PERMANENT CUSTODY HEARING

When parents have been working on a parent agency treatment agreement, and have failed to progress or show improvement, the foster care worker may file a petition to terminate parental rights. Lawyers, court staff and judges may refer to this hearing as a pc hearing or even a pc trial (SEE MCR 3.977).

For the most part, the rules of evidence do not apply at this proceeding. That means the prosecutor or other attorneys can ask you about your communications with other people. They can ask you what the parents stated to you, and what a therapist or other professionals said to you. They can also ask you to summarize the contents of reports completed by other professionals.

PC hearings require extensive preparation. You should consult with the attorney handling the matter more than once in between the pre-trial and final hearing. You should also provide a written case history to the attorney handling the matter. Some attorneys will provide you with a questionnaire to help you review the matter. You can take this questionnaire with you to court. If you decide to use it while testifying to refresh your memory about something, the other parties may ask to look at it.

In general you should be prepared to respond to the entire case file even if you were not the assigned case worker at the time.

\*\*\*because a pc trial/hearing is so extensive, this is by no means an exhaustive list of questions. There are a plethora of questions that may be presented to you. You should be prepared to address all of them. The best way of doing this is by reviewing the file at least two weeks ahead of time, and then again one or two days before the hearing again. You should request from the attorney presenting the trial whether they have a questionnaire for you to complete. Also, what questions they will ask, if possible.

### **Questions you might be asked at a permanent custody hearing.**

What was the date of the first parent agency treatment agreement?

What was required in the agreement?

Did the parents receive a copy of the pata? Did they sign it? Were they provided with updated copies? When? Did they sign those?

When did you become the case worker?

Have you reviewed the entire case file? Did you bring the case file to court with you?

(continued permanent custody hearing questions)

Can you testify to the file history?

What referrals have been made? When? Where? Did the parents follow through? What progress did they make? Did they benefit from services that you referred them to?

Did you supervise visits? How many visits? When? Where? How did the visits go? What kind of parenting skills did the parents demonstrate?

Did you refer the parents to drug screens? Did you explain the drug screen procedure to the parent? When? Where? How many drug screens was the parent required to submit? How many were missed? How many were positive? Does a diluted screen mean positive?

Did the parent admit to relapse? Did the parent identify which drugs they were using to you?

Does the parent require psychiatric treatment? Who is the treating physician? What diagnoses does the parent have? What medications does the parent require? Does the parent take their medications? Is there a history of mental health hospitalizations? When? Where?

What special needs does the child have? What medications does the child require? What kind of supervision does the child require?

What kind of bond do the parent and child have? Why do you say that?

Is it in the child's best interest to terminate parental rights?

## POST TERMINATION REVIEW

Within 93 days of the court terminating parental rights, the court is required to conduct a post termination review hearing. The purpose of the hearing is to address the child's long term plan and efforts made towards achieving that plan. Usually, the plan is for adoption. In some cases, the court may identify other long term plans, like placement with a fit and willing relative. Depending on the child's long-term plan your agency may require that only an adoptions case worker be required to attend this hearing (SEE MCR 3.978).

### **Questions you can expect to be asked at a post termination review hearing**

What is the permanent plan?

What was the date of termination of parental rights?

Has the adoptions packet been completed? When? Who is the assigned adoptions worker?

What efforts have been made to achieve the permanent plan?

What recruitment efforts has DHS made to locate an adoptive family?

When was the family assessment completed?

When was the child assessment completed?

Are the reports current?

What information does the adoptions worker need to file for adoption?

What needs does the child have?

What medications does the child take?

\*\*\*You should be prepared to provide the same kind of information you would provide at a permanency planning hearing, disposition, dispositional review or change of placement hearing.



## SUBPOENAS

### **What is a subpoena?**

**Subpoena or Order to Appear** will require you to appear in court to testify on a case or matter (SEE MCL 600.1455).

### **Subpoena or Order to Produce also referred to as Subpoena Duces Tecum**

requires the production of records. The court may require you to produce certain reports or documents in your file. When you receive this type of subpoena you should consult with your supervisor. Usually, the agency will have a point person or legal department who can certify and make sure the records are conveyed properly (SEE MCL 600.1455).

It is important to never ignore a subpoena request. The courts have the power to punish by fine or imprisonment, or both, persons guilty of failing to attend a hearing when a subpoena has been issued (SEE MCL 600.1701).



### **What if I receive a subpoena for a case which I no longer supervise?**

Even if you don't have case load responsibility, you should plan on attending the hearing for which you have received a subpoena. You should notify the court or attorney who issued the subpoena that you no longer have case load responsibility. You should provide the name and contact information for the new worker. If you provide this information, you may find yourself being excused from the hearing.

**\*\*\*\*ONLY THE COURT CAN EXCUSE YOU FROM APPEARING ON A SUBPEONA!!!**

## CONTEMPT OF COURT



MCR 3.928 (A) says that the Court has the authority to hold persons in contempt of court pursuant to MCL 600.1701 and MCL 712A.26. Also, this court rule says that 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 of the court pursuant to MCL 712A.26.

MCL 600.1701 says that the Court has the power to fine or punish individuals who behave in a certain manner.

MCL 712A.26 is a provision in the juvenile code which says in part that the court shall have the power to punish for contempt of court under chapter 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.

### LESSONS LEARNED?

- 1) **Record your court dates and attend.**
- 2) **If you are on vacation or call-in sick, let your supervisor know about your court-date.**
- 3) **Complete the requirements of the court order before you go to court.**
- 4) **Advise parents that they are required to attend court hearings.**
- 5) **Call and let the Court know when you are running late.**

## COURT REPORTS

- **Remember to update basic information like addresses and names**
- **Your report should have updated information, it should not be identical to the report you submitted at a prior court hearing**
- **Your report should have sufficient information to advise the court of the case's current status**
- **You should not burden the court with administrative issues that you may have to encounter (i.e. SWISS wouldn't allow entry of the dad's information or this worker just obtained this case) Remember the court wants to know what is going on with the family not what is going on with your agency**
- **Don't use slang in the report unless you are reporting specific words**
- **Don't identify a communicable disease (i.e. HIV) that anyone has or is being treated for**
- **Be sensitive about address information where there is an issue of domestic violence**
- **Sign your report, and have your supervisor sign it as well**
- **Review the report for typos, grammar spelling errors**
- **In court advise the court of any amendments you need to make if there has been a change since you submitted the report**
- **Remember to bring enough copy of the reports you are submitting to the court (one for the court, each parent's attorney, the prosecutor, and GAL).**

## REPORT CONTENTS

**Initial Service Plan:** An initial service plan must be completed within thirty days of the child's placement in foster care. In general the service plan should document the following: information about the family, functioning of the family and the children, permanent plan, and services necessary to achieve the permanency plan. You should be prepared to submit the report to the court at the initial disposition. (See DHS CFF 722-8 for further information).

**Updated Service Plan:** The updated service plan should be completed every ninety days after the initial service plan. The plan should address the agency's offer of services, and the family's compliance with those services. The second part of your updated service plan should include the parent agency treatment agreement. (See DHS 722-9 for further information on what your updated service plan should include).

**Case service plan** (also known as **parent/agency agreement or a parent/agency treatment plan and service agreement**) The plan developed by an agency that includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. Your report will also include responsibilities and needs of the child.

**MCL 712A.18f (3)(a)-(e)** governs the contents of a case service plan. The law says that the case service plan shall consider the most family like setting available to the child as well as the proximity to the child's parents as is consistent with the child's best interests and special needs. The case service plan shall also include: type of home the child should be placed in, and the reasons for that placement, efforts by the parents, and agency to reunify the children with the parents, schedule of services to provided to the parents, and children, a schedule of parenting time not less than once every seven days should be reflected unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a.

(See DHS CFF 722-8C for further information on what your pata should include)

## REPORT TIME FRAMES

**DHS POLICY REFLECTS THAT COURT REPORTS ARE TO BE PRESENTED TO THE COURT OF RECORD FIVE BUSINESS DAYS OR SEVEN CALENDER DAYS BEFORE THE COURT HEARING. MAKE SURE YOU GET A TIME STAMPED COPY FROM THE COURT FOR YOUR RECORDS!**

**MAKE ENOUGH COPIES OF THE REPORT. YOU SHOULD PLAN ON HAVING AT LEAST SIX COPIES (INCLUDING ONE OR YOURSELF) FOR THE HEARING. EVEN IF YOU TURN ONE IN TO THE COURT, YOU SHOULD BRING A COURT COPY IN CASE OF AN ADMINSTRATIVE OVERSIGHT AT THE COURTHOUSE. YOU SHOULD BRING EXTRA COPIES IF THERE IS MORE THAN ONE FATHER INVOLVED, AS EACH ATTORNEY WILL NEED A COPY OF THE REPORT.**

Initial Service Plan should be completed **within 30 days of a child's placement** in foster care. MCL 712A.13a (8)(a) and MCR 3.965 (E) and **DHS CFF 722-8.**

Home study report of a relative where a child has been placed should be submitted to the court **not more than 30 days after placement** in the relative's home. MCL 712A.13a (9)

The case service plan (aka PATA) must be provided to the court at disposition. **If children are in foster care, the court has to schedule the dispositional hearing no later than 28 days after the trial and/or admissions date.** MCR 3.973 (C). It should be noted that many jurist like to complete their dispositional hearing on the day of the scheduled trial, or day trial completes. You should ask the attorney representing DHS or the State whether or not they expect for the court to hold a disposition at the trial date.

Completion of the first USP **is required within 120 calendar days of** removal (i.e., within 90 days of the completion of the initial service plan). You should complete an USP every 90 days. DHS policy suggests that the report due date may be adjusted to coincide with the scheduled court dates -**DHS CFF 722-9**

## DO'S AND DON'T'S OF TESTIFYING IN COURT

### DO

- ◇ be confident
- ◇ answer truthfully
- ◇ maintain professional objectivity
- ◇ answer truthfully
- ◇ come prepared
- ◇ have the prosecuting attorney or DHS attorney with you when you are talking to parent's attorneys
- ◇ provide the LGAL with placement information regarding their client
- ◇ ask questions of the prosecuting attorney and/or court when you need confused help or clarification

### DON'T

- ◇ be scared, defensive or angry
- ◇ exaggerate or mislead the court
- ◇ minimize client's failures or accomplishments
- ◇ be afraid of telling the court what is going on in a case
- ◇ forget to review your case file, relevant documents and to bring the file when appropriate
- ◇ be afraid to talk to an attorney when they want to get basic information like their client's new address
- ◇ forget to give LGAL new address for the children
- ◇ leave court

◇ Dress professionally

◇ think it is ok to not dress professionally because an attorney or court staff is not

◇ Answer the question

◇ Do not try to directly qualify your answer by saying things like: “As far as I know”; “Honestly” “As I understood”; “That Is my information”

◇ accept responsibility for your mistakes

◇ Do not make excuses (i.e. just got the case)

◇ speak professionally and use social work terms to explain to the court

◇ Do not use slang

◇ Know and understand the relief you are requesting on behalf of DHS

◇ Do not come to court without addressing disagreements with supervisor and prosecutor

◇ be on time and check in with the clerk.

◇ Be late

◇ have information filled reports ready with enough copies for all attorneys and the judge

◇ bring sparse reports

## Authority and Jurisdiction of the Courts Under MCL 712A.2

**712A.2 (b)** specifies that a child(ren) under the age of 18 found **in the said county** are subject to the jurisdiction of the court of the **said county**.

**The following speaks to the behaviors, action or inaction of parents, custodians or guardians that may bring a child under the court’s jurisdiction:**

**712A.2 (b)(1)** specifies that when a parent or person *legally responsible* (i.e. guardian, parent or legal custodian) for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide the following: proper or necessary support, education, medical, surgical, other care necessary for his or her health or morals. Also, under this provision, a child who is subjected to substantial risk of harm to his or her mental well-being, who is abandoned or who is without proper custody or guardianship come within the juvenile code.

**712A. 2 (b)(2)** specifies that a child can come under the court’s jurisdiction when the home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, non-parent adult<sup>1</sup>, or other custodian, is an unfit place for the juvenile to live in.

\*\*\* In your petition, you should specify whether you are alleging a child comes under the court’s authority under either MCL 712A.2 (b)(1) or MCL 712A.2(b)(2).<sup>2</sup>

### **Definitions of words used in 712A.2 (b)(1)**

#### **712A. 2 (b)(1)(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.

#### **712A. 2(b)(1)(B)**

“**Without proper custody or guardianship**” means a parent has placed the juvenile with another person who is *legally responsible*<sup>3</sup> for the care and maintenance of the juvenile and who does provide the juvenile with proper care and maintenance.

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<sup>1</sup> *Non parent adult* is someone that child sees on a regular basis that is not related to the child through blood or marriage. This could be a boyfriend or girlfriend to the parent, family friend, babysitter etc.

<sup>2</sup> It is possible and even likely that a child comes under the court’s jurisdiction under both. You should refer to both then.

<sup>3</sup> *Legally Responsible* means a parent (i.e. legal father), legal custodian or guardian. It does not mean people like the mother or father’s boyfriend, cousin or best friend.

<b>Termination of Parental Rights Statute</b>	<b>MCL 712A.19b(3)</b>
Abandonment-unidentifiable parent (i.e. no legal father)	MCL 712A.19b(3)(a)(i)
Abandonment- 91 days or more	MCL 712A.19b(3)(a)(ii)
Abandonment – of a young child	MCL 712A.19b(3)(k)(i)
Abuse (child or sibling) including life threatening injury	MCL 712A.19b (3)(b)(i); (g); (j); (k)(v)
Abuse (child or sibling) including battering, torture, other severe physical abuse	MCL 712A.19b(3)(b)(i); (g); (j); (k)(iii)
Abuse (child or sibling) including loss or serious impairment of an organ or limb	MCL 712A.19b(3)(b)(i); (g); (j); (k)(iv)
Abuse (child or sibling) resulting life threatening injury	MCL 712A.19b(3)(b)(i); (g); (j); (k)(v)
Abuse (child or sibling) murder or attempted murder	MCL 712A.19b(3)(b)(i);(g);(j); k(vi)
Abuse (child or sibling) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter	MCL 712A.19b(3)(b)(i);(g);(j); k(vii)
<b>Specified crimes-</b> court can terminate if parent <i>convicted</i> of one of the following offenses and the court finds that termination would be in the best interest of the child because continuation of relationship with parent would be harmful: <b>First degree murder; Second degree murder; Criminal sexual conduct in the first degree; Criminal sexual conduct in the second degree; Criminal sexual conduct in the third degree; Criminal sexual conduct in the fourth degree; Assault with intent to commit criminal sexual conduct</b>	MCL712A.19b (3) (i)
Incarcerated parent- more than two years	MCL 712A.19b(3)(h)
Physical abuse- parent perpetrator	MCL 712A.19b(3)(b)(i); (g); (j)
Failure to protect parent – serious physical abuse or sexual abuse.	MCL 712A.19b(3)(b)(ii) <sup>4</sup> ; (b)(iii) <sup>5</sup> ;(g); (j)

<sup>4</sup> (i.e. father knows children are beat by mom, but does nothing about it).

<sup>5</sup> If the abuser is non related through marriage or blood (i.e. mom’s boyfriend, and she won’t leave him)

Prior termination Original Permanent Custody (current risk of harm)	MCL 712A.19b(3)(i) and any other provision that parent was previously terminated on that has not been rectified <sup>6</sup>
Supplemental Permanent Custody (Foster Care Worker usually)	MCL 712A.19b(3)(c)(ii); (g); (j) and other provisions that were previously cited but not rectified <sup>7</sup>
Sexual Abuse- parent perpetrator involving CSC involving penetration, attempted penetration or assault with intent to penetrate	MCL 712A.19b (3)(b)(i) <sup>8</sup> ; (g); (j); (k)(ii)
Sexual Abuse not involving penetration	MCL 712 A. 19b(3)(b)(i); (g); (j)
Visitation (include a statement as to this provision in your petition) If a petition to terminate parental rights to a child is filed, the court may suspend parenting time for a parent who is a subject of the petition.	MCL 712A.19b (4)
Best Interest (include a statement as to this provision in your petition) If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made	MCL 712A.19b (5)

This is not an all inclusive listing of how you may list statutory provisions on a petition. You may need to cite different statutes according to the facts of your own cases. This is a generalization of possible combinations.

Remember under 3(b)(i) the perpetrator of the physical or sexual abuse is the parent. Under 3(b)(ii) the perpetrator is usually another parent or family member. Under 3(b)(iii) the perpetrator is a non-parent respondent (i.e. family friend, boyfriend or girlfriend to the parent). If you have a parent who has failed to protect their child from serious physical and/or sexual abuse you would cite b(ii) or b(iii) as well as other citations like (g) and (j).

Note\*\*\* In permanent custody cases you should first ask the court to take jurisdiction of the child(ren) under MCL 712.2(b)(1) and/or including 712.2b(2). Then include 712A.19b(3) (along with the applicable sub provisions), 712A. 19(b)(4) and 712A.19(b)(5).

<sup>6</sup> (i.e. parent previously physically abused the child, and now has abused a new child, you should cite the abuse provisions as appropriate).

<sup>7</sup> (i.e. children came into care for physical abuse but parent never completed anger management) .

<sup>8</sup> Use (b)(ii) or b(iii) if parent was not the perpetrator but knew that the child was being abused by someone else