

JUDICIAL BENCH CARDS FOR CHILD PROTECTIVE PROCEEDINGS



Judicial Bench Cards provide quick and easy access to hearing-specific information.

1. Order for Protective Custody
2. Preliminary Hearing
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Sponsored by:

State Court Administrative Office
Child Welfare Services Division and
The Michigan Court Improvement Program

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Order for Protective Custody ~ Judicial Bench Card

MCR 3.963 | SCAO Form JC 05b | MCL 712A.14a & 712A.14b

To take a child into protective custody due to imminent circumstances, the Michigan Department of Health and Human Services (MDHHS) must petition the court for a protective custody and placement order.

When to use this Bench Card

MDHHS petitions the court for a placement order after law enforcement takes a child into protective custody without a court order; OR
MDHHS petitions the court for an ex parte removal and placement order based on imminent danger.

Procedural Issues

The Judge or Referee may enter a written ex parte removal and placement order, electronically or otherwise, authorizing MDHHS to take a child into protective custody and place the child into foster care. The court must inquire whether a family member is available to take custody of the child, and whether there was a central registry clearance and criminal history check initiated.

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see the ICWA/MIFPA Bench Card & [MJI Quick Reference Flowcharts](#) for the heightened removal standards, and ensure notice to the tribe(s).

If there are allegations against only one of the two legal parents, is the other legal parent able to assume physical custody of the child?

★ Required Judicial Findings/Orders

Determine if the child should be placed in protective custody pending the next hearing by making written findings of fact for each of the protective custody standards (see next section).

The court may authorize entry into specified premises to remove the child as part of the protective custody order.

Provide a signed and written order to MDHHS electronically or otherwise.

Schedule a Preliminary Hearing (if the court has not already taken jurisdiction of the child) or an Emergency Removal Hearing (if the court has previously authorized a petition for the child) to be held within 24 hours.

Protective Custody Standards

Upon receipt of a petition or affidavit, a judge or referee may issue a written ex parte order authorizing MDHHS to immediately take a child into protective custody and place the child if the court finds ***all of the following***:

1. There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal is necessary to protect the child's health and safety.
2. The circumstances warrant issuing an ex parte order pending the preliminary hearing.
3. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child (not required if the parent has subjected the child to aggravated circumstances as listed in [MCL 722.638](#)).
4. No remedy other than protective custody is reasonably available to protect the child.
5. It is contrary to the welfare of the child to remain in the home.

Federal Title IV-E Judicial Findings

Contrary to the Welfare to Remain in the Home

Must be made in the first court order authorizing removal. The court order must be signed the same day as the removal to preserve Title IV-E funding eligibility.

- Why is it contrary to the child's welfare to remain in the home? What is causing an imminent risk of harm?
- What specific conditions make the home an unsafe place for the child, requiring removal?
- What prevents the child from remaining in the home today?

Reasonable Efforts to Prevent Removal

Must be made within 60 days of removing the child from the home (state law requires this finding at removal or placement into foster care). Federal funding will not begin until the finding is made.

- Has the agency made reasonable efforts to prevent the child's removal from the home?
- Would any services or a safety plan allow the child to safely remain in the home?

Preliminary Hearing ~ Judicial Bench Card

MCR 3.965 | SCAO Form JC 11a | MCL 712A.13a

If a child is in protective custody or the petitioner requests out of home placement of the child, a preliminary hearing must be conducted. The court makes two major decisions at a preliminary hearing: whether to authorize the filing of the petition, and if so, whether to order pretrial foster care placement of the child or maintain the child in the home.

Procedural Issues

Must commence within 24 hours of protective custody (removal), excluding Sundays and holidays.

Did the petitioner notify the parent(s) of the date and time of the hearing?

Did the parent(s) receive a copy of the petition? The court must read the petition in open court, unless waived by the parent(s).

If there are allegations against only one of two legal parents, is the other legal parent able to safely assume physical custody of the child?

Appoint counsel for child and respondent(s). LGAL must be present.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Inquire if the child or either parent is a member of an Indian Tribe. See *Special Considerations for Indian Child* on reverse.

Inquire whether the child is subject to the continuing jurisdiction of another court.

Advise parties of the following rights:

- Right to the assistance of an attorney at the preliminary hearing pursuant to [MCR 3.915\(B\)\(1\)\(a\)](#);
- Right to trial by judge or jury on the allegations in the petition;
- Right to seek placement of his or her child in his or her home (nonrespondent parent); and
- Right to the opportunity to deny or admit the allegations and make a statement of explanation.

If there is a putative father, advise him of his responsibility to establish legal paternity.

★ Required Judicial Findings/Orders

Determine whether to authorize the petition, dismiss the petition, or refer the matter to alternative services.

- Standard of review is *probable cause* that 1 or more of the allegations in the petition are true and fall within [MCL 712A.2\(b\)](#).

If you authorize the petition, determine whether the child should remain home, be returned home, or be placed in foster care pending trial. See required *Findings to Remove Child From Home* below.

Reasonable efforts to prevent removal were made (or active efforts for an Indian Child). Describe the efforts.

Order the parent to execute a medical release to the agency.

Order family time (parenting time and sibling time, if not placed together).

Schedule next hearing.

Findings to Remove Child From Home

The court may place a child into foster care if it finds **ALL** of the following five conditions:

1. Substantial risk of harm to the child's life, physical health, or mental well-being.
2. No service or other arrangement is reasonably available to adequately safeguard the child from the substantial risk of harm.
3. Continuing child's residence in the home is contrary to the child's welfare.
4. Reasonable efforts were made to prevent/eliminate the need for removal (not required if the parent has subjected the child to aggravated circumstances as listed in [MCL 722.638](#)); and
5. Conditions away from the parent are adequate to safeguard the child's health and welfare.

Continued on reverse

Preliminary Hearing Cont. ~ Judicial Bench Card

MCR 3.965 | SCAO Form JC 11a | MCL 712A.13a

Federal Title IV-E Judicial Findings

Contrary to the Welfare to Remain in the Home

Must be made in the first court order authorizing removal. The court order must be signed the same day as the removal to preserve Title IV-E Funding eligibility.

- Why is it contrary to the child's welfare to remain in the home?
- What specific conditions make the home an unsafe place for the child, requiring removal?
- What prevents the child from remaining in/returning home today?

Reasonable Efforts to Prevent Removal

Must be made within 60 days of removing the child from the home (state law requires this finding at removal or placement into foster care). Federal funding will not begin until the finding is made.

- Has the agency made reasonable efforts to prevent the child's removal from the home?
- Were there any pre-hearing conferences or meetings, such as a Family Team Meeting (FTM), that included the family?
- What services were considered and offered to allow the child to remain at home?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?

Child Well-Being/Preserving Connections

Have relatives been identified and considered for placement? What *diligent efforts* have been made to locate and engage them?

Does the child have siblings? If so, will the agency place them together? If not, is there a plan for frequent sibling family time?

Will the child's placement allow the child to maintain school placement and other important family and social connections?

Initial Service Plan and Family Time

If the child is removed from home, the agency has 30 days to prepare an initial service plan. Participation in the plan is voluntary without a court order.

- Does the child need any type of behavioral assessment or mental health evaluation?
- Does the child/parent need therapeutic visitation?

Family Time with Parent(s) & Siblings

- Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.
- Consider additional electronic contact (email, phone, etc.) between visits.
- Order continued parental responsibilities such as attendance at appointments, school events, and/or extracurricular activities as appropriate.
- If supervised family time is requested, what are the safety risks preventing unsupervised family time?

Special Considerations for Indian Child

If the court knows or has reason to know the child is an Indian child or eligible for tribal membership, notice must be sent to the Tribe by registered mail, return receipt requested.

If the Tribe is unknown, notice must be sent to the Bureau of Indian Affairs (BIA) and any Tribe in the county where the child resides.

Different legal standards apply for Indian children, see the ICWA/MIFPA Bench Card and MJI Quick Reference Flow Charts.



For more information on Preliminary Hearing best practices, please visit the following link to view mock hearing videos:

www.courts.mi.gov/NewJuristVideoSeries

Adjudicatory Hearing (Plea or Trial) Judicial Bench Card

MCR 3.971 & MCR 3.972 | SCAO Form JC 49 | MCL 712A.17

An adjudication is conducted to determine if the child comes within the jurisdiction of the court. Adjudication may be by trial or plea. If the court concludes that the child is within the jurisdiction of the court, the court may order one or more of the dispositions contained in [MCL 712A.18\(1\)](#).

Procedural Issues for Trial

The trial must begin as soon as possible, but no later than 63 days of the removal. If the child is not in placement, the trial must be held within 6 months after the petition was filed. (See [MCR 3.972\(A\)](#) for permissible reasons to postpone trial and for requirements if postponement occurs.)

Was service of process proper and was legally sufficient notice given to the parties?

If there is only one respondent parent, what is the status of the other parent?

Unless a party has demanded a trial by judge or jury, an attorney referee may conduct the trial.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Read allegations in the petition (unless waived) and advise parties of rights.

Use the jury instructions for child protection proceedings. (See [MCJI 97.01](#) et seq.)

The court may examine a witness, call a witness, or adjourn the matter to cause service of process on additional witnesses or order production of additional evidence if at any time the court believes the evidence has not been fully developed.

At the conclusion of proofs, allow the LGAL to make a recommendation as to whether jurisdiction has been established.

Accepting a Plea Under 3.971

Advise the parent(s) of:

- Allegations in the petition.
- Right to an attorney.
- Consequences of the plea; including that the plea can be later used as evidence in a proceeding to terminate parental rights, and that if parental rights are subsequently terminated, any child support obligation continues until modified by the court, or the child is adopted or emancipated.

The rights relinquished if a plea is accepted:

- Trial by judge or jury.
- Petitioner's burden to prove allegations by a preponderance of the evidence.
- Have witnesses against the respondent appear and testify under oath at trial.
- Cross-examine witnesses.
- Have court subpoena any witnesses the respondent believes could give testimony in his or her favor.

Court must find that the plea is knowingly, understandingly, and voluntarily made.

To accept a *plea of admission*, the court must establish support for a finding that one or more of the statutory grounds alleged in the petition are true. Questioning the respondent is the preferred method for establishing support.

To accept a *no contest plea*, the court must establish support for a finding that one or more statutory grounds alleged in the petition are true. The court cannot question the respondent as a basis for accepting the no contest plea.

Continued on reverse

Adjudicatory Hearing (Plea or Trial) Cont.

Judicial Bench Card

MCR 3.971 & MCR 3.972 | SCAO Form JC 49 | MCL 712A.17

Dependency Grounds

A petition for dependency pursuant to [MCL 712A.2\(b\)\(3\)](#) may or may not list a parent as a respondent. To take dependency jurisdiction, the court must find that the child is dependent **and in danger of substantial physical or psychological harm.**

A child may be found to be dependent when any of the following occurs:

- The juvenile is homeless or not domiciled with a parent or other legally responsible person.
- The juvenile has repeatedly run away from home and is beyond the control of a parent or other legally responsible person.
- The juvenile is alleged to have committed a commercial sexual activity as defined in section [MCL 750.462a](#) or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.
- The juvenile's custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile

★ Required Judicial Findings/Orders

Determine if there are statutory grounds to exercise jurisdiction over the child. [MCR 3.972](#) requires the court to find by a preponderance of the evidence that one or more allegations in the petition are true.

The court may assume jurisdiction over the child on the basis of the adjudication of one parent, but the court's dispositional authority does not extend to the unadjudicated parent. See [In re Sanders](#).

If termination of parental rights is requested in an initial or amended petition, see the Termination of Parental Rights bench card.

Unless the dispositional hearing will immediately follow, schedule the dispositional hearing to occur within 28 days of adjudication.

Initial Dispositional Hearing ~Judicial Bench Card

MCR 3.973 | SCAO Form JC 17 | MCL 712.18

The purpose of the dispositional phase is to determine what measures the court will take regarding a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea or no contest that one or more of the statutory grounds alleged in the petition are true. The dispositional phase includes disposition, dispositional review hearings, permanency planning hearings, and termination of parental rights hearings. (If the agency requested termination of parental rights at the initial dispositional hearing, see the Termination of Parental Rights Bench Card.)

Procedural Issues

A dispositional hearing may be held immediately after the adjudication, but when the child is in placement the hearing must be held within 28 days of adjudication, unless good cause is shown for delay. There is no right to a jury trial during the dispositional phase, even where a supplemental petition is subsequently filed containing new allegations of abuse or neglect.

Was legally sufficient notice given to the parties?

If the hearing is held more than 91 days after petition authorization, has the LGAL met with or observed the child and complied with the other statutory duties in [MCL 712A.17d](#)?

Is the child present in court? If not, why?

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Review of Case Service Plan

Before the court enters the order of disposition, it must consider the case service plan. The court may order compliance with all or part of the case service plan.

Have the parent(s) been assessed and offered appropriate services? Are they participating? Have they signed the treatment plan? Does the plan need to be modified?

Does the LGAL believe the services to the child are appropriate?

The case service plan must include:

- The type of home or institution in which the child is to be placed and the reasons for the selected placement.
- Clear, understandable and actionable items to be made by the child's parent, and the agency, to enable the child to return to his or her home.

- 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.
- A schedule for regular and frequent family time between the child and his/her parent (unless there is a safety exception)

Efforts made by the agency to return the child to his or her home.

Efforts made by the agency to provide frequent, in-person family time or other interactions between siblings.

The court should ensure that the plan is consistent with the specific needs of the family, and that the parent(s) understands what is required to have their child(ren) returned home.

Child's Placement

If only one of two legal parents has been adjudicated, consider placement of the child with the non-respondent parent, if appropriate.

Have relatives been identified and considered for placement or contact with the child? If not, what diligent efforts have been made to locate/engage them? Ask the parents at the court hearing if there are any willing and available relatives for placement or contact.

Does the child have siblings? If so, has the agency placed them together? If not, is there a plan for placement as well as frequent sibling family time?

Has the child changed placements since the last court hearing? If so, what are the reasons for the move?

Continued on reverse

Initial Dispositional Hearing Cont.

Judicial Bench Card

MCR 3.973 | SCAO Form JC 17 | MCL 712.18

Safety and Permanency Issues

What prevents a safe return home with a parent today?

Have the caseworker and LGAL visited the home and found the child safe and well cared for?

Have there been any instances of abuse/neglect while the child has been under court jurisdiction?

Has the LGAL talked to the child about his or her permanency wishes? Are those wishes consistent with the LGAL's determination of the child's best interests?

Education Well-Being

Is the child currently enrolled and attending school or a preschool program?

Does the child's placement allow the child to maintain school placement and other important family and social connections?

Is the child eligible for special education services? Is the child receiving any services to address the identified needs?

Is the child engaged in any extracurricular activities? If so, are there resources available for the child to continue?

Health Services

Is the child up-to-date on medical and dental exams?

Does the child require mental health treatment? If so,

- What medications and services are being provided?
- Inquire as to the child's views on the mental health treatment.

Family Time with Parent(s) & Siblings

Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.

Where and how frequently has parenting time occurred? Are the visits supervised or unsupervised?

What is the plan for sibling visitation or interaction?

Denial of parenting time may not be used as a punishment for noncompliance with the case service plan.

How does the parenting time plan incorporate continued parental responsibilities such as appointments, school events, or extracurricular activities?

If supervised parenting time is requested, what are the specific safety risks preventing unsupervised parenting time?

What is needed for expanded or unsupervised parenting time?

Consider additional electronic contact (email, phone, etc.) between visits.



Required Judicial Findings/Orders

A dispositional order cannot be entered against a parent unless that parent has been adjudicated.

The order of disposition may do any of the following:

- Return or maintain the child in the home under the court's jurisdiction. The court must return the child to the parent unless the return would cause a substantial risk of harm to the child's life, physical health, or mental well-being.
- Continue the child's foster care placement.
- Order medical care for the child.
- Appoint a guardian for the child.
- Terminate the court's jurisdiction.

The order may require the friend of the court to redirect child support to a caretaker who does not receive foster care payments.

Order participation in all or part of the case service plan.

Order specific evaluation and/or services to be provided to the parent(s) and child.

Schedule next hearing.

Dispositional Review Hearing ~Judicial Bench Card

MCR 3.974 & MCR 3.975 | SCAO Form JC 19 | MCL 712A.19

A dispositional review hearing is conducted to permit court review of the progress made to comply with the order of disposition and case service plan, and for the court to evaluate the continued need for jurisdiction. The hearing determines the family's progress towards rectifying the conditions that brought the child within the court's jurisdiction.

Procedural Issues

For children placed in foster care, the court must hold the hearing within 182 days after removal.

For children remaining at home and subject to the court's jurisdiction, the court must hold the hearing within 182 days after the petition was authorized.

Thereafter, hearings must be held:

- Every 91 days for the first year.
- Every 182 days for the second year and beyond.

Was legally sufficient notice sent to the parties and the foster parents?

Are the foster parents in court; if so, do they want the opportunity to be heard?

Is the child present in court? If not, why?

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Ensure parties had the opportunity to examine and controvert written reports (may allow cross-examination of individual making report if individual is reasonably available).

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see *ICWA/MIFPA bench card* & [MJI Quick Reference Flowcharts](#) for the heightened removal standards.

Has the LGAL met with or observed the child and complied with the statutory duties in [MCL 712A.17d](#)? If not, the LGAL must state on the record the reasons for failing to do so.

Determine whether the Foster Care Review Board reviewed the case. If so, the court must ensure that all parties had the opportunity to review the report and file objections, pursuant to [MCR 3.975\(E\)](#).

Safety Issues

Have the caseworker and LGAL visited the home and found the child safe and well cared for?

Have there been any instances of abuse/neglect while the child has been under court jurisdiction?

Child Placement

Have relatives been identified and thoroughly considered for placement? What diligent efforts have been made to locate/engage them?

If the child has siblings in foster care, are the children placed together? If not, why?

Has the child changed placements since the last court hearing? If so, what were the reasons for the move?

Did the court receive notice in advance of the placement change? If not, why?

Evaluation of Progress to Reunify Family

Is the case service plan accessible to all parties and offered into evidence as required by [MCR 3.975\(E\)](#)?

Does the parent understand what he or she must do to have the child returned?

The court **must** review on the record the following:

- The parents' compliance with, and level of benefit from, the case service plan.
- Compliance with the case service plan specific to parenting time.
- Likely harm to the child if the separation continues.
- Likely harm to the child if returned to the parent.

Does the parent attend the child's school or extracurricular activities?

Determine if the agency has provided reasonable efforts towards reunification.

Does a parent have a disability? If so, has the agency reasonably accommodated this disability? See [In re Hicks/Brown](#)

Has the LGAL talked to the child about his or her permanency wishes? If so, what are they? Are those wishes consistent with the LGAL's determination of the child's best interests?

Does the LGAL believe the services outlined in the case service plan are appropriate?

Can the child be safely returned home with or without in-home services?

Continued on Reverse

Dispositional Review Hearing Cont. ~ Judicial Bench Card

MCR 3.974 & MCR 3.975 | SCAO Form JC 19 | MCL 712A.19

Educational Well-Being

Is the child currently enrolled and attending school or a preschool program?

Does the child's placement allow the child to maintain school placement and other important family and social connections?

Is the child eligible for special education services? Is the child receiving any services to address the identified needs?

Is the child engaged in any extracurricular activities? If so, are there resources available for the child to continue?

Health Services

Is the child up to date on medical and dental exams?

Does the child require mental health treatment? If so,

- What medications and services are being provided?
- Inquire as to the child's views on the mental health treatment.

Family Time with Parent(s) & Siblings

Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.

Where and how frequently has parenting time occurred? Are the visits supervised or unsupervised?

What is the plan for sibling visitation or interaction?

Denial of parenting time may not be used as a punishment for noncompliance with the case service plan.

How does the parenting time plan incorporate continued parental responsibilities such as appointments, school events, or extracurricular activities?

If supervised parenting time is requested, what are the specific safety risks preventing unsupervised parenting time?

What is needed for expanded or unsupervised parenting time?

Consider additional electronic contact (email, phone, etc.) between visits.



Required Judicial Findings/Orders

Is there a **substantial risk of harm** to the child if returned to the parent, guardian, or legal custodian? If not, the child **must** be returned home.

[MCL 712A.19\(8\)](#)

Determine if parental progress is sufficient to continue toward reunification. Should another permanency plan be considered?

Following review of the case service plan, the court may:

- Order the child to be returned home.
- Change the placement of the child, in accordance with [MCR 3.974\(A\)\(3\)](#).
- Modify the dispositional order, or any part of the case service plan.
- Enter a new dispositional order.
- Continue the prior dispositional order.

Issue any orders necessary to facilitate the timely provision of services, as well as family participation in those services.

Schedule next hearing (next dispositional review hearing and/or permanency planning hearing).

Emergency Removal Hearing (Child Placed at Home) Judicial Bench Card

MCR 3.974 | SCAO Form JC 75

An emergency removal hearing is conducted when the agency requests that a child, over whom the court has authorized a petition but maintained in his or her home, be removed from the home.

When to use this Bench Card

When an amended or supplemental petition is filed seeking the child's removal from home and either:

- The child was taken into protective custody pursuant to MCL 712A.14b (the court must conduct this hearing within 24 hours. MCR 3.974(C)(3)); OR
- The petitioner requests a hearing to remove the child from home. MCR 3.974(B).

If the court has not taken jurisdiction in the case (preadjudication), the court must conduct an Emergency Removal Hearing in the manner prescribed in MCR 3.965, Preliminary Hearing.

Procedural Issues

Was legally sufficient notice given to the parties?

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see the ICWA/MIFPA Bench Card & [MJI Quick Reference Flowcharts](#) for the heightened removal standards.

The parent(s) must be given an opportunity to make a statement as to why the child should not be removed from, or should be returned to, the custody of the parent.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference in compliance with [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/videoconference.

Advise the respondent of the following rights:

1. To be represented by an attorney at the hearing;
2. To contest the continuing placement at the hearing within 14 days; and
3. To use the compulsory process to obtain witnesses for the hearing.

★ Required Judicial Findings/Orders

The court must determine whether to:

- Remove the child from the home pursuant to the *Out-of-Home Placement Standards* (below), or maintain the child in the home under the court supervision; OR
- Return the child home if taken into protective custody.

The court must inquire whether a family member can take custody of the child pending the next hearing; and whether there has been a central registry clearance and criminal history check.

The written order must contain specific findings of fact.

The order must be communicated, electronically or otherwise, to MDHHS.

Out-of-Home Placement Standards

The court may place a child in foster care if it finds **ALL** of the following five conditions. [MCL 712A.13a\(9\)](#).

1. Substantial risk of harm to child's life, physical health, or mental well-being.
2. No service or other arrangement is reasonably available to adequately safeguard the child from the substantial risk of harm.
3. Continuing child's residence in home is contrary to child's welfare.
4. Reasonable efforts were made to prevent/eliminate need for removal (not required if the parent has subjected the child to aggravated circumstances as listed in [MCL 722.638](#)); and
5. Conditions away from the parent are adequate to safeguard the child's health and welfare.

Continued on Reverse

Emergency Removal Hearing (Child Placed at Home) Cont. Judicial Bench Card

MCR 3.974 | SCAO Form JC 75

Federal Title IV-E Judicial Findings

Contrary to the Welfare to Remain in the Home

Must be made in the first court order authorizing removal. The court order must be signed the same day as the removal to preserve Title IV-E Federal eligibility.

- Why is it contrary to the child's welfare to remain in the home? What is causing an imminent risk of harm?
- What special conditions make the home an unsafe place for the child, requiring removal?
- What prevents the child from remaining in/returning home today?

Reasonable Efforts to Prevent Removal

Must be made within 60 days of removing the child from the home (state law requires this finding at removal or placement into foster care). Federal funding will not begin until the finding is made.

- Has the agency made reasonable efforts to prevent the child's removal from the home?
- Were there any pre-hearing conferences or meetings, such as a Family Team Meeting (FTM), that included the family?
- What services were considered and offered to allow the child to remain at home?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?

Placement and Permanency Issues

Have relatives been identified and considered for placement or meaningful contact with the child?

What diligent efforts have been made to locate and engage them?

If there is a putative father, has he been advised of his responsibility to establish paternity?

Will the child need to change schools?

Family Time with Parent(s) & Sibling

Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.

Where and how frequently has parenting time occurred? Are the visits supervised or unsupervised?

What is the plan for sibling visitation or interaction?

Denial of parenting time may not be used as a punishment for noncompliance with the case service plan.

How does the parenting time plan incorporate continued parental responsibilities such as appointments, school events, or extracurricular activities?

If supervised parenting time is requested, what are the specific safety risks preventing unsupervised parenting time?

What is needed for expanded or unsupervised parenting time?

Consider additional electronic contact (email, phone, etc.) between visits.

Next Hearing Required

If the court removes the child at this Emergency Removal Hearing and:

- The child is not already under the jurisdiction of the court: schedule a pretrial conference or adjudication hearing; OR
- The child is already under the court's jurisdiction but the court has not held a dispositional hearing: schedule and conduct a dispositional hearing within 28 days: OR
- The child is already under the court's jurisdiction and the court has already conducted a dispositional hearing: schedule a dispositional review hearing within 14 days.

Permanency Planning Hearing ~Judicial Bench Card

MCR 3.976 | SCAO Form JC 19 | MCL 712A.19a

A permanency planning hearing is conducted to review and finalize a permanency plan for a child in foster care. The purpose of the hearing is to review the progress being made toward returning a child home, or to determine if an alternative permanency goal is more appropriate.

Procedural Issues

Must hold the hearing:

- Within 12 months of the child's removal from home, and at least once every 12 months thereafter.
- If the court found that reasonable efforts were not required to prevent the removal or to reunify the family (i.e., aggravated circumstances), within 28 days of that finding.

Was legally sufficient notice given to the parties (including a child age 11 years and older)?

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see [ICWA/MIFPA bench card](#) & [MJI Quick Reference Flowcharts](#) for the heightened legal standards.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Has the LGAL met with or observed the child and complied with the statutory duties in [MCL 712A.17d](#)?

Is the child present in court? If not, why?

What are the child's wishes for the permanency plan? The court must obtain the child's views of the permanency plan in an age-appropriate manner.

Review of the Child's Out of Home Placement

Does the placement remain necessary, safe, and appropriate? Have there been any instances of maltreatment while placed in foster care?

Has the child changed placements since the last court hearing?

Reasonable Efforts to Finalize

Federal Title IV-E funding regulations require the court to make this finding within 12 months of removal and annually thereafter.

What steps has the agency taken to finalize the child's permanency goal?

Acceptable permanency goals:

- Reunification
- Adoption

- Juvenile Guardianship
- Placement with Fit and Willing Relative, and
- Another Planned Permanent Living Arrangement (APPLA). APPLA is prohibited for youth under age 16. The court must specify the compelling reasons for this goal.

If Reunification is the Permanency Plan

Would returning the child home cause a substantial risk of harm to the child's life, physical health, or mental well-being?

What prevents a safe return home with either parent today?

Did the parent substantially comply with the case service plan? What other services might help?

Family Time with Parent(s) & Siblings

Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.

Where and how frequently has parenting time occurred? Are the visits supervised or unsupervised?

What is the plan for sibling visitation or interaction?

Denial of parenting time may not be used as a punishment for noncompliance with the case service plan.

How does the parenting time plan incorporate continued parental responsibilities such as appointments, school events, or extracurricular activities?

If supervised parenting time is requested, what are the specific safety risks preventing unsupervised parenting time?

What is needed for expanded or unsupervised parenting time?

Consider additional electronic contact (email, phone, etc.) between visits.

If Reunification is No Longer the Permanency Plan

What is the new permanency plan? Why is this plan in the child's best interests?

Continued on reverse

Permanency Planning Hearing Cont. ~ Judicial Bench Card

MCR 3.976 | SCAO Form JC 19 | MCL 712A.19a

Have reasonable efforts been made to finalize the permanency plan, including consideration of an out-of-state placement, if appropriate?

What is the anticipated date by which the permanency goal will be achieved?

Has the child been consulted in a developmentally appropriate manner? What is the child's opinion about the permanency plan?

Child Well-Being/Preserving Connections

Education

Is the child currently enrolled and attending school or a preschool program?

Does the child's placement allow the child to maintain school placement and other important family and social connections?

Is the child eligible for special education services? Is the child receiving any services to address the identified needs?

Is the child engaged in any extracurricular activities? If so, are there resources available for the child to continue?

Health Services

Is the child up-to-date on medical and dental exams?

Does the child require mental health treatment? If so,

- What medications and services are being provided?
- Inquire as to the child's views on the mental health treatment.

Youth Engagement

Inquire if the youth supports the permanency goal and if he or she needs any supportive services.

Has the youth been involved in case planning?

- Does the child have input on his or her case plan?
- Does the child attend Family Team Meetings?
- Does the child have regular communication with their court-appointed LGAL?

What steps are the agency and foster parents taking to ensure the child has regular opportunities to engage in age or developmentally appropriate activities?

Older Youth: Age 14+

Has the agency provided independent living skills?

What services are needed to assist the youth in transitioning from foster care to successful

adulthood? Has the young adult voluntary foster care program been discussed with the youth?

Has the youth selected individuals to be a part of his or her case planning team?



Required Judicial Findings/Orders

Determine whether and when:

- The child can be returned home, under the court's jurisdiction if necessary;
- A petition to terminate parental rights should be filed;
- The child may be placed in a guardianship.
- The child may be permanently placed with a fit and willing relative; or
- The child may be placed in Another Planned Permanent Living Arrangement.

Determine whether or not the agency, foster home, or institutional placement has followed the **reasonable and prudent parenting standard** that the child has had regular opportunities to engage in age or developmentally appropriate activities.

- If the youth is present, can the youth describe their activities? If not, ask the caseworker.
- Has the caregiver received the required training?
- Does the child or caregiver need support or help addressing system barriers? Are there any orders the court can issue to help resolve the barriers?

The court must return the child to the parent unless the return would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

If the child has been in foster care for 15 of the most recent 22 months, order the agency to initiate termination of parental rights or document a compelling reason why termination is not in the child's best interests.

Determine if reasonable efforts have been made to achieve the permanency plan. Describe efforts and identify the permanency goal for each child.

Order actions by the agency to expedite the permanency plan, if necessary.

Continue to place the child with MDHHS for care and supervision.

Schedule next hearing.

Termination of Parental Rights Hearing ~Judicial Bench Card

MCR 3.977 | SCAO Form JC 63 | MCL 712A.19b

The termination of parental rights hearing is divided into two phases. The first phase is to determine whether there is clear and convincing evidence to support statutory grounds for termination of parental rights. The second phase is to determine if it is in the child's best interests to terminate parental rights.

Procedural Issues

Must hold hearing within 42 days of filing supplemental petition (21 day extension permitted for good cause).

Was legally sufficient notice given to the parties?

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see *ICWA/MIFPA bench card* & [MJI Quick Reference Flowcharts](#) for the heightened legal standards.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference pursuant to [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/video conference.

Has the LGAL met with or observed the child and complied with the statutory duties in [MCL 712A.17d](#)?

★ Required Judicial Findings/Orders

Determine if at least one statutory ground for termination has been proven by clear and convincing evidence.

If a statutory ground has been proven, determine if the termination of parental rights is in the child's best interests.

If grounds do not exist and/or termination is not in the child's best interests, dismiss the petition.

If grounds exist and termination is in the child's best interests, order the termination of parental rights (and that further efforts to reunify the family must not be made).

State on the record, or in writing, findings of fact, conclusions of law and include the statutory basis for the termination of parental rights order.

If in writing, the decision shall be filed within 28 days after taking final proofs, but not later than 70 days after commencement of the hearing.

If termination of parental rights is ordered:

- Determine whether to maintain the child as a county ward or commit the child to the MCI Superintendent.

Schedule post-termination review hearing within 91 days of termination of parental rights and:

- Every 91 days for the first year.
- Every 182 days the second year and beyond.

Evidentiary Standards

Termination Sought at Initial Disposition:

- Rules of evidence **do** apply.
- Clear and convincing legally admissible evidence.

Termination Sought Based on Original Allegations:

- Rules of evidence do not apply, other than those with respect to privileges that have not been abrogated by [MCL 722.631](#).
- Clear and convincing evidence that is relevant and material.

Termination Sought Based on New or Different Allegations:

- Rules of evidence **do** apply, only to the new or different allegations.
- Clear and convincing legally admissible evidence.

Best Interests Determination

A finding that termination is in the child's best interests must be supported by a preponderance of the evidence.

The court must consider the best interests of each child individually (unless similarly situated)

The court must consider relative placement when making a best interests determination.

The court may consider this non-exhaustive list, when making a best interests determination:

- Child-parent bond.
- The child's age and need for stability and permanency.
- The opinion of experts, including psychologists, therapists, LGAL, and caseworker.
- The child's wishes.
- The likelihood of the child being adopted.
- The child's bond with siblings, if appropriate.

Continued on reverse

Termination of Parental Rights Hearing Cont. Judicial Bench Card

MCR 3.977 | SCAO Form JC 63 | MCL 712A.19b

Mandatory Advice of Rights to Parent Upon Termination

The court shall inform a parent of the following rights verbally, or in writing, immediately after entry of an order terminating parental rights. SCAO [form JC 44](#) may be used to provide the written advice of rights.

- Parent is entitled to appellate review.
- If the parent is unable to afford an attorney, the court will appoint one to assist with an appeal and furnish the attorney with portions of the transcript and record as may be required.
- A request for assistance of an attorney must be made within 14 days after notice of the order terminating parental rights is given, or order entered denying a post-judgment motion.
- Parent has the right to keep identifying information current with the Central Adoption Registry.
- Parent has the right to file a denial of release of identifying information.

Post-Termination Review Hearing ~Judicial Bench Card

MCR 3.978 | SCAO Form JC 76 | MCL 712A.19c

If a child remains in placement following termination of parental rights, the court must conduct post-termination review hearings to determine the appropriateness of the child's placement, appropriateness of the permanency plan, and determine whether reasonable efforts are being made to achieve permanency for the child.

Procedural Issues

Must hold the hearing:

When the child remains in placement following the termination of parental rights.

Within 91 days of termination of parental rights and:

- Every 91 days for the first year.
- Every 182 days the second year and beyond.

Was legally sufficient notice given to the child, LGAL, agency, and foster parents?

Is the child present in court? If not, why?

Do the foster parents have information regarding the child they want to share with the court?

Reasonable Efforts to Finalize

What is the child's permanency plan?

What are the child's wishes for the permanency plan?

The court must obtain the child's views of the permanency plan in an age-appropriate manner.

Have relatives been identified for permanent placement? If not, what efforts are being made?

Review the Permanent Ward Treatment Plan/Service Agreement. Have the foster parent and child over age 11 signed the treatment plan?

What is the anticipated date of permanency?

Are there barriers to achieving the permanency plan?

What is the agency doing to remove the barriers?

If APPLA is the permanency goal for a child age 16+:

- Describe the compelling reasons why each of the other permanency goals is inappropriate.
- Has the caseworker provided a written, supervisor-approved long-term plan for the child that the court also believes is suitable?
- Has an adult signed an agreement to continue regular and positive contact with the child?

Child Well-Being

Has the child changed placements since the last court hearing? List the reasons for the move.

Is sibling visitation or interaction occurring?

Are the child's educational needs being met?

Health Services:

Is the child up-to-date on medical and dental exams?

Does the child require mental health treatment? If so,

- What medications and services are being provided?
- Inquire as to the child's views on the mental health treatment.

Older Youth: Age 14+

Has the agency provided independent living skills?

What services are needed to assist the youth in transitioning from foster care to successful adulthood?

Has the young adult voluntary foster care program been discussed?

Has the youth selected individuals to be a part of his or her case planning team?



Required Judicial Findings/Orders

Determine if reasonable efforts have been made towards finalizing the permanency plan. Describe efforts.

Determine the appropriateness of the permanency goal.

Determine the appropriateness of the child's placement.

Determine whether or not the agency, foster home, or institutional placement has followed the **reasonable and prudent parenting standard** that the child has had regular opportunities to engage in age or developmentally appropriate activities.

- If the youth is present, can the youth describe their activities? If not, ask the caseworker.
- Has the caregiver received the required training?
- Does the child or caregiver need support or help addressing system barriers? Are there any orders the court can issue to help resolve the barriers?

Order actions by the agency to expedite the permanency plan, if necessary.

If the permanency plan is APPLA (for youth age 16+), list the compelling reasons why the other goals are not appropriate.

Continue to place the child with MDHHS for care and supervision.

Schedule next hearing.

ICWA/MIFPA ~ Proceedings Involving Indian Child Judicial Bench Card

MCR 3.002, 3.800, 3.807, 3.905, 3.967, 5.404 | MCL 712B.1-41 | USC 1901-1963

The Michigan Indian Family Preservation Act (MIFPA) establishes standards and procedures for cases involving Indian children. MIFPA does not replace the federal Indian Child Welfare Act; therefore, jurists and legal professionals must apply both laws. The protections of both laws apply only to federally recognized tribes. The law providing the highest standard of protection must be applied.

When to use this Bench Card

Use this bench card when the court knows, or has reason to know, that the case may involve an Indian child. This bench card is part of a set and supplements the other child protection proceeding bench cards when a case involves an Indian child.

Notice Requirements

MDHHS must actively seek to determine if a child is an Indian child.

Court must make inquiry at each hearing. In re Morris. An Indian child's tribe and family must have an opportunity to be involved in the decisions affecting services for the child.

If the tribe's identity is unknown, the petitioner must notify the Secretary of the Interior (BIA). MDHHS must contact in writing the tribe or tribes located in the county where the child is located. [MCL 712B.9 \(3\)](#).

No foster care placement or termination of parental rights proceeding may occur until at least 10 days after the parent, Indian custodian and tribe receive notice. The parent, Indian custodian, or tribe may request an additional 20 days to prepare.

Tribal intervention and participation is a right.

Placement Standards

Foster care or pre-adoptive placement guidelines (in order of preference) unless the Indian child's tribe has different preferences, [MCL 712B.23\(6\)](#):

- A member of the child's extended family.
- A foster home licensed, approved, or specified by the child's tribe.
- An Indian foster home licensed or approved by MDHHS.
- An institution for children approved by an Indian tribe or operated by an Indian organization that has a suitable program to meet the child's needs.

Adoptive placement guidelines (in order of preference):

- A member of the child's extended family.
- A member of the child's tribe.
- An Indian family.

Definitions/Applicability

Indian child: An unmarried person who is under the age of 18 years and is either of the following: 1) A member of an Indian tribe OR 2) Eligible for membership in an Indian tribe as determined by that tribe.

- The child does not have to reside on the reservation for the laws to apply.

Child Custody Proceedings:

- Foster care placements
- Pre-adoptive placements
- Guardianship (including EPIC)
- Adoptive placements
- Status Offenses
- Termination of parental rights

Jurisdiction:

- Tribes have exclusive jurisdiction over an Indian child who resides or is domiciled within the tribe's reservation, unless that child is temporarily located off the reservation and limited emergency jurisdiction is necessary to prevent imminent physical damage or harm to the child. The emergency jurisdiction ends when the removal or placement is no longer necessary to prevent the imminent physical damage or harm.
- If a child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in residence or domicile.
- For an Indian child not domiciled or residing on the reservation, the parent, Indian custodian, or tribe may request the case be transferred to tribal court. The court must transfer the case, unless there is good cause not to, if either parent objects, or the tribal court declines the transfer.

Active Efforts: Ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the tribe and that uses the available resources of the tribe, tribal and other Indian child welfare agencies, extended family members, other Indian caregivers, and other culturally appropriate service providers. [MCL 712B.3\(a\)](#).

Continued on reverse

ICWA/MIFPA ~ Proceedings Involving Indian Child Cont. Judicial Bench Card

MCR 3.002, 3.800, 3.807, 3.905, 3.967, 5.404 | MCL 712B.1-41 | USC 1901-1963

Removal From Home Standards

The court must find by clear and convincing evidence based on testimony from a qualified expert witness that the child would be at risk of serious physical or emotional damage unless removed.

Court must find that active efforts were made to prevent the removal.

Qualified Expert Witness (QEW)

A qualified expert witness may be either of the following (in order of preference): [MCL 712B.17](#)

- A member of the child's tribe, recognized as knowledgeable in tribal customs and how they pertain to family organization and child rearing practices.
- A person with knowledge, skill, experience, training, or education and who can speak to the child's tribe and its customs and how they pertain to family organization and child rearing practices.

Termination of Parental Rights

The court must find evidence beyond a reasonable doubt, including testimony from at least one QEW, that continued custody with the parent is likely to result in serious emotional or physical damage to the child.

★ Overview of Heightened Standards

Active efforts were made to prevent the Indian child's removal from home.

Clear and convincing evidence, based on qualified expert witness testimony, that the child may face **serious physical or emotional damage** unless removed.

Termination of parental rights: **evidence beyond a reasonable doubt**, including testimony from at least one qualified expert witness, that continued custody with the parent is likely to result in **serious emotional or physical damage to the child**

Key MIFPA/ICWA Specific Findings

Whether the child has any tribal heritage.

If so, whether the tribe the child is a member of, or may be eligible for membership in, is known?

If known, was notice provided to the tribe? If not known, was notice provided to the Secretary of the Interior? When was notice sent, have 10 days passed?

Was notice provided to the parents, or to the Indian Custodian if applicable?

Whether there is evidence of efforts to comply with the placement preferences (ongoing).

Whether ICWA/MIFPA does or may apply to this case.

Whether at the time of the removal the child was already a ward of a tribal court (if known) thereby depriving the state court of jurisdiction.

Whether the child is domiciled or living on a reservation but temporarily located off the reservation.

Whether active efforts were made prior to the removal of the child.

Whether protective custody was necessary to prevent imminent physical damage or harm to the child, for child temporarily off the reservation.

Whether there is clear and convincing evidence the child is likely to suffer serious emotional or physical damage if continued in the custody of the parent or Indian Custodian.

Whether qualified expert witness testimony to support out-of-home placement was provided.

Whether the placement preferences are being followed. If not, why not and is there good cause not to follow them?

★ Please see the 2017 [ICWA/MIFPA Court Resource Guide](#) for more comprehensive guidance.

★ Please see the [MJI Quick Reference Flow Charts](#) for topic based information.

★ Please also see the [American Indian Child Placement & Evidence Standards Chart](#).

