Michigan Supreme Court
State Court Administrative Office
Child Welfare Services
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-8036

Daniel J. Wright
Director

MEMORANDUM

DATE: July 17, 2008

TO: Family Division Judges

cc: Chief Circuit Judges
Circuit Court Administrators
Family Division Administrators

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2008-05
New Foster Care / Permanency Planning Laws (2008 Public Acts 199-203)

The Governor recently signed into law Senate Bills (SB) 668-672, a bill package amending several sections of the Juvenile Code regarding court procedures in child protection cases. Enactment of this legislation requires several changes to court practice. A summary of the new laws, and guidance in implementing the necessary reforms, follows.

If you have any questions, or would like additional information, please contact Kelly Howard at howardk@courts.mi.gov or (517) 373-8671.

Background

On July 11, 2008, the Governor signed SB 668 – 672 into law as Public Acts 199-203, with immediate effect. A summary of each of the Acts follows. The State Court Administrative Office (SCAO) is in the process of updating court forms and court rules to accommodate the new laws, with a distribution target date of December 2008. SCAO's Child Welfare Services Division will offer training on these new laws. Additional information will be forthcoming.

PA 199 of 2008

PA 199 of 2008, introduced as SB 668, amends MCL 712a.19b(4) by eliminating the automatic suspension of parenting time when a termination of parental rights petition is filed, and section 19b(5) by requiring the court to make a finding that termination of parental rights is in the child's best interests.

Rescinds the Automatic Suspension of Parenting Time when a Termination Petition is Filed.

Before the amendment to this law, parenting time was suspended by operation of law upon the filing of a termination petition. This required a parent seeking parenting time to file a petition with the court. PA 199 of 2008 eliminates the automatic suspension of parenting time when a termination petition is filed, and instead allows the court to determine parenting time rights when a termination petition is filed.

When considering whether to suspend parenting time, the court should consider the type of abuse/neglect that led to the agency filing a termination petition, the safety of the child if supervised or unsupervised parenting time is ordered, and any other issues the court considers relevant to the case.

Requires the Court to Find that Terminating Parental Rights is in the Child's Best Interests.

Before the amendment to this law, the court was required to terminate parental rights if there were grounds for termination, unless the court made a finding that termination was clearly not in the child's best interests. PA 199 of 2008 requires the court to find, in addition to grounds for termination, that termination of parental rights is in the child's best interests. SCAO will develop guidelines to help courts implement this provision.

PA 200 of 2008

PA 200 of 2008, introduced as SB 669, amends the permanency planning hearing process in MCL 712a.19a. The court must conduct permanency planning hearings periodically to review the status of the child and the progress being made toward the child's return home, or to show why the child should not be placed in the permanent custody of the court. The new law (1) requires the court to obtain the child's views of his or her permanency plan, (2) requires the court to consider out-of-state placement options, (3) aligns Michigan termination filing requirements with the federal

Adoption and Safe Families Act, and (4) allows the court to appoint a guardian for a child in lieu of terminating parental rights.

Court must Obtain the Child's Views Regarding the Permanency Plan

The federal Child and Family Services Improvement Act of 2006 [Public Law 109-288][1] requires courts conducting permanency planning hearings to consult with the child, in an age-appropriate manner, regarding the child's permanency plan. Following enactment of the federal law, the Department of Health and Human Services (DHHS) issued a policy bulletin to clarify that the law does not require a child to attend each permanency planning hearing and provide the court with his or her views of the permanency plan. Rather, DHHS declared that any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. One example is to allow the child's lawyer guardian ad litem (LGAL) to express the child's views to the court.

PA 200 of 2008 adopts the federal law by requiring the court to obtain the child's views regarding his or her permanency plan, in a manner that is appropriate to the child's age. SCAO will publish recommended guidelines to the courts to help implement this new requirement.

Court must Consider Out-Of-State Placement Options at Permanency Planning Hearing

The federal Safe and Timely Interstate Placement Act of 2006 [Public Law 109-288][2] requires, for purposes of Title IV-E eligibility, courts to consider interstate placement options at permanency planning hearings, and, if a child is already in an out-of-state placement, to determine if the placement continues to be appropriate and in the child's best interests. The court must also ensure that the agency is providing appropriate services to assist a child who will transition from foster care to independent living.

PA 200 of 2008 mirrors these federal requirements and complies with federal Title IV-E requirements.

Amends Timeframe for Filing a Termination Petition

Before the amendment to this law, courts were required to order the agency to initiate a termination petition, within 42 days, if the court determined at a permanency planning hearing that the child should not be returned home, unless the court found that initiating the termination petition was clearly not in the child's best interests. As courts are required to

[1] 42 USC 675(5)(c): "Procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child."

[2] 45 USC 675(5)(C) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ239.109.pdf

hold permanency planning hearings every 12 months, many termination petitions were ordered to be initiated after this hearing, which became known as the "12 month rule".

The new law eliminates the "12 month rule" and adopts the timelines in the federal Adoption and Safe Families Act, which *requires* the court to order the agency to initiate a termination petition if the child has been in foster care under the responsibility of the state for 15 out of the most recent 22 months, with the following exceptions:

a. The child is being cared for by relatives.
b. The case service plan documents a compelling reason[3] for determining that filing a termination petition would not be in the child's best interests.
c. The 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 home, if reasonable efforts are required.

Additionally, the law allows the court to order the agency to initiate a termination petition if the court determines at a permanency planning hearing that the child should not be returned home.

The new law strikes the requirement that DHS file a petition *within 42 days*; however, SCAO recommends that courts set time guidelines for DHS to file the termination petition.

Allows the Court to Appoint a Guardian Instead of Terminating Parental Rights

At a permanency planning hearing, the court may determine that neither termination of parental rights nor returning the child home is appropriate, and may order an "alternative placement option." Alternative placement options include (a) foster care for a limited period of time stated by the court, or (b) foster care on a long-term basis, based on compelling reasons. PA 200 of 2008 added a third alternative placement option, appointing a guardian for the child, if the court determines it is in the child's best interests.

The Act grants the guardian the same powers and duties of a guardian appointed under the Estates and Protected Individuals Code (EPIC), MCL 700.5215. The distinction is that a guardian appointed under this Act will be under the jurisdiction of the family division of the circuit court, while EPIC guardians are subject to the jurisdiction of the probate court. A typical EPIC guardianship is short term, due to a temporary inability of a parent to care for a child. A family division guardianship is intended to be the permanent placement for a child who cannot be returned home.

The law prescribes the following procedures for a guardian's appointment under this section.

[3] Compelling reasons include, but are not limited to, (a) adoption is not the appropriate permanency goal for the child, (b) no grounds to file a petition to terminate parental rights exist, (c) the child is an unaccompanied refugee minor as defined in 45 CRF 400.11, or (d) there are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.

Appointing a Guardian

a. When the child is placed with the guardian or proposed guardian, the court must order the Department of Human Services (DHS) to do all of the following:

   1. Perform an investigation and file a written report of the investigation for a review hearing.
   2. Perform a criminal record check within 7 days.
   3. Perform a central registry clearance within 7 days.
   4. Perform a home study and file a copy with the court within 30 days, unless a home study was conducted within the preceding year. If a home study was conducted within the preceding year, a copy of that home study must be submitted to the court.

b. The court must review the guardianship annually, and may conduct more frequent reviews as it considers necessary. The court may order DHS or a court employee to conduct an investigation and file a written report to the court to assist with a review.

c. The court's jurisdiction over the child under section 2(b) of the Juvenile Code is terminated when the court appoints a guardian; however, the court's jurisdiction over the guardianship continues until released by court order.[4]

   The law does not require the annual review to be a court hearing. The court could require the guardian to submit a report to the court, which would satisfy the review requirement. Based upon the information in the report, the court could determine whether a hearing is necessary. The court should require the guardian to report certain information to allow the court to properly review the guardianship. SCAO recommends that courts require at least all of the following information in a guardianship report:

   1. The guardian and child's current address and phone number.
   2. The guardian's willingness and ability to continue to provide for the child's welfare.
   3. Information about the child's education, including the name of the child's school and current progress, including a copy of the child's most recent report card, if the child is of sufficient age to attend school.
   4. Information about the child's physical and emotional health, specifically if the child is having any medical/dental problems of concern and if the child has experienced any traumatic event during the past year.
   5. Information about other members of the guardian's household.

[4] This allows DHS to close its foster care case, while allowing the court to maintain oversight over the guardianship.

Revoking a Guardianship

a. The child's LGAL or DHS may petition the court to terminate a guardianship. Upon petition, or upon its own motion, the court may hold a hearing to determine whether to revoke the guardianship. Additionally, the law allows the guardian to petition the court for permission to terminate the guardianship.

b. After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of the evidence that continuation of the guardianship is not in the child's best interests, the court must revoke or terminate the guardianship and appoint a successor guardian, or restore temporary legal custody to DHS.

The statute does not limit guardianships to children of a certain age; however, SCAO recommends that courts use this placement option only when adoption is not an appropriate goal. For example, a teenager placed with his or her aunt during the child protective proceedings may prefer that the court appoint the aunt as a guardian, rather than terminating parental rights.

PA 201 of 2008

PA 201 of 2008, introduced as SB 670, amends MCL 712a.13b to require the agency[5] to notify the court and the child's LGAL when a foster child changes placement. Providing notice of the change in placement could alert the court and LGAL to potential problems, especially if a child frequently changes placements. The law allows the agency to send the notice to the court electronically. The notice must include the following information:

a. The reason for the change in placement.

b. The number of times the child has changed placements.

c. Whether or not the child will be required to change schools due to the placement change.

d. Whether or not the change will separate or reunite siblings, or affect sibling visitation.

DHS caseworkers are required to use DHS form 69 (Foster Care Action Summary Format) to notify the court when a child changes foster care placement. The form will be modified to include the provisions above. Courts should prepare to receive these notices by identifying a contact person to receive the notices and determining the best mode of communication with DHS.

[5] The term "agency" denotes either DHS or a private agency contractor, whichever is responsible for the case.

PA 202 of 2008

PA 202 of 2008, introduced as SB 671, amends MCL 712a.19 by allowing DHS to implement concurrent planning. Concurrent planning is a process of working towards family reunification, while at the same time establishing a back-up permanency plan in case the child cannot be returned home safely.

DHS is currently developing policy to instruct their workers on how to perform concurrent planning. SCAO is participating in this policy development, and will send the published policy to courts and offer training on concurrent planning.

PA 203 of 2008

PA 203 of 2008, introduced as SB 672, amends MCL 712a.19c by allowing the court, with the written consent of the MCI Superintendent, to appoint a guardian for a child after parental rights have been terminated. The Act includes many of the same requirements as PA 200 of 2008, and adds an appeal process for individuals who cannot obtain the MCI Superintendent's consent to be a guardian.

Appointing a Guardian (Post-Termination of Parental Rights)

a. The court may not appoint a guardian without the written consent of the MCI Superintendent, except as provided in (f) below.

b. If the child is placed with the guardian or proposed guardian, the court must order DHS to do all of the following:

   1. Perform an investigation and file a written report of the investigation for a review hearing.
   2. Perform a criminal record check within 7 days.
   3. Perform a central registry clearance within 7 days.
   4. Perform a home study and file a copy with the court within 30 days, unless a home study was conducted within the preceding year. If a home study was conducted within the preceding year, a copy of that home study must be submitted to the court.

c. The court must review the guardianship annually, and may conduct more frequent reviews as it considers necessary. The court may order DHS or a court employee to conduct an investigation and file a written report to the court to assist with a review.

d. The court's jurisdiction over the child under section 2(b) of the Juvenile Code is terminated when the court appoints a guardian; however, the court's jurisdiction over the guardianship continues until released by court order.[6]

[6] This allows DHS to close its foster care case, while allowing the court to maintain oversight over the guardianship.

e. Appointing a guardian releases the child from the MCI Superintendent's control and custody.

f. **Appeal process**: A person may file a motion with the court if that person believes the MCI Superintendent's decision to withhold consent was arbitrary and capricious.

   1. The motion must include the specific steps the person took to obtain the consent and the specific reasons why the person believes the decision to withhold consent was arbitrary and capricious.
   2. Upon receiving a motion, the court must set a hearing date and provide notice to the MCI Superintendent, the foster parents, the prospective guardian, the child, and the child's LGAL.
   3. If a hearing is held and the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court may approve the guardianship without the consent of the MCI Superintendent.

   4. Consistent with PA 200 of 2008, the law does not require the annual review to be a court hearing. Courts may require the guardian to submit a written report to the court, as described above, or develop other review procedures to allow the court to properly review the guardianship.

Revoking a Guardianship

a. The child's LGAL or DHS may petition the court to terminate a guardianship. Upon petition, or upon its own motion, the court may hold a hearing to determine whether to revoke the guardianship. Additionally, the law allows the guardian to petition the court for permission to terminate the guardianship.

b. After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of the evidence that continuation of the guardianship is not in the child's best interests, the court must revoke or terminate the guardianship and appoint a successor guardian, or restore temporary legal custody to DHS.