

Reasonable Efforts to Preserve and Reunify Families

What that means after
In re Rood,
483 Mich 73; 763 NW2d (2009)

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Adoption Assistance and Child Welfare Act of 1980, PL 96-272, §471(15), 94 Stat 500

- To receive federal funding, the Act required states to adopt a Foster Care and Adoption Assistance Plan that provides that, in each case, **reasonable efforts** will be made (A) prior to the placement of a child in foster care, to **prevent or eliminate the need for removal** of the child from his home, and (B) to make it **possible for the child to return to his home**;

Adoption and Safe Families Act of 1997 PL 105-89, §101(15), 111 Stat 2115

- Amended AACWA's "reasonable efforts" provision
- When looking at what reasonable efforts to make, and in making those reasonable efforts:
the child's health and safety shall be the paramount concern[.]
- Still need to make reasonable efforts to prevent removal and to facilitate child's safe return home.
- Also enacted exceptions to the reasonable efforts requirements in aggravated circumstances.

Michigan's response to AACWA and ASFA

Michigan's statutes and court rules prescribe four different reasonable efforts determinations:

- reasonable efforts to *prevent removal* of a child from his or her home [MCL 712A.18f(1), MCR 3.963(B)(1), MCR 3.965(D), MCR 3.973(E)(2), (F)(3)(a-b)];
- reasonable efforts to *rectify the conditions that lead to removal* of the child [MCL 712A.18f(1), MCR 3.973(E)(2), (F)(3)(a-b)];
- reasonable efforts to *reunify the child with his or her family* [MCL 712.19a(2)]; and
- reasonable efforts to *finalize a permanency plan*. MCL 712A.19(12), (13), MCR 3.976(A).

Reasonable efforts determinations are arguably stage specific.

Reasonable efforts to prevent removal:

- When court orders child to be taken into custody, MCR 3.963(B)(1).
- At the preliminary hearing , MCR 3.965(D).
- At the dispositional hearing, MCR 3.973(E)(2).
- In each case service plan, MCL § 712A.18f(1).
- In the court's disposition order, MCR 3.973(F)(3).
 - Must appeal reasonable efforts finding in court's disposition order within 14 days of its entry 7.204(A)(1)(c).

Reasonable efforts to rectify the conditions that caused removal:

- At the dispositional hearing, MCR 3.973(E).
- In each case service plan, MCL § 712A.18f(1).
- In a dispositional order, MCR 3.973(F)(3).
- At dispositional review hearings, 3.975(F)(2).

Reasonable efforts to finalize the permanency plan:

- During permanency planning, MCR 3.976(A).
- During concurrent planning for reunification and adoption or other permanency plan. MCL 712A.19(12) and (13)

2008 Amendment to the Probate Code

The court need not order the State to file a termination petition if

[t]he state has not provided the child's family, consistent with the time period in the case service plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required.

MCL 712A.19a(6)(c)

Michigan's courts have not held litigants to any stage-specific reasonable efforts formulation.

Even before the 2008 amendment, at the termination of parental rights stage, parents have argued that the state has not made reasonable efforts to reunite the family.

Michigan courts have not yet actually defined reasonable efforts.

Reasonable Efforts:

Proposed Definitions
(using rules of statutory construction
and words' plain, ordinary meaning)

Reasonable means:

1. agreeable to reason or sound judgment; logical . . . 2. not exceeding the limit prescribed by reason; not excessive. . .

RANDOM HOUSE UNABRIDGED DICTIONARY (1997), available at Infoplease.com, <http://dictionary.infoplease.com/reasonable> (last visited Apr. 28, 2009).

Effort means:

- 1. exertion of physical or mental power
- 2. an earnest or strenuous attempt 3. something done by exertion or hard work
- 5. the amount of exertion expended for a specified purpose

- RANDOM HOUSE UNABRIDGED DICTIONARY (1997), available at Infoplease.com, <http://dictionary.infoplease.com/effort> (last visited Apr. 28, 2009).

“Reasonable efforts to prevent the removal of a child”

a sound, logical, strenuous, or earnest attempt to keep the child at home with his or her parent or parents.

“Reasonable efforts to rectify the conditions that caused the removal of the child from the home”

a sound, logical, strenuous, or earnest attempt to help the parent or parents change their behavior or change the environment that existed when the child was removed from the home.

“Reasonable efforts to reunify the child and family”

a sound, logical, strenuous, or earnest attempt to work with the parent or parents to bring them back together with their children.

In re Rood

Reasonable Efforts: The State Must Comply With Statutes, Regulations, Court Rules, and Its Own Procedures.

- A parent may “claim procedural error in an action brought by the state to terminate [his or her parental rights] if the state fails to comply with the required procedures and its failure may be said to have affected the outcome of the case.”

Rood, 483 Mich at 107; 763 NW2d at 606 (Corrigan, J) (Kelly and Markman, JJ, concurring).

Justice Cavanagh's Concurring Opinion Made it
Four Votes for the Following:

(*Rood*, 483 Mich at 123-25; 763 NW2d at 614-15.)

- The trial court clearly erred when it determined that DHS had proven the statutory grounds for termination.
- DHS did not comply with its statutory duties, which include the mandate "to make reasonable efforts to reunite a child and family."
- Reasonable efforts means that the DHS and the trial court must make the "active efforts toward reunification provided for in statutes and court rules . . ."
- "[C]ompliance with the relevant laws and regulations was sorely lacking." (agreeing with the lead opinion)
- "I also agree that, in Michigan, the statutes, the court rules, DHS policy , and federal laws all set forth procedures that help ensure adequate due process protection for parents."

What are the DHS's duties under
statutes, regulations, and DHS
policies?

State Statutes and Court Rules

- “Reasonable efforts to reunify the child and family must be made in all cases.” [citing MCL 712A.19a(2)].
- When a child is removed from a parent’s home, both parents are entitled to notice of proceedings. [citing MCL 712A.2(b)(1)].
- A parent who is not named as a respondent must be notified of and allowed to participate in all proceedings. [citing MCL 712A.19(5)(c)].

- At the preliminary hearing, the court must determine if the child’s parents have been notified and can adjourn the hearing until both parents can be present. [citing MCR 3.965(B)(1)].
- The court must ask the parent from whom the child was taken for the identity and location of relatives to see if one is a fit and appropriate alternative to foster care. [MCL 722.954a(2), MCR 3.965(E), and MCR 3.965(B)(13)]

- DHS must provide an initial service plan before the court may enter an order of disposition. [citing MCL 712A.13a(B)(a), MCL 712A.18f(2) and (4), and MCR 3.965(E)(1)].
- The initial service plan must report the efforts the State made or services the State provided to prevent the child’s removal from home, or it must detail the services the State provided to rectify conditions that caused the child’s removal. [citing MCL 712A.18f(1) and MCR 3.965(D)(1)].

- The initial service plan must also detail efforts *to be made* and services *to be provided* to facilitate the child’s return home or to facilitate some other permanent placement, and the plan must provide a parenting time schedule. [citing MCL 712A.18f(3) and (4) (emphasis added)].
- The State must update the service plan every 90 days. [citing MCL 712A.18f(5)]

- The court must hold a review hearing within 182 days after child was first removed from home, then every 91 days during the first year of placement. [citing MCL 712A.19(3), MCR 3.966(A)(2), and MCR 3.975(C)].
- At the review hearing the Court must review a parent’s compliance with the plan and progress made toward reunification. [citing MCL 712A.19(6) and (7)].
- The court can order the State to provide and the parent to participate in additional services necessary to rectify the conditions that brought the child into placement. [citing MCL 712A.19a(7)(a), MCR 3.973(F), and MCR 3.975(A), (F), and (G)].

- If the child is still in foster care after one year, the court must hold a permanency planning hearing. [citing MCL 712A.19a(1) and MCR 3.976(B)(2)].
- At the permanency planning hearing, the court must review the progress the parties have made toward returning child home, or the State must show why the child should not be returned home. [citing MCL 712A.19a(3)].

- If at the permanency planning hearing the court determines that the child would be safe at home, it must order child to be returned to the parent. [citing MCL 712A.19a(5)].
- If parent hasn't substantially complied with the case service plan, the court may use that as evidence that it is not safe to send child home. [citing MCL 712A.19a(5)].

Federal Statutes and Regulations

- The State must make reasonable efforts to prevent removal of a child from home and to return that child to his or her family. In other words, the State must make "reasonable efforts . . . to preserve and unify families." [quoting 42 USC 671(a)(15)(b)].
- The State's service plan must include services to both of the parents to facilitate the child's return to the family. [citing 42 USC 675(1)(B) and 42 USC 671(a)(16)].

- The State must develop the service plan together with the child’s parents or guardian. The plan must include a description of services already offered to prevent the removal of the child from the family and of services to be offered to reunify the family. [citing 45 CFR 1356.21(g)(1), (4)].

Most significantly, according to the court,

- The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child’s safety is assured [and] to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child) [citing 45 CFR 1356.21(b)].

**DHS Policies:
The Children’s Foster Care Manual**

All citations are to the Manual’s latest revision, September 1, 2009. Many of the Manual’s sections were revised after *Rood*. Most of the revisions provide more detail than before and are now consistent with the Court’s opinion in *Rood*.

- The State must involve the family, including both parents, in devising a case service plan. FOM 722-6 at 2 (“parents **must be encouraged to actively participate in developing** the Parent-Agency Treatment Plan . . .” (emphasis in original).
- Parents must clearly understand “all of the conditions which must be met” before the child may return home. FOM 722-6 at 2.
- The case service plan must outline what the parents must do to reunify the family **and what the State must do** to support the parents’ goals. FOM 722-6 at 5 (emphasis added).

- The foster care worker must meet face-to-face with each parent twice in the first month. One of these meetings must be in the parent’s home. After that the worker must meet with the parent in the parent’s home once every three months. FOM 722-6 at 7-8.
- The foster care worker must keep regular phone contact with the parents – two contacts with each parent in the first month and as needed after that. FOM 722-6 at 7.
- Of the four required contacts during the first month, one must be used to discuss the Family and Child Assessment of Needs and Strengths, and one must be used to discuss the Parent=Agency Plan and Service Agreement.

- According to the Court in *Rood*, the state was allowed to direct its initial reunification efforts to the home from which the child was removed – that of the custodial parent. (citing CFF 722-7 at 2)

This section was changed post-*Rood*. It no longer states that reunification efforts may be focused first on the custodial parent. Instead, it discusses and incorporates the Absent Parent Protocol. FOM 722-7 at 4-13.

- The foster care worker must also attempt to locate both parents. FOM 722-6 at 1.

- The foster care worker must use parenting time to strengthen parent/child bond and must provide parenting time for each parent. FOM 722-6 at 10.

Child Protective Services Manual

- If the child remains in his or her own home following an investigation, Child Protective Services monitors the family.
- If the child is removed from the child's home, responsibility for the case transfers to Foster Care staff.
- CPS must make reasonable efforts to prevent removal.
 - PSM 715-4 at 1.

**Reasonable Efforts to Prevent Removal
– CPS must:**

- Provide services to the family to prevent child’s placement in foster care
- Evaluate each case to determine if efforts to reunify are reasonable, i.e., should be provided.
 - If not, document why not.
PSM 715-2 at 1-2, PSM 713-9 at 7.

Reasonable Efforts -- Services

reasonable efforts to prevent removal may include, but are not limited to,

- 24-hour emergency caretaker, homemaker, day care,
- crisis or family counseling,
- emergency shelter,
- emergency financial assistance,
- respite care, parent aid services, home-based family services,
- self-help groups, mental health services, drug and alcohol abuse counseling, and vocational training.

PSM 714-2 at 1

Other CPS Duties

- Safety Assessment (and reassessment) PSM 713-1
- Risk Assessment (and reassessment) PSM 713-11
- Family Assessment Of Needs And Strengths PSM 713-12
- Face-to-face contacts, home visits, child interviews PSM 713-3
- Ongoing CPS responsibilities see PSM 714-1 at 10.

Reasonable Efforts and Title IV-E Funding

Jenifer Pettibone, Title IV-E An Overview, SCAO 2009 Training
<http://courts.michigan.gov/scao/services/CWS/Materials/IV-E/TabB-ContraryToWelfareAndReasonableEffortFindings.pdf>

- If a case meets required criteria, the federal government reimburses the state for some of the cost of foster care placement. *Id.* at 5.
- Decreases the amounts coming out of county child care funds. *Id.* at 6.
- Courts must make reasonable efforts findings within 60 days of child’s removal from home. *Id.* at 20-21 (citing 45 CFR 1356.21(d)).

What if the Court can’t find Reasonable efforts were made?

- •At the time of a finding of “no reasonable efforts”, Title IV-E reimbursement becomes unavailable for that family.
- •Once the court is able to make a positive reasonable efforts finding again, Title IV-E reimbursement is again available for the case.
- •The time during which the negative finding was in effect is the time frame when the IV-E reimbursement is not available. *Id.* at 27.

Direct IV-E Funding Questions to:

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Questions?



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**Reasonable Efforts to Reunite Families in Child Abuse and Neglect Proceedings: They Aren't Just For Funding Anymore
In re Rood, 763 N.W.2d 587 (Mich. 2009)**

Evelyn K. Calogero *

I. Introduction

Since 1983, states have been eligible to receive federal funding for children in foster care.¹ One of the requirements for this funding (commonly referred to as Title IV-E funding) is that the states have a federal-government-approved plan in place that provides, among other things, that the states make reasonable efforts to prevent a child's removal from home, and if removed, facilitates a child's return home unless certain aggravated circumstances exist.²

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¹ Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 503 (1981) (codified as amended at 42 U.S.C. § 671 (2006)). At that time, 42 U.S.C. § 671(a)(15) provided: "effective October 1, 1983, [the state must have a plan that] provides that, in each case, reasonable efforts will be made

(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and

(B) to make it possible for the child to return to his home"

² 42 U.S.C. § 671(a)(15) (2006). The current statute provides as follows:

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

In 1992, the United States Supreme Court held in *Suter v. Artist M.* that a parent could not bring a separate civil rights claim against a state for not making reasonable efforts to reunify parent and child.³ According to the Court, Title IV-E made states eligible for federal monies; it did not grant parents or children rights independent of the funding provisions.⁴

Title IV-E still does not create independent rights to enforce its reasonable efforts provisions. However, parents in Michigan, whose defense is that the State did not make reasonable efforts to reunite them with their children in a termination of parental rights proceeding, now know what the State Department of Human Services (the State) must do to make reasonable efforts.⁵

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- (i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
 - (ii) the parent has—
 - (I) committed murder (which would have been an offense under section 1111(a) of title 18, [United States Code], if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - (II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, [United States Code], if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
 - (iii) the parental rights of the parent to a sibling have been terminated involuntarily;
 - (E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—
 - (i) a permanency hearing (as described in section 475(5)(C) of this title), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and
 - (ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
 - (F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts of the type described in subparagraph (B)

³ *Suter v. Artist M.*, 503 U.S. 347, 350 (1992).

⁴ *Id.* at 350-51.

⁵ *See generally In re Rood*, 763 N.W.2d 587 (Mich. 2009) (describing what reasonable efforts a state must take to preserve and unify families).

The Michigan Supreme Court has answered a question many parents have asked since 1983: When are the State's efforts to reunite them with their children reasonable? The answer: The State's efforts to reunify child and family are reasonable if the State fulfills its duties under federal statutes and regulations, state statutes and court rules, and the State's own internal child protective and foster care procedures.⁶ If it does not, a parent may challenge its failure to follow these procedures when the State seeks to terminate the parent's rights to his or her child.⁷

In answering the question the way it did, the Michigan Supreme Court has now provided much-needed guidance to the State, the bench, and the bar. And it has put the State on notice that in the future, parents, attorneys, and judges will be examining its efforts to reunify the parent and child through a more powerful lens.

This article examines the Michigan courts' limited attempts to define and describe the scope of the State's reasonable efforts. It next explains why that scope leaves uncertainty because it conflicts with state statutes and court rules. It then explains how the court in *In re Rood* has put the State's efforts to reunify parent and child under a more powerful microscope. It also discusses some inconsistencies in the opinion. It finishes with advice to judges, parents' advocates, and children's advocates about what they must now do to ensure that parental rights to a child are not terminated unnecessarily.

In the end, the court's decision in *Rood* will work to the advantage of the State, parents, and children. The State knows what the courts will expect it to do. Parents will be able to

⁶ *Id.* at 598 (Corrigan, J., Kelly, J., and Markman, J.); *id.* at 615 (Cavanagh, J. concurring in part). (Justice Maura D. Corrigan wrote the lead opinion, with Chief Justice Marilyn J. Kelly and Justice Stephen J. Markman concurring. Justice Michael F. Cavanagh wrote an opinion concurring in part with the lead opinion. Justice Robert P. Young, Jr. wrote an opinion concurring in part with the lead opinion. Justice Elizabeth A. Weaver concurred only in the lead opinion's result, and concurred in part with Justice Young.)

⁷ *Id.* at 606 (majority opinion); 614 n.2 (Cavanagh, J. concurring in part).

receive meaningful services in their efforts to ameliorate the conditions that led to State intervention with the family. And Michigan's children will ultimately benefit when they are reunited with their parents in a changed, safer environment.

II. The Question: When and How Did Michigan's Child Welfare Workers Satisfy The Statutory Mandate To Make Reasonable Efforts to Reunify Families?

A. Federal Statutes – The Evolution of Reasonable Efforts

The federal Child Abuse Prevention and Treatment Act of 1974⁸ required states to create and implement child abuse investigation and reporting procedures.⁹ As an unexpected result, the number of children entering foster care rapidly increased.¹⁰ Once the number of children being removed from their homes increased, Congress became concerned that these children may not have needed to be removed and were spending too much time in foster care.¹¹ In addition, Congress became concerned that states were not working hard enough to return those children to their families or were not working hard enough to find permanent, adoptive homes for the children who could not return to their families.¹² The congressional solution: the Adoption Assistance and Child Welfare Act of 1980 [AACWA].¹³

AACWA conditioned federal funding to states by “[r]equir[ing] states to make ‘reasonable efforts’ to keep families together, by providing both [removal] prevention and family

⁸ The Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974).

⁹ Kasia O’Neill Murray & Sarah Gesiriech, *A Brief Legislative History of the Child Welfare System*, 3 (2004), <http://pewfostercare.org/research/docs/Legislative.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

reunification services.”¹⁴ This worked for a while—the number of children in foster care decreased.¹⁵

But by 1995, the number of children in foster care had increased 76% nationwide over what it had been in 1986.¹⁶ Congress enacted several funding provisions in the early 1990s to improve child welfare services.¹⁷ These acts funded, among other things, services to help families whose children were at risk of being removed, independent living for older children in foster care, court improvement programs, and waivers of federal laws to allow states to experiment to find the best child welfare systems for them.¹⁸

By the mid-1990s, though, Congress started hearing rumblings of discontent: AACWA did not emphasize strongly enough keeping children safe; AACWA promoted returning children to their families, even when it seemed as though it was not safe to do; and state child welfare organizations were not looking seriously enough at adoption as a viable permanency option.¹⁹ Congress responded with the Adoption and Safe Families Act of 1997 [ASFA].²⁰

ASFA discourages sending children back into unsafe environments by “making . . . the child’s health and safety . . . the paramount concern” when determining what efforts will be made “with respect to a child” and in making those efforts.²¹ In addition, Congress recognized

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.* at 4-5.

¹⁸ *Id.* (citing Independent Living Program, Pub. L. NO. 99-272; Family Preservation and Family Support Services Program, Pub. L. No. 103-66; Child Welfare Waiver Program (as part of the Social Security Amendments of 1994, Pub. L. No. 103-432); The Multi-Ethnic Placement Act, Pub. L. No. 103-382; and the Inter-Ethnic Placement Provisions, Pub. L. No. 104-188).

¹⁹ *Id.* at 5.

²⁰ *Id.* (citing The Adoption and Safe Families Act of 1997, Pub. L. No. 105-89).

²¹ 42 U.S.C. § 671(a)(15)(A) (2006).

situations in which a state need not make any effort at all to prevent removal or to reunify families.²²

Under both the Adoption Assistance and Child Welfare Act of 1980²³ and the Adoption and Safe Families Act of 1997,²⁴ to receive federal funding for foster care and adoption, Michigan needed a plan that included, among other things, a “reasonable-efforts-to-prevent-removal-or-to-reunite-families” provision.²⁵ Michigan responded with both statutes and court rules that mirror the federal statutes and regulations.

B. Michigan’s Reasonable Efforts Statutes and Court Rules

Michigan’s statutes and court rules prescribe four different reasonable efforts determinations: reasonable efforts to *prevent removal* of a child from his or her home, reasonable efforts to *rectify the conditions that lead to removal* of the child, reasonable efforts to *reunify the*

²² § 671(a)(15)(D) (2006). These situations include where

- (i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
- (ii) the parent has--
 - (I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - (II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (iii) the parental rights of the parent to a sibling have been terminated involuntarily

²³ Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 471(a)(15).

²⁴ Adoption and Safe Families Act of 1997, 42 U.S.C. § 471(a)(15)

²⁵ § 671(a)(15)(B).

child with his or her family, and reasonable efforts to *finalize a permanency plan*.²⁶ Each form applies at different stages of a child protection proceeding.

As a threshold matter, “[r]easonable efforts to reunify the child and family must be made in all cases” with certain exceptions.²⁷ Then, beginning with a removal order and ending with concurrent planning, the court must apply a variation of the reasonable efforts language.

- When the court orders a child to be taken into custody because the child is not safe in his or her home, the court must determine that “reasonable efforts to prevent the removal of the child have been made or are not required.”²⁸
- At the preliminary hearing, the court must again determine “whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required.”²⁹
- As part of the evidence that the State provides to the court during a dispositional hearing, the State must “report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.”³⁰

²⁶ See MICH. COMP. LAWS ANN. § 712A.18f(1) (West 2002); MICH. COMP. LAWS ANN. § 712A.19(12)-(13) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.19a(2) (West Supp. 2009); MICH. CT. R. 3.963(B)(1); MICH. CT. R. 3.965(D); MICH. CT. R. 3.973(E), (F)(3)(a)-(b); MICH. CT. R. 3.976(A).

²⁷ MICH. COMP. LAWS ANN. § 712A.19a(2) (West Supp. 2009) provides:

Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

- (a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.
- (b) The parent has been convicted of 1 or more of the following:
 - (i) Murder of another child of the parent.
 - (ii) Voluntary manslaughter of another child of the parent.
 - (iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.
 - (iv) A felony assault that results in serious bodily injury to the child or another child of the parent.
- (c) The parent has had rights to the child's siblings involuntarily terminated.

²⁸ MICH. CT. R. 3.963(B)(1).

²⁹ MICH. CT. R. 3.965(D)(1).

³⁰ MICH. CT. R. 3.973(E)(2).

- Each case service plan must also describe the efforts the State has 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.”³¹
- In formulating its disposition order, the court must, “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.”³²
- At all dispositional review hearings, if the child remains in foster care, the court must assess “the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.”³³
- During the permanency planning stage, the court “must determine whether the agency has made reasonable efforts to finalize the permanency plan.”³⁴
- During concurrent planning where the State may concurrently seek reunification of child and family and explore adoption or other permanency planning options.³⁵

While each formulation arguably applies at different stages of the child protective proceeding, Michigan’s courts have not held litigants to stage-specific formulations. Rather, at the termination of parental rights stage, litigants have argued a general “reasonable-efforts-to-

³¹ § 712A.18f(1).

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.

³² Compare MICH. CT. R. 3.973(F)(3) (stating that the court must make the reasonable efforts statement “when appropriate”) with MICH. COMP. LAWS ANN. § 712A.18f(4) (West 2002) (stating that the court “shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home.”).

³³ MICH. CT. R. 3.975(F)(2).

³⁴ MICH. CT. R. 3.976(A).

³⁵ § 712A.19(12)-(13). The statute provides:

- (12) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family.
- (13) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family.

reunify-the-child-with-the-family” standard, which includes the various formulations. And no Michigan court had ever specifically defined the term “reasonable efforts.”

C. *Michigan Courts’ Interpretation of the Reasonable Efforts Requirements*

Respondent³⁶ parents have argued—some successfully, but most not—that the State cannot terminate their rights to their children if the State has not made reasonable efforts to reunite them with their children. Despite its many uses in the Juvenile Code, the Probate Code, and the Michigan Court Rules, neither the legislature nor the Michigan Supreme Court had defined the term “reasonable efforts” in the statutes or court rules. And, as noted, neither the Michigan Court of Appeals nor the Michigan Supreme Court had defined the term in case law.

The Michigan Court of Appeals did, however, interpret the phrase in *In re Fried*.³⁷ The court noted that the State “is required to make reasonable efforts to rectify the conditions that caused the child’s removal by *adopting a service plan*.”³⁸ And when a parent raised the reasonable efforts argument, the court of appeals treated it as an argument attacking the sufficiency of the evidence used to prove one of the statutory grounds for termination of parental rights.³⁹

Rather than just looking to see if the State has adopted a service plan, the court of appeals looks at the efforts the State has made to provide the parent with services as described in the

³⁶ MICH. CT. R. 3.903(C)(10) (“[R]espondent means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.”). See *In re Rood*, 763 N.W.2d 587, 599 n.21 (Mich. 2009) (The court rules do define respondent in the context of child protective proceedings before they define it again in the context of termination of parental rights).

³⁷ *In re Fried*, 702 N.W.2d 192, 197 (Mich. Ct. App. 2005).

³⁸ *Id.* at 197 (citing MICH. COMP. LAW ANN. § 712A.18f(1),(2), (4) (West 2002)) (emphasis added).

³⁹ *Id.* (“Although respondent has not expressly challenged the sufficiency of the evidence for termination of his parental rights, his contention that reasonable services were not offered ultimately relates to the issue of sufficiency.”) See *In re Newman*, 472 N.W.2d 38, 40-41 (Mich. Ct. App. 1991).

plan.⁴⁰ In *Fried*, the child had been removed from her home because of her parents' drug abuse.⁴¹ The State referred the father to mental health and substance abuse services.⁴² It arranged to have the father tested for substance abuse⁴³ and for supervised parenting time with his child.⁴⁴ The father did not accomplish what he needed to do to regain custody of his daughter.⁴⁵

The court of appeals, then, looked beyond merely adopting a service plan to see what the State had offered to the father and how the father had complied with the plan. The court held that the “trial court did not clearly err by finding that reasonable efforts were made to preserve and reunify the family.”⁴⁶

Arguably, then, the court of appeals did and does more than just look at whether the State has adopted a case service plan. And other panels of the court of appeals have done the same.⁴⁷ But the *Fried* opinion can also be read quite narrowly to allow a court to look to see if the State adopted a service plan and, without more, say that the State made “reasonable efforts.”

And if a court were to read the opinion narrowly, practitioners and judges would be left with uncertainty. Could that really be all that the State is required to do? Adopt a service plan? Isn't it also required to provide the services it said it would provide under the plan? The statutes and court rules require the State to perform certain acts. How did they come into play? Or did they come into play at all?

⁴⁰ *Fried*, 702 N.W.2d at 197.

⁴¹ *Id.* at 195.

⁴² *Id.* at 197.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See, e.g., *In re Trottier*, Nos. 279767, 280105, 280106, 2008 WL 1991712, at *1 (Mich. Ct. App. May 8, 2008); *In re Dennis*, No. 271323, 2007 WL 287683, at *1 (Mich. Ct. App. Feb. 1, 2007); *In re Bean*, Nos. 270363, 270364, 2006 WL 3826992, at *1 (Mich. Ct. App. Dec. 28, 2006).

III. The Problem: The Court of Appeals' Interpretation Did Not Require the State to Do Enough.

The uncertainty all are left with, if the “adopting-a-service-plan” interpretation is itself narrowly interpreted, exists for four reasons. First, the authority that the Michigan Court of Appeals cited to support its interpretation that adopting a service plan satisfies the reasonable efforts requirements does not support its interpretation.⁴⁸ Second, the court’s interpretation not only conflicts with statutes and court rules that require the trial courts to look at the progress everyone has made toward reunification during review hearings,⁴⁹ but it also conflicts with the statutory mandate that “[r]easonable efforts to reunify the child and family must be made in all cases”⁵⁰ Third, because the statute itself does not contain a definition of reasonable efforts, the court should have applied the rules of statutory construction to define the term. Fourth, the court’s interpretation is now out-of-date because the Michigan Legislature has recently recognized that the State’s efforts toward reunification may not have been reasonable and has enacted a statute that would prevent the termination of parental rights until reasonable efforts have been made.⁵¹ Each of these reasons is examined below.

A. *Mich. Comp. Laws Ann. §§ 712A.18f(1), (2), and (4), do not support the Fried court’s interpretation.*

As noted, the court in *Fried* cited Mich. Comp. Laws Ann. § 712A.18f(1), (2), and (4) (West 2002), to support its conclusion that adopting a service plan satisfies the reasonable efforts requirements in Michigan’s statutes and court rules.⁵² That statute, however, prescribes the

⁴⁸ *Fried*, 702 N.W.2d at 197 (citing MICH. COMP. LAWS ANN. §§ 712A.18f(1),(2), (4) (West 2002)).

⁴⁹ MICH. CT. R. 3.975; § 712A.18f.

⁵⁰ § 712A.19a(2).

⁵¹ § 712A.19a(6).

⁵² See generally *Fried*, 702 N.W.2d 192.

information that the State must put into its service plan.⁵³ It does not state that adopting a service plan satisfies the reasonable efforts requirements.⁵⁴ And reading the statute as if it does ignores the statute's language and renders sub-section three of the statute meaningless. The court's opinion can be read to say, in effect, that it is enough for the State to adopt a plan; the courts will not look at what was in the plan to see if the suggested services were appropriate for the family, and they will not look at how the State implemented the plan.

A short detour here is appropriate to explain the various hearings in a child protective proceeding so that the statute can be considered in context.⁵⁵ If, after an investigation, a child is taken into State custody, the court must hold a preliminary hearing to determine if there is probable cause to believe that the child comes within the court's jurisdiction.⁵⁶ At the preliminary hearing, the court decides whether to keep the child in placement or to return the child to his or her parent(s).⁵⁷ The child will remain in placement if the court determines that returning to his or her home would be contrary to the child's welfare.⁵⁸ Also, the court must determine if the State made reasonable efforts to prevent the child's removal or if reasonable efforts to prevent the child's removal were unnecessary.⁵⁹

Once the State has filed a petition alleging that the child is within the court's jurisdiction because the child has been abused or neglected, the court must either take the parent's plea to the petition or hold a trial on the allegations in the petition to determine if it has jurisdiction.⁶⁰ Once

⁵³ See generally §§ 712A.18f (1),(2), and (4) (West 2010).

⁵⁴ *Id.*

⁵⁵ See *In re* A.P. and B.J., No. 286431, slip. op. at 9-10 (Mich. Ct. App. May 5, 2009).

⁵⁶ MICH. CT. R. 3.965(B)(11).

⁵⁷ MICH. CT. R. 3.965(B)(4), (12).

⁵⁸ MICH. CT. R. 3.965(C)(2).

⁵⁹ MICH. CT. R. 3.965(D)(1).

⁶⁰ MICH. CT. R. 3.971; MICH. CT. R. 3.972.

the court has determined that it has jurisdiction of the child, the court must then determine how best to protect the child while attempting to reunify the child with his or her family.⁶¹ This determination occurs at the dispositional hearing. At this hearing, the court then determines whether the state has used “reasonable efforts” to prevent removal of the child from his or her family as required by Mich. Comp. Laws. Ann. § 712A.18f. The Court in *Fried* used this statute to interpret the definition of “reasonable efforts.”

The statute, Mich. Comp. Laws Ann. § 712A.18f, provides, first, that if the State at disposition recommends that the child remain in placement rather than return home, the State must justify its recommendation.⁶² That written justification must specifically describe the efforts the State made to keep the child in the home by describing the services it provided; if services were not provided to keep the child in the home, the State must explain why.⁶³ That report must also detail the harm a child might suffer from both being separated from and returned to the parents.⁶⁴

Next, the statute requires the State to create a case service plan.⁶⁵ In subsection three, the section that the court of appeals’ “reasonable efforts” interpretation rendered meaningless, the statute provides what that case service plan must contain:

(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.

⁶¹ MICH. CT. R. 3.973; MICH. COMP. LAWS ANN. § 712A.18f(1) (West 2002).

⁶² § 712A.18f(1).

⁶³ § 712A.18f(1)(a)-(b).

⁶⁴ § 712A.18f(1)(c)-(d).

⁶⁵ § 712A.18f(2).

(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.⁶⁶

Subsection four provides that the court must consider the case service plan, among other things, “[b]efore [it] enters an order of disposition.”⁶⁷

So Mich. Comp. Laws Ann. § 712A.18f does not support the court’s statement in *Fried* that all the State must do to make its reasonable efforts to rectify the conditions that caused the child to be removed from his or her home is to adopt a service plan. The statute states only that before a court may order further measures to protect the child and help reunite the family, the court must look at the plan the State and the family have drawn up, which contains the services that the State plans to provide to the family, and make its orders accordingly. “The court may order compliance with all or any part of the case service plan as the court considers necessary.”⁶⁸

B. The statutes and court rules that require the trial courts to look at the progress all parties have made toward reunification during review hearings require the State to do more than adopt a service plan.

Once the court issues its orders during that initial dispositional hearing, the court must hold dispositional review hearings during the pendency of the family’s involvement with the State. The State must update its case service plan every 90 days if the child continues in placement outside of the child’s home.⁶⁹ If the child is still in foster care, that first dispositional review hearing must occur within six months of the date on which the child was first removed from the parent’s home.⁷⁰

⁶⁶ § 712A.18f(3)(b)-(d) (emphasis added).

⁶⁷ § 712A.18f(4) (emphasis added).

⁶⁸ *Id.*

⁶⁹ § 712A.18f(5).

⁷⁰ MICH. CT. R. 9.375(C)(1).

During a dispositional review hearing, the court must look at the progress everyone has made in complying with the order of disposition and with the case service plan.⁷¹ And this is where the court’s statement in *Fried*, that the State makes reasonable efforts to rectify the conditions that existed when the children are removed from their parent’s home when the State adopts a service plan,⁷² conflicts with the court rules and with Michigan statutes.

When reviewing the progress the parties have made in complying with the case service plan, the court must consider (among other things) the following:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

...

(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency⁷³

Once the court has engaged in this review, it may “modify any part of the case service plan.”⁷⁴

Because the court must review the services that the State has provided or offered and because the court may modify the case service plan, the court, at this point, should evaluate whether the services the State has been offering or providing are appropriate to the families’ needs. Thus, merely adopting a case service plan is not enough to satisfy the requirement that

⁷¹ MICH. CT. R. 3.975(A).

⁷² *In re Fried*, 702 N.W.2d 192, 197 (Mich. Ct. App. 2005).

⁷³ MICH. CT. R. 3.975(F)(1).

⁷⁴ MICH. CT. R. 3.975 (G)(4).

the State make reasonable efforts to rectify the conditions that caused the child's removal from his or her home.⁷⁵ The State must actually provide or offer services to the child and family.

Moreover, Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009) requires more than just reasonable efforts to rectify the conditions that caused the child to be removed from his or her home. That statute requires the State to make “[r]easonable efforts to reunify the child and family . . . in all cases”⁷⁶ Certainly, the case service plan will address those conditions that led to the child's removal from the home. But, as the statutes and court rules contemplate, other issues may arise during the course of the case that were not related to the child's initial removal.⁷⁷ In fact, one of the grounds for terminating a parent's rights to his or her child contemplates just that. The statute provides that if during the course of the case (1) other conditions came to light that would have brought the child within the court's jurisdiction; (2) the parent was given recommendations on how to rectify those conditions; and (3) the parent did not rectify them after having been given a reasonable opportunity to do so, a court may terminate that parent's rights to his or her child.⁷⁸

The court rules also contemplate situations in which a parent's rights may be terminated based on conditions that were not mentioned in the original petition.⁷⁹ Under those circumstances, the court may use only legally admissible evidence to determine if the allegations

⁷⁵ MICH. COMP. LAWS ANN. §§ 712A.18f(1), (4) (West 2002).

⁷⁶ See MICH. COMP. LAWS ANN. § 712A.19a(2) (West Supp. 2009) (the statute contains exceptions to the “all cases” requirement for aggravated cases).

⁷⁷ See, e.g., § 712A.19b(3)(c)(ii) (West Supp. 2009); MICH. CT. R. 3.977(F).

⁷⁸ § 712A.19b(3)(c)(ii) (West 2002).

⁷⁹ MICH. CT. R. 3.977(F).

relating to the new circumstances are true and satisfy one of the statutory grounds for termination of parental rights.⁸⁰

As noted earlier, the court of appeals' statement in *Fried* that the State "is required to make reasonable efforts to rectify the conditions that caused the child's removal *by adopting a service plan*"⁸¹ conflicts with Michigan's statutes and court rules. The State must make reasonable efforts to reunify the family in all cases. To reunify the family, the State must create a service plan that seeks to correct the conditions that caused the child to be removed from his or her home. The State must update that service plan every 90 days. The court must review the service plan and the parties' progress toward compliance with it at dispositional review hearings. If the services offered or to be offered are not appropriate to facilitate reunification, the court may modify the service plan. If new conditions come to light that require action, the State may recommend to the parent ways to rectify the new conditions. If the new conditions are not rectified within a reasonable time, the State may seek to terminate parental rights based on those new conditions.

The State is not merely trying to rectify the conditions that caused the child's removal; the State is charged with reunifying the family if it is safe to do so. Merely adopting a service plan does not fulfill the statutory mandate. The State must do more. It must work with the family to help it to achieve its goals. The court of appeals' interpretation does not require the State to actively work with the family and, thus, conflicts with the statutes and court rules.

C. Reasonable Efforts Defined – The Rules of Statutory Construction

⁸⁰ MICH. CT. R. 3.977 (F)(1)(b)(i).

⁸¹ *In re Fried*, 702 N.W.2d 192, 197 (Mich. Ct. App. 2005) (emphasis added).

Rather than simply saying that the State’s statutory mandate to make reasonable efforts to reunify families is fulfilled when it adopts a service plan, the court should have defined the term “reasonable efforts” and then applied the definition to determine if the State’s efforts to reunify the family were, in fact, reasonable. Michigan courts routinely apply rules of statutory construction to determine the meaning of phrases in a statute or court rule.⁸² In addition to using the rules of statutory construction, “[w]hen the Legislature does not provide definitions, courts may consult a dictionary.”⁸³

For example,

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. *DiBenedetto v. West Shore Hosp.*, 461 Mich. 394, 402, 605 N.W.2d 300 (2000); *Massey v. Mandell*, 462 Mich. 375, 379-380, 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. *Turner v. Auto Club Ins. Ass'n*, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Where the language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed--no further judicial construction is required or permitted, and the statute must be enforced as written." *DiBenedetto, supra* at 402, 605 N.W.2d 300. Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. *See Lansing v. Lansing Twp.*, 356 Mich. 641, 649-650, 97 N.W.2d 804 (1959).⁸⁴

Had the court of appeals consulted a dictionary, it would have seen that “reasonable efforts” does not mean adopting a service plan. Rather, “reasonable” means “1. [A]greeable to reason or sound judgment; logical 2. [N]ot exceeding the limit prescribed by reason; not

⁸² See, e.g., *In re L.E.*, 747 N.W.2d 883, 895-96 (Mich. Ct. App. 2008).

⁸³ *Superior Hotels, LLC v. Township of Mackinaw*, 765 N.W.2d 31, 38 (Mich. Ct. App. 2009) (“Undefined statutory terms must be given their plain and ordinary meanings, and it is proper to consult a dictionary for definitions.” (quoting *Halloran v. Bhan*, 683 N.W.2d 124 (2004)) (consulting WEBSTER’S COLLEGE DICTIONARY (1992)).

⁸⁴ *Pohutski v. City of Allen Park*, 641 N.W.2d 219, 226 (Mich. 2002).

excessive”⁸⁵ “Effort” means “1. [E]xertion of physical or mental power 2. [A]n earnest or strenuous attempt 3. [S]omething done by exertion or hard work 5. [T]he amount of exertion expended for a specified purpose”⁸⁶

Thus, “reasonable efforts to prevent the removal of a child”⁸⁷ would mean a sound, logical, strenuous, or earnest attempt to keep the child at home with his or her parents. And “reasonable efforts to rectify conditions that caused removal of the child from the home”⁸⁸ would mean a sound, logical, strenuous, or earnest attempt to help the parent or parents change their behavior or change the environment that existed when the child was removed from the home. Finally, “reasonable efforts to reunify the child and family”⁸⁹ would mean a sound, logical, strenuous, or earnest attempt to work with the parent or parents to bring them back together with their children.

D. The Court of Appeals’ Interpretation Of “Reasonable Efforts” Has Been Superseded By Statute: The Michigan Legislature Has Recognized That The State’s Efforts May Not Have Been Reasonable In All Cases.

In 2008, the Michigan Legislature amended the probate code.⁹⁰ A court must no longer order the State to file a petition to terminate a parent’s rights to his or her child if the child has been in foster care for 15 of the last 22 months.⁹¹ Rather, the legislature carved out an exception to that rule. The court need not order the State to file a termination petition if “[t]he state has not provided the child’s family, consistent with the time period in the case service plan, with the

⁸⁵ RANDOM HOUSE UNABRIDGED DICTIONARY (1997) available at Infoplease.com, <http://dictionary.infoplease.com/reasonable>.

⁸⁶ RANDOM HOUSE UNABRIDGED DICTIONARY (1997) available at Infoplease.com, <http://dictionary.infoplease.com/effort>.

⁸⁷ MICH. COMP. LAWS ANN. §§ 712A.18f(1),(4) (West 2002); MICH. CT. R. 3.963(B)(1); MICH. CT. R. 3.965(D)(1); MICH. CT. R. 3.973(E), (F)(3)(a).

⁸⁸ §§ 712A.18f(1), (4); MICH. CT. R. 3.973(E)(2), (F)(3)(b).

⁸⁹ §§ 712A.19(12), (13) (West Supp. 2009).

⁹⁰ MICH. COMP. LAWS ANN. § 712A.19a (West Supp. 2009).

⁹¹ § 712A.19a(6).

services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required.”⁹²

The court’s formulation—reasonable efforts means adopting a service plan – plainly conflicts with this statute. The amended statute contemplates more than just creating a service plan; it requires State action to fulfill the plan’s provisions. The Michigan Legislature has taken a giant step toward holding the State responsible for its efforts to reunite families. In the cases where the new statute applies, the *Fried* formulation cannot withstand judicial scrutiny.

While the Michigan courts still have not specifically defined the term “reasonable efforts,” the various court of appeals’ panels have been doing more than just determining if the State has developed a service plan. The courts have looked at the services offered in the plan. The problem, however, has remained that advocates and judges did not have the kind of guidance that a definition of reasonable efforts would bring.

Now, the Michigan Supreme Court has taken a giant step toward holding the State responsible for its efforts to reunite families in its recent opinion in *In re Rood*.⁹³ The court in *Rood* has answered the lingering doubts about “reasonable efforts.”

IV. Reasonable Efforts: The State Must Comply With Statutes, Regulations, Court Rules, and Its Own Procedures.

Until the court’s decision in *In re Rood*, a parent challenging the termination of his or her parental rights because the State did not make reasonable efforts to reunify the family faced uncertainty about the reasonable efforts requirements. Did the State need to do more than just

⁹² § 712A.19a(6)(c).

⁹³ *In re Rood*, 763 N.W.2d 587 (Mich. 2009).

adopt a service plan to make reasonable efforts? Was the reasonable efforts requirement merely a predicate to federal funding of a state’s foster care costs?⁹⁴

The Michigan Supreme Court has removed any lingering uncertainty: A parent may “claim procedural error in an action brought by the state to terminate [his or her parental rights] if the state fails to comply with the required procedures and its failure may be said to have affected the outcome of the case.”⁹⁵ According to the court, the procedures required to make “reasonable efforts” include those found in federal statutes and regulations, state statutes and court rules, and the State’s own internal procedures.⁹⁶ So if the State has not followed these procedures, it has not made reasonable efforts to reunify the family. Therefore, a parent may raise the State’s failure to follow proper procedure as a defense to the termination of his or her parental rights, as long as the failure affected the outcome of the case.⁹⁷

A. Rood: *The Facts*

The respondent in *Rood*, Darroll Donald Rood (the child’s father⁹⁸), challenged the State’s efforts to reunite him with his daughter, claiming that the State had not done enough before it filed a petition to terminate his rights.⁹⁹ The child, A., had been removed from her

⁹⁴ *Id.* at 617 (Mich. 2009) (Young, J. concurring in part) (The counter-argument isn’t exactly accurate. While the United States Supreme Court in *Suter v. Artist M.*, 503 U.S. 347, 350 (1992), held that a parent could not bring a later, separate civil-rights claim against a state for not making reasonable efforts to reunify parent and child, the Court said nothing about a challenge to the state’s efforts brought in the termination proceedings themselves. Justice Young made this argument in his separate concurring opinion.).

⁹⁵ *Id.* at 606 (majority opinion); *id.* at 614 n.2 (Cavanagh, J., concurring in part).

⁹⁶ *Id.* at 598 (majority opinion); *id.* at 615 (Cavanagh, J., concurring in part).

⁹⁷ *See id.* at 606 (majority opinion); *see also id.* at 616 n.2 (Cavanagh, J., concurring in part).

⁹⁸ *See id.* at 587, 589 (majority opinion) (The child’s mother, Laurie Kops, voluntarily relinquished her rights to her child after she failed to comply with or benefit from the case service plan. *Id.* at 594. The release of her rights to her child was “contingent upon the termination of [Mr. Rood’s] rights.” *Id.* at 594, n. 11).

⁹⁹ *In re Rood*, No. 280597, 2008 WL 2389498 (Mich. Ct. App. June 12, 2008) (the Michigan Court of Appeals agreed, and it reversed the order terminating Donald Rood’s parental rights), *aff’d* 736 N.W.2d 587 (Mich. 2009).

mother's care due to neglect.¹⁰⁰ Even though the State knew that Rood was her father¹⁰¹ and the State protective services worker, foster care worker, and the court had a correct address and telephone number,¹⁰² the court sent notices of hearings to an outdated address.¹⁰³ Also, the foster care worker tried to call him – only once – at an outdated telephone number.¹⁰⁴

Rood himself made the initial contact with the State's protective services worker.¹⁰⁵ She never told Rood that he could be considered as a placement for his daughter.¹⁰⁶ In fact, she told him that the State would seek to reunite A. "back with the mother, not the father."¹⁰⁷ She never told him that services were available, if needed, to reunify him with his daughter.¹⁰⁸ Most importantly, neither the State nor the court told Rood that his parental rights could be at stake in a case against A.'s *mother*.¹⁰⁹

While three of the court's justices would have held that the State's failures violated Rood's procedural due process rights,¹¹⁰ five of the six justices who participated in the decision agreed that the state statutes obligated the State to do more than it did.¹¹¹ And four justices agreed that child welfare proceedings in Michigan must comply with federal statutes and regulations, state statutes and court rules, and the state's own processes set out in its foster care

¹⁰⁰ Rood, 763 N.W.2d at 590.

¹⁰¹ *Id.*

¹⁰² *Id.* at 591.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 592.

¹⁰⁵ *Id.* at 590.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 591.

¹⁰⁹ *Id.* at 609.

¹¹⁰ *Id.* at 589, 607-08.

¹¹¹ *Id.* at 598-603 (per Corrigan, J., with two other justices concurring); *id.* at 614, 615 (Cavanagh, J., concurring in part); *id.* at 616 (Young, J., concurring in part) ("As a result of the lack of adequate notice, respondent was clearly deprived of *numerous statutorily required services* to ensure that he could properly parent his child.") (emphasis added); *id.* at 615 (Weaver, J., concurring in part) (concurring in only the result).

manual.¹¹² As Justice Michael Cavanagh stated in his concurring opinion, “[r]easonable efforts require that the DHS and the trial court, at a minimum, make the active efforts towards reunification provided for in statutes and court rules”¹¹³

B. The Required Procedures – State Statutes and Court Rules.

With which state statutes and court rules must the State comply before a court may say that the State made “reasonable efforts” with a parent, custodial or non-custodial? The court specifically mentioned the following:

- The state must make “reasonable efforts to reunify the child and family . . . in all cases”¹¹⁴
- When a child is removed from a parent’s home, both parents are entitled to notice of the proceedings.¹¹⁵
- A parent who is not named as a respondent must be notified of and allowed to participate in all proceedings.¹¹⁶
- At the preliminary hearing, the court must determine if the child’s parents have been notified and it can decide to adjourn the hearing until both parents can be present.¹¹⁷
- The court must ask the parent from whom the child was taken for the identity and location of relatives to determine if any relative is a fit and appropriate alternative to foster care.¹¹⁸
- DHS must provide an initial service plan before the court may enter an order of disposition.¹¹⁹

¹¹² *Id.* at 606, 614 (majority opinion); *id.* at 614-15 (Cavanagh, J., concurring in part) (“I also agree that, in Michigan, the statutes, the court rules, DHS policy, and federal laws all set forth procedures that help ensure adequate due process protection for parents.”).

¹¹³ *Id.* at 614 (Cavanagh, J. concurring in part).

¹¹⁴ *Id.* at 602 (majority opinion) (citing MICH. COMP. LAWS ANN. § 712A.19a(2) (West Supp. 2009)).

¹¹⁵ *Id.* at 598-99 (citing MICH. COMP. LAWS ANN. § 712A.2(b)(1) (West Supp. 2009)).

¹¹⁶ *Id.* at 599 (citing MICH. COMP. LAWS ANN. § 712A.19(5)(c) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.19a(4)(c) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.19b(2)(c) (West Supp. 2009); MICH. CT. R. 3.921(B)(1)(a), (d); MICH. CT. R. 3.921(2)(c); MICH. CT. R. 3.921(3)).

¹¹⁷ *Rood*, 763 N.W.2d at 599(citing MICH. CT. R. 3.965(B)(1)).

¹¹⁸ *Id.* (citing MICH. COMP. LAWS ANN. § 722.954a(2) (West 2002); MICH. CT. R. 3.965(E); MICH. CT. R. 3.965(B)(13)).

¹¹⁹ *Id.* at 599-600 (citing MICH. COMP. LAWS ANN. § 712A.13a(B)(a) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.18f(2),(4) (West 2002); MICH. CT. R. 3.965(E)(1)).

- The initial service plan must report the efforts the State made or services the State provided, if any, to prevent the child’s removal from the home or to rectify conditions that caused the child’s removal.¹²⁰
- The initial service plan must also detail efforts *to be made* and services *to be provided* to facilitate the child’s return home or to some other permanent placement; the plan must provide a parenting time schedule.¹²¹
- The State must update the service plan every 90 days.¹²²
- The court must hold a review hearing within 182 days of the date the child was first removed from the home, then every 91 days during the first year of placement.¹²³
- At the review hearing, the Court must review parental compliance with the plan and progress made toward reunification.¹²⁴
- The court can order the State to provide and the parent to participate in additional services necessary to rectify the conditions that brought the child into placement.¹²⁵
- If the child is still in foster care after one year, the court must hold a permanency planning hearing.¹²⁶
- At the permanency planning hearing, the court must review the progress the parties have made toward returning the child home or, if no progress has been made, the State must show why the child should not be returned home.¹²⁷
- If at the permanency planning hearing the court determines that the child would likely be safe at home, it must order the child to be returned to the parent.¹²⁸
- If the parent has not substantially complied with the case service plan, the court may use that as evidence that it is not safe to send the child home.¹²⁹

¹²⁰ *Id.* at 600 (citing MICH. COMP. LAWS ANN. § 712A.18f(1) (West 2002); MICH. CT. R. 3.965(D)(1)).

¹²¹ *Id.* (citing MICH. COMP. LAWS ANN. § 712A.18f(3), (4) (West 2002)) (emphasis added)

¹²² *Id.* at 601(citing MICH. COMP. LAWS ANN. § 712A.18f(5) (West 2002)).

¹²³ *Id.* (citing MICH. COMP. LAWS ANN. § 712A.19(3) (West Supp. 2009)); MICH. CT. R. 3.966(A)(2); MICH. CT. R. 3.975(C)).

¹²⁴ *Rood*, 763 N.W.2d at 601 (citing MICH. COMP. LAWS ANN. § 712A.19(6),(7) (West Supp. 2009)).

¹²⁵ *Id.* at 601-02 (citing MICH. COMP. LAWS ANN. § 712A.19a(7)(a) (West Supp. 2009); MICH. CT. R. 3.973(F); MICH. CT. R. 3.975(A), (F), (G)).

¹²⁶ *Id.* at 602 (citing MICH. COMP. LAWS ANN. § 712A.19a(1) (West Supp. 2009); MICH. CT. R. 3.976(B)(2)).

¹²⁷ *Rood*, 763 N.W.2d at 602 (citing MICH. COMP. LAWS ANN. § 712A.19a(3) (West Supp. 2009)).

¹²⁸ *Id.* (citing MICH. COMP. LAWS ANN. § 712A.19a(5) (West Supp. 2009)).

¹²⁹ *Id.* (citing MICH. COMP. LAWS ANN. § 712A.19a(5) (West Supp. 2009)).

The court did not note that the Michigan Court Rule that governs dispositional review hearings states that the court must also review “the services provided or offered to the child and parent, guardian, or legal custodian of the child”¹³⁰ Thus, the reviewing court must not only assess the progress that a parent has made, but it must also assess the State’s actions taken toward facilitating reunification. In addition, because the case service plan must state which services the State plans to offer, the court’s review should, at a minimum, include reviewing the State’s compliance with the plan.¹³¹

The court did not note that the Michigan court rule governing the procedure at the permanency planning hearing requires more than the statute requires. It mandates that the court determine if the State has “made reasonable efforts to finalize the permanency plan.”¹³² Thus, under the statutes and court rules that the court agreed govern procedure in the child protective proceeding, the court must look at both the parent’s effort to comply with the plan and the State’s effort to provide the child with a permanent placement, either back to the child’s home or in some other long-term placement.¹³³

C. The Required Procedures – Federal Statutes and Regulations

As noted, four justices agreed that the state’s child welfare procedures must comply with federal statutes and regulations.¹³⁴ The court mentioned the following federal statutes and

¹³⁰ MICH. CT. R. 3.975(F)(1)(a) (Even though the court did not specifically mention this court rule, its holding is broad enough to include all of the court rules that apply in child protective proceedings.).

¹³¹ MICH. CT. R. 3.965(D)(1).

¹³² MICH. CT. R. 3.976(A).

¹³³ See generally *In re Rood* 763 N.W.2d 587 (Mich. 2009).

¹³⁴ *Id.* at 590.

regulations regarding mandatory services with which the State and courts in a child protective proceeding must also comply. Calling them “most applicable,”¹³⁵ the court stated:

- The State must make reasonable efforts to prevent removal of a child from home and to return that child to his or her family. In other words, the State must make “reasonable efforts . . . to preserve and unify families.”¹³⁶
- The State’s service plan must include services to both of the parents to facilitate the child’s return to the family.¹³⁷
- The State must develop the service plan together with the child’s parents or guardian. The plan must include a description of services already offered to prevent the removal of the child from the family and of services to be offered to reunify the family.¹³⁸
- Most significantly, according to the court,

The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child’s safety is assured [and] to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child)¹³⁹

D. Required Procedures – The State’s Children’s Foster Care Manual

The Michigan and federal statutes require the state to develop regulations and policies regarding children in foster care.¹⁴⁰ Those policies and regulations also require the State to perform certain acts.¹⁴¹ The policies and procedures for Children’s Protective Services and Foster Care are available on the Internet.¹⁴² According to the Children’s Foster Care Manual:

¹³⁵ *Id.* at 604.

¹³⁶ *Id.* (quoting 42 U.S.C. § 671(a)(15)(b) (2006)).

¹³⁷ *Id.* (citing 42 U.S.C. § 675(1)(B) (2006 & Supp. 2009); 42 U.S.C. § 671(a)(16) (2006)).

¹³⁸ *Rood* 763 N.W.2d at 605 (citing 45 C.F.R. §§ 1356.21(g)(1), (4) (2008)).

¹³⁹ *Id.* (citing 45 C.F.R. § 1356.21(b) (2008)).

¹⁴⁰ *Id.* (citing 45 CFR § 1356.21(g) (2008); MICH. COMP. LAWS ANN. § 722.111-.128 (West 2002 & West Supp. 2009); *Cf.* MICH. COMP. LAWS ANN. § 712A.13a(8) (West Supp. 2009)).

¹⁴¹ *Rood* 763 N.W.2d at 615 (Cavanagh, J., concurring in part) (While Justice Cavanagh did not expressly state that the State must follow its policies set out in these manuals, Justice Cavanagh agreed that the DHS policies, along

- The State must involve the family, including both parents, in devising a case service plan.¹⁴³
- The case service plan must outline what the parents must do to reunify the family and what the State must do to support the parents' goals.¹⁴⁴
- The foster care worker must meet with each parent in the parent's home.¹⁴⁵
- The foster care worker must keep regular phone contact with the parents.¹⁴⁶
- The foster care worker must use parenting time to strengthen parent/child bond and must provide parenting time for each parent.¹⁴⁷
- The state may direct its initial reunification efforts to the home from which the child was removed – that of the custodial parent.¹⁴⁸
- The state may, however, shift its efforts to reunify from the custodial to the non-custodial parent where the situation warrants.¹⁴⁹
- No matter which household the State initially targets for reunification, the State must complete a family assessment of needs and strengths for each household with a legal right to the child, unless the State cannot locate a parent, the parent will be incarcerated for more than two years, or the parent refuses to participate.¹⁵⁰

E. The State Did Not Comply With The Required Procedures

with Michigan statutes and court rules, and federal statutes and regulations set forth procedures “that help ensure adequate due process protection for parents.” If the DHS policies help ensure adequate due process, the State should be complying with them).

¹⁴² State of Michigan, Department of Human Services, Children's Foster Care Manual [cited as FOM] (September 1, 2009, available at <http://www.mfia.state.mi.us/olmweb/ex/fom/fom.pdf>); State of Michigan, Department of Human Services, Children's Protective Services Manual [cited as PSM] (September 1, 2009), available at <http://www.mfia.state.mi.us/olmweb/ex/psm/psm.pdf>.

¹⁴³ *Rood*, 763 N.W.2d at 600 (majority opinion) (citing FOM 722-6 at 1).

¹⁴⁴ *Id.* at 600-01 (citing FOM 722-6 at 2-3).

¹⁴⁵ *Id.* at 601 (citing FOM 722-6 at 5-6).

¹⁴⁶ *Id.* (citing FOM 722-6 at 5-6).

¹⁴⁷ *Id.* (citing FOM 722-6 at 7).

¹⁴⁸ *Id.* at 602 (citing FOM 722-7 at 2).

¹⁴⁹ *Id.* (citing FOM 722-7 at 2).

¹⁵⁰ *Id.* (citing FOM 722.8a at 1).

As the court stated, “compliance with the relevant laws and regulations was sorely lacking with regard to respondent.”¹⁵¹ That is an understatement.

From the moment that the State took his daughter into custody, Darroll Donald Rood did not receive the services the statutes mandated. The child’s mother told him that his daughter was in State custody, not the State’s child protective services worker.¹⁵² Even though he gave the State’s child protective services worker his cellular telephone number, his girlfriend’s cellular telephone number, and his address,¹⁵³ the court and the State used that address to notify him of only *one* of the *six* hearings in his daughter’s case.¹⁵⁴ For all of the other hearings, the court used an outdated address, even when it knew that mail to that address had been returned as undeliverable.¹⁵⁵

The statutory, regulatory, and procedural violations continued. When Mr. Rood spoke with the State’s child protective services worker to tell her that he wanted his daughter placed with him, she actively discouraged him, stating that the State would seek to reunify his daughter with her mother, not her father.¹⁵⁶ She never told him that the State would assess his home as a viable placement for his daughter.¹⁵⁷ She never told him that services were available to help him

¹⁵¹ *Id.* at 606.

¹⁵² *Id.* at 590.

¹⁵³ *Id.* at 591.

¹⁵⁴ *Id.* at 606. (This violated MICH. COMP. LAWS ANN. § 712A.19a(2) (West Supp. 2009)) (emphasis added).

¹⁵⁵ *Id.* (This violated MICH. COMP. LAWS ANN. § 712A.19(5)(c) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.19a(4)(c) (West Supp. 2009); MICH. COMP. LAWS ANN. § 712A.19b(2)(c) (West Supp. 2009); MICH. CT. R. 3.921(B)(1)(a),(d); MICH. CT. R. 3.921(B)(2)(c)).

¹⁵⁶ *Id.* at 590. (This violated a procedure in the Children’s Protective Services Manual, which the Michigan Supreme Court did not consult. The Children’s Protective Services Manual states: “**Note:** *Initial placement with a non-custodial parent, voluntary or court ordered, is not considered an out-of-home placement per 1973 PA 116 . . . and it is therefore the responsibility of CPS to monitor and provide services.*” STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES, CHILDREN’S PROTECTIVE SERVICES MANUAL (PSM) 715-4 at 1 (2009)) (some emphasis in original; some emphasis added). (Need hard copy)

¹⁵⁷ *Id.* at 607, n.49 (In fact, the foster care worker testified at the termination trial that she would have ordered a home study had she had earlier contact with Mr. Rood. This violated FOM 722.8a at 1).

to become a viable placement for his daughter.¹⁵⁸ She never told him that the State would create a case service plan and that he should be involved in that process.¹⁵⁹

At the preliminary hearing, which Mr. Rood did not attend because notice had been sent to an incorrect address, the trial court compounded the violations. The court did not order the State “to identify and consult with relatives”¹⁶⁰ The court did not expressly determine if Mr. Rood had been notified, or if anyone had attempted to notify him.¹⁶¹

In preparing the Initial Service Plan and Updated Service Plans, the foster care worker added to the growing list of violations. She never contacted Mr. Rood before preparing the initial plan,¹⁶² yet the plan stated that Mr. Rood was not willing to participate in the service plan.¹⁶³ Later, Updated Service Plans still indicated that Mr. Rood was not willing to participate.¹⁶⁴ The Kinship Resources and Placement section of the Updated Service Plans indicated that the State was not considering placing Rood’s daughter with a relative because “[t]here are no appropriate relatives.”¹⁶⁵ And even though the foster care worker had Mr. Rood’s correct address and telephone number, her only attempts to contact him were calls to the child’s mother to see if she knew where Mr. Rood was.¹⁶⁶

¹⁵⁸ *Id.* at 600 (This violated FOM 722-6 at 1-3).

¹⁵⁹ *Id.* at 606 (This violated MICH. COMP. LAWS ANN. § 722.954a(2) (West 2002), MICH. CT. R. 3.965(E), and FOM 722-6 at 1).

¹⁶⁰ *Id.* at 591 (This violated MICH. CT. R. 3.965(E)).

¹⁶¹ *Id.* at 606 (This violated MICH. CT. R. 3.965(B)(1)).

¹⁶² *Id.* at 591 (This violated 42 U.S.C. § 675(1)(B) (2006 & Supp. 2009), 42 U.S.C. § 671(a)(16) (2006), 45 C.F.R. §§ 1356.21(g)(1), (4) (2008), and FOM 722-6 at 1).

¹⁶³ *Id.* at 606-07.

¹⁶⁴ *Id.* at 607.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (This violated FOM 722-6 at 5-6).

The child protective services worker did offer parenting time to Mr. Rood.¹⁶⁷ She told him to contact the foster care worker to schedule it.¹⁶⁸ Mr. Rood did not take advantage of the offer, however, because he did not want to reenter his daughter's life only to have to leave it again once his daughter and her mother were reunited.¹⁶⁹

F. The Trial Court Erred When It Terminated Mr. Rood's Parental Rights, And The Error Affected Mr. Rood's Substantial Rights.

Perhaps the worst violation of statutes, court rules, regulations, and procedures came when nobody ever notified Mr. Rood that his parental rights were at stake in a case against the child's mother.¹⁷⁰ The court terminated Mr. Rood's rights under Mich. Comp. Laws Ann. § 712A.19b(3)(g)¹⁷¹ and Mich. Comp. Laws Ann. § 712A.19b(3)(j),¹⁷² in part because Mr. Rood had not participated in services or in any of the proceedings (save one) before the termination of his parental rights trial.¹⁷³ And when Mr. Rood's counsel asked to adjourn the termination trial so that Mr. Rood could begin participating in services, the trial court denied his request.¹⁷⁴

Because Mr. Rood had been denied the opportunity to participate in services, the trial court did not have all of the information needed to support its decision that the State had proven both grounds for termination of his rights by clear and convincing evidence.¹⁷⁵ Stated another way, the court did not have enough information to conclude, without speculating, that Mr. Rood

¹⁶⁷ *Id.* at 590.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 590-91.

¹⁷⁰ *Id.* at 609.

¹⁷¹ MICH. COMP. LAWS ANN. § 712A.19b(3)(g) (West 2002) ("The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.").

¹⁷² § 712A.19b(3)(j) ("There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.").

¹⁷³ *Rood*, 763 N.W.2d at 609.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 610.

would not be “able to provide proper care and custody within a reasonable time considering the child's age.”¹⁷⁶ And because the court had virtually no information about Mr. Rood, information which it would have had if the State had followed the statutes, regulations, court rules, and its internal procedures, the court could only speculate about whether Mr. Rood would present a danger to his daughter if she were to be placed in his custody.¹⁷⁷

As the Supreme Court has similarly noted, even if Mr. Rood had chosen not to participate in the proceeding against the child’s mother, he did not give up his constitutional parental rights¹⁷⁸ to his child in a later proceeding against him to terminate his rights.¹⁷⁹ Mr. Rood deserved the opportunity to meaningfully participate in services and to participate in proceedings against him before a court terminated his parental rights.¹⁸⁰

V. The Court’s Additional Concerns Conflict With the Codified Law and Procedures Governing Child Protective Proceedings and Will Result in Longer Stays in Foster Care.

After the court determined that Mr. Rood had not received the notices and services to which he was statutorily entitled to, the lead opinion notes its additional concerns regarding uniting a child with a non-custodial parent.¹⁸¹ The opinion specifically states that the court’s decision should not be read to say that the State cannot focus its initial reunification efforts on the custodial parent, especially because, according to the court, the statute mandates that “a child

¹⁷⁶ § 712A.19b(3)(g).

¹⁷⁷ § 712A.19b(3)(j) (“There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.”); *see Rood*, 763 N.W.2d at 609-10, 611 n. 55.

¹⁷⁸ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹⁷⁹ *Rood*, 763 N.W.2d at 609.

¹⁸⁰ *Id.* at 612.

¹⁸¹ *Id.* at 612-13 (This portion of the opinion received only three votes).

be placed ‘preferably in his or her *own* home.’”¹⁸² The court stated that “[r]eunification efforts may be initially directed at a custodial parent when appropriate, consistent with the statutory preferences for a child’s ‘own home.’ But if these efforts are unfruitful, the state must also make reasonable efforts to reunify the child with the noncustodial parent.”¹⁸³

This interpretation of the court’s opinion conflicts with the codified law and procedures that the court cited to support its decision that Mr. Rood’s rights were erroneously terminated. In addition, allowing the State to focus all of its reunification efforts on the custodial parent until the custodial parent fails to comply with the service plan will result in longer stays in foster care for Michigan’s children.

- A. *Filing a petition to terminate both parents’ rights to A. would not have been mandatory if the State had not focused all of its reunification efforts on the custodial parent.*

Initially focusing reunification efforts on the custodial parent conflicts with the procedures in the Children’s Protective Services Manual (which the court did not consult). As a threshold matter, the Children’s Protective Services Manual states: **Note:** *Initial placement with a non-custodial parent, voluntary or court ordered, is not considered an out-of-home placement per 1973 PA 116 . . . and it is therefore the responsibility of CPS to monitor and provide services.*¹⁸⁴ In other words, a child has not been “removed” from his or her “own home” if the child is placed with his or her non-custodial parent. This classification is extremely important because if the child has not been removed from home, the statutes, court rules, and procedures that govern out-of-home placements do not apply.

¹⁸² *Id.* at 612 (citing MICH. COMP. LAWS ANN. § 712A.1(3) (West 2002)).

¹⁸³ *Id.* at 613.

¹⁸⁴ STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES, CHILDREN’S PROTECTIVE SERVICES MANUAL [cited as PSM], 715-4 at 1, (September 1, 2009) (some emphasis in original, some emphasis added), available at <http://www.mfia.state.mi.us/olmweb/ex/psm/psm.pdf>.

For example, the court must hold a permanency planning hearing if the child has been in an out-of-home placement for 12 months.¹⁸⁵ And if the child has been in an out-of-home placement (foster care) for 15 out of the last 22 months, the court must order the state to initiate a termination of parental rights proceeding, unless the State has not provided the necessary services.¹⁸⁶ So in Mr. Rood’s case, the child protective services worker who told Mr. Rood that the State would reunify the child with her mother ignored the State’s own mandate and she should have immediately investigated Mr. Rood as a placement. Had the State placed A. with her father, the CPS worker would have been responsible for providing services to both Mr. Rood and to A.’s mother.¹⁸⁷ Had the state placed A. with her father, A. would not have been in foster care, no permanency planning hearing would have been necessary, and the court would not have been mandated to order the State to file a petition to terminate either parent’s rights to A.

B. The court’s “additional concerns” renders the codified law that it held controls child protective proceedings meaningless.

1. “Own home” does not require the State to first concentrate its reunification efforts on the custodial parent.

The lead opinion’s interpretation of its opinion takes the phrase “own home” out of context and results in rendering all the codified law and procedures it cited meaningless. The statute that court cited, Mich. Comp. Laws Ann. § 712A.1(3), provides in full

This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction *receives the care, guidance, and control, preferably in his or her own home*, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile

¹⁸⁵ MICH. COMP. LAWS ANN. § 712A.19a(1) (West 2002); MICH. CT. R. 3.976(B)(2).

¹⁸⁶ § 712A.19a(6)(c).

¹⁸⁷ See *In re A.P. & B.J.*, No. 286431 (Mich. Ct. App. May 5, 2009) for an example of how the State provides services to both the custodial and the noncustodial parent.

shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.¹⁸⁸

Taken in context, the preference for the child’s own home reflects later statutory mandates where removal from the home is the last resort. Michigan statutes and court rules consistently contemplate that children and their families will receive services in their own homes.¹⁸⁹ The court rules provide for a preliminary inquiry when a petition is filed that does not ask for removal of the child so the child remains in his or her own home.¹⁹⁰ And if the State removes a child from his or her home, the State must, in a written report, explain the reasonable efforts the State made to prevent the child’s removal.¹⁹¹ In addition, the Children’s Foster Care Manual requires the Initial Service Plan to contain “[d]etails of the reasonable efforts that were made by CPS to prevent removal of the child(ren) from his/her home or the reasons why reasonable efforts were not provided.”¹⁹²

2. The courts “additional concerns” conflict with the State’s procedures outlined in the Children’s Foster Care Manual and with the errors that the court held the State made in Mr. Rood’s case.

The court’s statement that the State may focus its initial reunification efforts on only the custodial parent conflicts with the Children’s Foster Care Manual, which four justices agreed that

¹⁸⁸ § 712A.1(3) (emphasis added).

¹⁸⁹ See, e.g., MICH. CT. R. 3.961(B)(6) (Child protective proceedings are started with a petition. If the petitioner asks the court to authorize removal, it must specifically ask for that remedy in the petition).

¹⁹⁰ MICH. CT. R. 3.962.

¹⁹¹ See, e.g., § 712A.18f(1) (report must detail services offered and if no services offered, must explain why); MICH. CT. R. 3.963(B)(1) (court may order that a child be taken into custody, and if it does, it must “make a judicial determination that reasonable efforts to prevent removal of the child have been made or are not required.”); see also MICH. CT. R. 3.965(D)(1) (if a court determines that a child should be placed “with someone other than the custodial parent . . .” the court must also make a reasonable efforts to prevent removal determination); *In re Rood*, 763 N.W.2d 587, 600 (Mich. 2009) (“The agency must report what efforts were made and what services were provided, if any, to prevent removal or to rectify the conditions that caused removal.”).

¹⁹² STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES, CHILDREN’S FOSTER CARE MANUAL [cited as FOM], 722-8 at 3, (September 1, 2009), available at <http://www.mfia.state.mi.us/olmweb/ex/fom/fom.pdf>. (a copy of an initial service plan and what it must contain is available at <http://www.mfia.state.mi.us/olmweb/ex/rff/65.pdf>).

together with federal and state statutes, court rules, and regulations provides at least the minimum due process protections for a parent.¹⁹³ In addition, that focus on the custodial parent conflicts with the errors that the court held the State to have made with Mr. Rood. The court’s “additional concerns” in the lead opinion would, had they been agreed to by four justices, have resulted in an internally inconsistent opinion.

For example, the court, with at least four justices agreeing, stated that when a child is removed from a parent’s home, both parents are entitled to notice of any proceedings.¹⁹⁴ Moreover, the Michigan Supreme Court noted that at the preliminary hearing, the probate or family court must determine if a parent has been notified. If that parent is not present, the family court can adjourn the hearing until that parent can be present.¹⁹⁵ If only one parent is present at the preliminary hearing, the court must ask that parent about the other parent’s identity and whereabouts.¹⁹⁶

If the child is not initially placed with the non-custodial parent, the foster care worker must attempt to identify and locate the absent parent.¹⁹⁷ Also, the foster care workers must engage the family, including both parents, in developing a service plan.¹⁹⁸ The service plan must outline what the parents must do to reunify with their children and what the DHS must do to support the parent’s goals.¹⁹⁹ The foster care workers must then meet with each parent in that

¹⁹³ *Rood*, 793 N.W.2d at 598; *id.* at 615 (Cavanagh, J., concurring in part).

¹⁹⁴ *Id.* at 598-99 (citing MICH. COMP. LAWS ANN. § 712A.19(5)(c) (West 2009); MICH. COMP. LAWS ANN. § 712A.19a(4)(c) (West 2002); MICH. COMP. LAWS ANN. § 712A.19b(2)(c) (West 2002); MICH. CT. R. 3.921(B)(1)(a),(d), (2)(c), (3)).

¹⁹⁵ *Id.* at 599 (citing MICH. CT. R. 3.965(B)(1)); *See* MICH. CT. R. 9.303(A)(18) (A parent includes both the mother and father).

¹⁹⁶ *Id.* (citing MICH. CT. R. 3.965(B)(13)).

¹⁹⁷ *Id.* at 601 (citing FOM 722-6 at 2).

¹⁹⁸ *Id.* at 600 (citing FOM 722-6 at 1).

¹⁹⁹ *Id.* at 601 (citing FOM 722-6 at 2).

parent's home, and the worker must keep in regular phone contact with the parents.²⁰⁰ In addition, the State must evaluate the strengths, weaknesses, and needs of each household with a legal right to the child unless either the State cannot locate a parent or the parent does not want to participate in services.²⁰¹

By saying that the State, in effect, should focus its initial efforts to reunify on the custodial parent, the court did not take into account the court rules, statutes, and State procedures that say otherwise. Although dicta, judges and advocates should be mindful of these flaws.

C. The court's initial focus on the custodial parent will result in longer stays in foster care.

Making the initial reunification efforts with only the custodial parent and then shifting those efforts to the non-custodial parent when the custodial parent has failed to progress under the case services plan will result in children being kept in foster care longer. The 2008 amendments to the Probate Code contemplate that the State must no longer automatically file a petition to terminate parental rights when the child has spent the last 15 of 22 months in foster care.²⁰² Thus, the court is not required to order the State to start termination of parental rights proceedings if reasonable efforts were required and “[t]he state has not provided the child's family . . . with the services the state considers necessary for the child's safe return to his or her home” within the time period listed in the case service plan.²⁰³

If the court waits until the custodial parent has failed to complete and benefit from the services ordered, the child may have already been in foster care, away from both parents, for a

²⁰⁰ *Id.* (citing FOM 722-6 at 5-6).

²⁰¹ *Id.* (citing FOM 722-8a at 1).

²⁰² MICH. COMP. LAWS ANN. § 712A.19a(6)(c) (West Supp. 2009) (provides that if the child has been in foster care for 15 out of the last 22 months, the court must order the State to initiate proceedings to terminate a parent's rights).

²⁰³ *Id.*

year.²⁰⁴ If it is only then that it is appropriate to turn to the non-custodial parent to determine if that parent is an appropriate placement for the child, the non-custodial parent would get another year or so to comply with and benefit from the services.

The codified law and procedures themselves provide a sensible solution to the problem of children who are removed from one-parent homes. Neither the codified law nor the State's procedures favor one parent over the other. Thus, consistent with the statutes and procedures, the State should involve the non-custodial parent in services and in a case service plan as soon as possible.

Participation in a case service plan can be voluntary;²⁰⁵ therefore, the State should also immediately assess the non-custodial parent's home as an appropriate placement for the child. If that home is not yet appropriate, the State can provide services to both parents simultaneously to assure permanency for the child. If the non-custodial parent is successful in completing the case service plan, then involving the non-custodial parent from the start will ultimately protect the child by preventing long stays in foster care.

The child is further protected from the uncertainty of no permanent placement if neither parent completes and benefits from the case service plan. If neither parent successfully completes the case service plan, the statute that requires the court to order the State to institute a termination of parental rights proceeding if the child has been in foster care for 12 of the last 15 months would apply. The court could order the State to institute proceedings against both

²⁰⁴ See § 712A.19a(1) (the permanency planning hearing must be held no later than 12 months after the child was removed from his or her home).

²⁰⁵ MICH. CT. R. 3.965(E)(2) ("If placement is ordered, the court must, orally or in writing, inform the parties . . . (2) that participation in the initial service plan is voluntary unless otherwise ordered by the court . . .").

parents. At that point, the State and the court would have *all* of the information that they would need to decide if the statutory grounds for termination have been met.

In sum, the court's concern that its opinion could be misread is misplaced. The opinion must be read recognizing that four justices agreed that the statutes, court rules, regulations, and state procedures govern the procedure in child protective proceedings. Until it stated its additional concerns in the lead opinion, the court had made it very clear that the State must involve the non-custodial parent from the very start of a child protective proceeding. Any other reading would render the statutes, court rules, and procedures that mandate locating and contacting a non-custodial parent meaningless.

Furthermore, involving the non-custodial parent from the start alleviates concerns about children spending too much time in temporary placement. And it alleviates the concerns that the court in *Rood* so plainly expressed—the court and the State would have all of the information they need to determine if the statutory grounds for termination of parental rights have been proven by clear and convincing evidence.

Finally, while it could be argued that involving the non-custodial parent in the proceedings from the very beginning creates competition between the parents for placement of their child, the child is the person who ultimately benefits from that competition. After all, isn't the goal safe and permanent placements for children? How can a child lose when the child has two qualified parents with whom to live?²⁰⁶

VI. The Next Steps For Children's And Parent's Advocates

²⁰⁶ See *In re A.P. & B.J.*, No. 286431, slip op. at 12 (Mich. Ct. App. May 5, 2009) (If both parents successfully complete the case service plan, any former orders entered under the Child Custody Act would again take effect); See *id.* at 10 (Orders entered under the Child Custody Act are temporarily superseded by orders entered under the Juvenile Code when a child has been adjudicated a ward of the court).

The court's extensive analysis of codified law and the State's procedures should not be limited to only those situations in which a non-custodial parent seeks custody of a child who has been removed from the custodial parent. If the federal statutes and regulations, the state statutes and court rules, and the State's own procedures provide the minimum due process protections for the parents in a child protective proceeding, those procedures should apply in every child protective proceeding. They should not apply only in proceedings in which a child has been removed from a parent. Furthermore, since the court emphasized the importance of complying with the statutes, regulations, court rules, and procedures, even those the court did not specifically mention will apply in all child protective proceedings. Child protective service workers and foster care workers should abide by them, courts should enforce them, and advocates should bring violations to the courts' attention.

Children's advocates and parents' advocates should already have familiarized themselves with state and federal law in child protective proceedings. Now it is even more important for those advocates to familiarize themselves with the Children's Protective Services Manual (PSM)²⁰⁷ and with the Children's Foster Care Manual (FOM).²⁰⁸ These two manuals contain the State's interpretation of the statutes and rules applicable in child protective proceedings and instruct child protective service workers and children's foster care workers in how to comply with the statutes.

Children's advocates and parents' advocates alike should refer to these manuals to ensure that child protective services and foster care workers are fulfilling their responsibilities—to

²⁰⁷ STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES, CHILDREN'S PROTECTIVE SERVICES MANUAL (2009), available at <http://www.mfia.state.mi.us/olmweb/ex/psm/psm.pdf>, last visited May 3, 2009.

²⁰⁸ *Id.*

children and parents—during the course of the child protective proceedings. Advocates should not wait until the trial to terminate parental rights to argue a failure to make reasonable efforts.. In addition to advising their clients to participate in the case service planning and execution, advocates should monitor their clients’ and the State’s progress toward those plans’ goals.

Child Protective Service (CPS) workers are responsible for making reasonable efforts to keep children safe in their homes.²⁰⁹ If a preponderance of the evidence shows that the child was abused or neglected, CPS workers must provide services to the family to prevent that child from being removed from the family if the child can be protected in his or her own home.²¹⁰ But “protective services [are] primarily a crisis intervention service and cannot effectively provide long-term treatment.”²¹¹

The Child Protective Services Manual contains chapters on, among other things, intake (or investigating complaints),²¹² post-investigative services (which includes information on involving families in services in their homes),²¹³ and removal of children from their homes.²¹⁴ For advocates whose clients are working with CPS in their homes, these chapters provide the State’s view of what their employees should be doing at each stage of the process. As such, they provide the advocate with a guide to helping their clients navigate the process.

As the process relates to reasonable efforts to keep children in their homes, the Children’s Protective Services Manual provides a list of examples of what reasonable efforts to prevent

²⁰⁹ PSM 714-2 at 1; 715-2 at 1-2.

²¹⁰ PSM 715-2 at 2 (noting that CPS workers must document the services they provided to prevent the child’s removal from home).

²¹¹ PSM 714-3 at 1.

²¹² See PSM 711-6; PSM 712-1 to 712-9; PSM 713-1 to 713-13.

²¹³ See PSM 714-1 to 714-4.

²¹⁴ See PSM 715-2.

removal includes.²¹⁵ Reasonable efforts to prevent removal may include: “24-hour emergency caretaker, homemaker, day care, crisis or family counseling, emergency shelter, emergency financial assistance, respite care, parent aid services, home-based family services, self-help groups, mental health services, drug and alcohol abuse counseling, and vocational training.”²¹⁶

If a child must be removed from an unsafe home, the State’s foster care workers are responsible for that child and family.²¹⁷ Permanent placement is the ultimate goal for all children removed from their homes.²¹⁸ Permanent placement may be achieved through reunification with the family, a guardianship, an adoption, “placement with a fit and willing relative, [or some other] planned, permanent living arrangement.”²¹⁹

Like the Children’s Protective Services Manual, the Children’s Foster Care Manual specifically details the foster care worker’s responsibilities to the child and to his or her parents. For example, a foster care worker must develop a service plan with a permanent placement in mind and provide casework services to help resolve the conditions that brought the child into foster care.²²⁰ In developing a case services plan, the foster care workers must seek input from the child’s parents – both of them – and must seek input from the child’s extended family and relative network.²²¹ The Children’s Foster Care Manual provides detailed instructions on how to develop the plan.²²²

²¹⁵ PSM 714-2 at 1.

²¹⁶ *Id.*

²¹⁷ PSM 715-4 at 1.

²¹⁸ FOM 722-7 at 1.

²¹⁹ *Id.*

²²⁰ FOM 722-6 at 1.

²²¹ *Id.* at 1, 3.

²²² See PSM 722-6 (describing the development of the service plan; See FOM 722-8 (describing the development of the initial plan) (a sample copy of a Parent-Agency Treatment Plan and Service Agreement is available at <http://www.mfia.state.mi.us/olmweb/ex/rff/67.pdf>).

Also, the Manual provides detailed instructions to foster care workers on the number of contacts that they must make with parents while the case is pending.²²³ For example, during the first month of the case, the foster care worker must make two face-to-face contacts with each parent, one of which must occur in the home.²²⁴ During that month, if the parent has a telephone, the worker must also make two phone contacts.²²⁵

The Manual also acknowledges that the court must find that reasonable efforts were made for the case to be eligible for Title IV-E funding.²²⁶ The foster care worker is responsible for reviewing court orders to ensure that the court has made a reasonable efforts finding and to ensure that the court included the evidence it relied on to make the reasonable efforts finding.²²⁷

The reasonable efforts that the State makes to reunite the child and family are the services that the foster care worker provides or arranges, which may include:

- Search for absent parent or other relatives.
- 24 hour emergency caretaker.
- Homemaker.
- Day care.
- Crisis or family counseling.
- Emergency shelter.
- Emergency financial assistance.
- Respite care.
- Families First of Michigan.

²²³FOM 722-6 at 5.

²²⁴*Id.* at 7.

²²⁵*Id.*

²²⁶*Id.* at 15.

²²⁷*Id.* at 16.

- Home-based family services.
- Self-help groups.
- Parenting classes.
- Services to unmarried parents.
- Mental health services.
- Drug and alcohol abuse counseling.
- Vocational/job training reports.²²⁸

This brief overview of the Children’s Protective Services Manual and the Children’s Foster Care Manual shows why advocates must become familiar with them. No matter whom the advocate represents, failing to do so can be detrimental to the child and his or her family.

VII. Conclusion

The court’s decision in *Rood*, although not perfect, has clarified Michigan’s reasonable efforts requirements. The standard the court set—comply with federal statutes and regulations, comply with state statutes and court rules, and comply with the procedures set out in the Children’s Protective Services Manual and the Children’s Foster Care Manual—now provides reference sources for advocates and judges to determine if the State has made the required reasonable efforts to reunite children and families when the child has come into the foster care system, or to prevent removal from home if the child can be protected at home. Because the statutes, court rules, and state procedure manuals tell child protective services workers and foster care workers what their duties to the child and to the family are, those workers now know that they must carefully follow them when making their efforts for the child and his or her parents.

²²⁸ *Id.* at 16-17.

Knowledge of everyone's duties will help all involved in child protective proceedings in working together to further the well-being and safety of the children involved. Accordingly, child protective services workers, foster care workers, judges, and attorneys should become keenly aware of everyone's responsibilities under federal law, state law, and state procedures. By complying with these procedures, as the court in *Rood* said must happen, children will be able to live in safe and permanent environments, and parents will know that the State did all that it was required to do before asking to terminate a parent's rights to his or her child.

FLOWCHART OF CHILD PROTECTIVE PROCEEDINGS TIME FRAMES

Child Protective Services Investigation

http://www.michigan.gov/documents/MCWLflowchart_34807_7.pdf

(References are to Chapters in the [Michigan Child Welfare Law Manual](#))

Additional references to reasonable efforts have been added.

Evelyn K. Calogero

Preliminary Hearing - [CHAPTER 6](#)

Conduct within 24 hours if child in custody, excluding Sundays and holidays unless adjourned for good cause.

See MCR 3.965 (A)(1).

DHS must make reasonable efforts to prevent removal. Provide services or say why reasonable efforts should not have been made. **PSM 715-2 at 1-2, PSM 713-9 at 7.**



Pretrial/Pleas Proceeding - [CHAPTER 7](#)

Timing at discretion of court.

If the child is placed in foster care, responsibility for services shifts from Child Protective Services to Foster Care staff. **PSM 715-4 at 1.**



Trial – [CHAPTER 8](#)

If child IS in placement, must commence as soon as possible, but no later than 63 days after the child is placed by court unless the trial is postponed. **See MCR 3.972(A).**

If child is NOT in placement, must be held within 6 months after the filing of the petition unless adjourned for good cause. **See MCR 3.972(A).**



Initial Dispositional Hearing - [CHAPTER 9](#)

Within 35 days of trial, except for good cause. **See MCR 3.973.**

- DHS must provide an initial service plan before the court may enter an order of disposition. **MCL 712A.13a(B)(a), MCL 712A.18f(2) and (4), and MCR 3.965(E)(1)**
- The initial service plan must report the efforts the State made or services the State provided to prevent the child's removal from home, or it must detail the services the State provided to rectify conditions that caused the child's removal. **MCL 712A.18f(1) and MCR 3.965(D)(1)**
- The initial service plan must also detail efforts *to be made* and services *to be provided* to facilitate the child's return home or to facilitate some other permanent placement, and the plan must provide a parenting time schedule. **MCL 712A.18f(3) and (4)** (emphasis added).
- The case service plan must outline what the parents must do to reunify the family **and what the State must do** to support the parents' goals. **FOM 722-6 at 5** (emphasis added)



Dispositional Review Hearing – [CHAPTER 10](#)

Child At Home

FIRST YEAR

The progress of the child must be reviewed no later than 182 days from the date a petition is filed, and no later than every 91 days after that for the first year that the child is under the jurisdiction of the court.

See MCL 712A.19(2).

AFTER FIRST YEAR

The progress of the child must be reviewed no later than 182 days from each preceding review until case is dismissed. **See MCL 712A.19(2).**

Child Removed From Home

FIRST YEAR

The progress of the child must be reviewed no later than 182 days after the child removal from his or her home, and no later than every 91 days after that for the first year. **See MCL 712A.19(3).**

AFTER FIRST YEAR

The progress of the child must be reviewed no later than 182 days from the immediately preceding review hearing before the end of that first year, and no later than every 182 days from each preceding review hearing until the case is dismissed. **See MCL 712A.19(3).**

Child Is Permanently Placed With a Relative or Child Is In A Permanent Foster Family Agreement

The progress of the child must be reviewed no later than 182 days after the child has been removed from his or her home, and no later than every 182 days after so long as the child is under the court's jurisdiction.

See MCL 712A.19(4).

At the review hearing the Court must review a parent's compliance with the plan and progress made toward reunification. **MCL 712A.19(6) and (7)**
Because the case service plan must outline the State's responsibilities, argue that the court should also review the State's compliance with the plan. **FOM 722-6 at 5**



Permanency Planning Hearing – [CHAPTER 10](#)

FIRST YEAR

Within 12 months from the date that the child was originally removed from the home. **See MCL 712A.19a(1).**

AFTER FIRST YEAR

Within 12 months of the preceding permanency planning hearing. **See MCL 712A.19a(1).**

At the permanency planning hearing, the court must review the progress the parties have made toward returning child home, or the State must show why the child should not be returned home. **MCL 712A.19a(3).**

Again, because the case service plan must describe what the State's responsibilities under the plan are, suggest that the court review the State's progress as well. **FOM 722-6 at 5**



Termination of Parental Rights – [CHAPTER 11](#)

Commence no later than 42 days of petition; must conclude within 70 days. **See MCR 3.977, MCL 712A.19b(1).**



Post Termination Review – [CHAPTER 10](#)

FIRST YEAR

Must be held no later than 91 days after the termination of parental rights, and no later than 91 days after that hearing for the first year following termination of parental rights. **See MCL 712A.19c(1).**

AFTER FIRST YEAR

Must be held no later than 182 days from the immediately preceding review hearing before the end of the first year, and no later than every 182 days from each preceding review hearing until the case is dismissed.

See MCL 712A.19c(1).

DHS Manuals and Guides

Main page for manuals and guides:

http://www.michigan.gov/dhs/0,1607,7-124-5458_7700---,00.html

Site includes:

Michigan Child Welfare Law Manual 11/9/2007 revision

Main page for policy and procedure manuals:

<http://www.mfia.state.mi.us/olmweb/ex/html/>

Site includes:

Adoption Services Manual (ADM) Updated 9/1/2009

<http://www.mfia.state.mi.us/olmweb/ex/adm/adm.pdf>

Children's Foster Care Services Manual (FOM) Updated 2/1/2010

<http://www.mfia.state.mi.us/olmweb/ex/fom/fom.pdf>

Children's Protective Services Manual (PSM) Updated 2/1/2009

<http://www.mfia.state.mi.us/olmweb/ex/PSM/PSM.pdf>

Children's Guardianship Manual (GDM) Updated 1/1/2010

<http://www.mfia.state.mi.us/olmweb/ex/gdm/gdm.pdf>

Adoption Subsidy Manual (AAM) Updated 1/1/2010

<http://www.mfia.state.mi.us/olmweb/ex/aam/aam.pdf>

SCAO Training and Development Material

contains handouts and agendas for trainings held within the last year

Main page for Training and Development Material

<http://courts.michigan.gov/scao/services/CWS/TrainingDevelopment.htm>

Title IV-E Overview

<http://courts.michigan.gov/scao/services/CWS/Materials/IV-ETabB-ContraryToWelfareAndReasonableEffortFindings.pdf>

Sample Court Orders – Reasonable Efforts and Contrary to the Welfare of the Child

<http://courts.michigan.gov/scao/services/CWS/Materials/IV-ETabC-CourtOrders.pdf>

Child Welfare Services Publications

<http://courts.michigan.gov/scao/services/CWS/CWSPublications.htm>

Publications available include:

- [Absent Parent Protocol](#) (1/08)
- [Achieving Permanency in Child Protection Proceedings](#)
- [Addressing the Educational Needs of Children in Foster Care in Michigan: Resources and Best Practices](#) (2/07)
- [Conducting Effective Post-Termination Review Hearings](#) (7/08)
- [Lawyer-Guardian Ad Litem Protocol](#)
- [Michigan Child Welfare Legal Resource Guide](#) (8/06)
- [Michigan Substance Abuse/Child Welfare Protocol for Screening and Assessment for Family Engagement, Retention, and Recovery \(SAFERR\)](#) (12/09)
- [Parents' Attorney Protocol](#) (7/08)

- [Reports](#)