

# 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

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### 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.



For more information on Adjudicatory Hearing best practices, please visit the following link to a view mock hearing video:

[www.courts.mi.gov/NewJuristVideoSeries](http://www.courts.mi.gov/NewJuristVideoSeries)