

# 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

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