



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

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Kelly Wagner
Director

DATE: April 13, 2017

TO: Chief Circuit Court Judges
Family Division Judges
Circuit Court Administrators
Family Court Administrators

FROM: Kelly Wagner

RE: New State and Federal Foster Care Laws

On January 5, 2017, Governor Snyder signed Public Acts 496 and 497 of 2016, which codified into state law certain requirements of the 2015 federal Preventing Sex Trafficking and Strengthening Families Act (Act). These laws were designed to promote well-being and normalcy for children in foster care, and include important provisions for the transition of older youth to achieve meaningful permanency. The Juvenile Code amendments, effective April 6, 2017, require the court to make a new judicial determination at a permanency planning hearing regarding if the agency and foster parents are following the new *reasonable and prudent parent* standard.

This memorandum outlines the role of the courts in implementing the older youth provisions of the federal Act, and new state law requirements. SCAO Child Welfare Services will hold a web-based meeting on May 17, 2017, to thoroughly discuss the application of these new laws. If a court has questions, please contact Casey Anbender at 517-373-5234 or anbenderc@courts.mi.gov, or me at 517-373-8671 or wagnerk@courts.mi.gov.

Federal Strengthening Families Act

The 2015 federal Strengthening Families Act (Act) includes several provisions for state Title IV-E agencies¹ to better manage foster care cases involving older youth. Courts play a key role in overseeing these provisions.

1. Normalcy / Reasonable and Prudent Parent Standard

The Act promotes “normalcy” for youth in foster care, which is the notion that children in foster care should have the same social and extracurricular opportunities as their peers who are not in foster care. Normalcy and permanency are interdependent; the more exposure youth have to activities and individuals within the community, the more opportunities they have to form healthy relationships with peers and supportive adults who can facilitate permanency.

The Act also directs state agencies, as a condition of receiving federal Title IV-E funding, to promote foster youth participation in age-appropriate activities and implement a reasonable and prudent parent standard for foster care providers.² State agencies must ensure that prospective foster parents are adequately educated about the reasonable and prudent parent standard. Some examples of reasonable and prudent parenting in the Act include: “sports, field trips, and overnight activities lasting one or more days, and...decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.”³

The Michigan Legislature recently amended the Juvenile Code to codify a reasonable and prudent parent (RPP) standard into state law, and add a requirement for the courts to determine if the agency has followed it.

Effective April 6, 2017, Public Act 496 of 2016 amended section 1 of the Juvenile Code by adding a definition of reasonable and prudent parent standard. MCL 712A.1(q) defines the reasonable prudent parenting standard as “decisions characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interest while encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.”

Also effective April 6, 2017, Public Act 497 of 2016 amended section 19a of the Juvenile Code to require the court to determine at each permanency planning hearing if the agency is applying the RPP standard. MCL 712A.19a(5) requires the court to determine at a permanency planning hearing “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.”

The SCAO Juvenile Court Forms Committee will consider, at its September 2017 meeting whether to amend SCAO Form JC 19 (Order After Dispositional Review/Permanency Planning Hearing) to include a finding of the RPP standard.

2. Another Planned Permanent Living Arrangement (APPLA)

¹ The Michigan Department of Health and Human Services is designated as Michigan’s Title IV-E agency.

² 42 USC 671(a)(24).

³ 42 USC 671(a)(24).

The federal Act encourages a reduction of foster care cases with APPLA as the permanency goal by (1) prohibiting the goal for youth under the age of 16, (2) requiring the state agency to document the intensive, ongoing, unsuccessful efforts made toward finding the child a family placement, and (3) increasing judicial scrutiny over APPLA cases.

- (1) Michigan law does not include an age limit to utilize APPLA as a permanency goal; however, the SCAO court forms⁴ have been amended in accordance with the age limitation in the federal Act.
- (2) Michigan Public Act 497 of 2016 amended the Juvenile Code to restrict APPLA as the permanency goal unless the court finds that the agency has clearly documented why the child should not be returned home, adopted, be placed in a guardianship, or be placed with a fit and willing relative. This essentially requires the court to rule out the more preferred permanency goals before accepting APPLA.

Effective April 6, 2017, MCL 712A.19a(4) now states:

At or before each permanency planning hearing, the court shall determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court shall determine whether and, if applicable, when the following must occur:

- (A) The child may be returned to the parent, guardian, or legal custodian.
- (B) A petition to terminate parental rights should be filed.
- (C) The child may be placed in a legal guardianship.
- (D) The child may be permanently placed with a fit and willing relative.
- (E) **The child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the child's best interests to follow one of the options in (A) – (D).** [Emphasis added]

- (3) The federal Act also modified the requirement for courts to consult with the child regarding the child's permanency plan. At a permanency planning hearing in which the child's permanency goal is APPLA, the federal Act requires the court to (1) ask the child about his or her desired permanency outcome, and (2) make a judicial determination why, as of the date of the hearing, APPLA continues to be the best permanency plan for the child, as well as provide compelling reasons why it continues not to be in the child's best interests to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.⁵

Since 2008, Michigan law has required the court, at a permanency planning hearing, to "obtain the child's views" regarding the permanency plan in a manner that is appropriate to

⁴ [SCAO Form JC 19](#); [SCAO Form JC 76](#).

⁵ 42 USC 675a(a)(1) and (a)(2)(B) require the court, at a permanency planning hearing in which APPLA is the child's permanency goal, to ask the child about his or her desired permanency outcome, and make a judicial determination why, as of the date of the hearing, APPLA continues to be the best permanency plan for the child, and provide compelling reasons why it continues not to be in the child's best interests to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.

the child's age, regardless of the child's permanency goal.⁶ This judicial finding is not new to our state law; however, the federal Act now suggests that a direct inquiry with older youth is required when the designated permanency goal is APPLA. Best practice is for jurists to promote youth participation at court hearings, especially for youth 11 years of age or older.

3. Youth Who Run Away from Foster Care (Absent Without Legal Permission)

Children placed in foster care and who subsequently run away from that placement are deemed "Absent Without Legal Permission," or AWOLP. Youth who run away from the foster care system are at special risk for being victims of sex trafficking as they are especially vulnerable to dangerous situations and exploitation. To that end, the federal Act requires state agencies to report to law enforcement within 24 hours when a youth in foster care becomes missing or runs away. Once a youth returns from an AWOLP episode, the Act requires the agency to screen the youth to determine if the youth is a victim of sex trafficking. The agency is also required to identify the primary factors that caused the youth to run away from foster care, and adequately respond to the reasons.⁷

In 2002, the Michigan Supreme Court issued Administrative Order (AO) 2002-04 which requires circuit courts to establish a plan through Local Administrative Order for a special docket or other expedited process for the review of AWOLP cases.⁸ The LAOs must specify an AWOLP review procedure either through regular periodic dispositional review hearings, formal status conferences, or emergency status reviews. The courts must designate an AWOLP judge to be responsible for ensuring compliance with the AWOLP plan. Courts are also required to coordinate their efforts with DHHS to locate and report on each AWOLP child. In 2009, to facilitate this reporting requirement, SCAO created an AWOLP web application that courts and DHHS may use to jointly access and update the status of an AWOLP child.⁹ Use of the web application is not mandatory, and the DHHS MiSACWIS case management system can now maintain AWOLP case status information; however, some courts have found the web application helpful because it provides the court with immediate access to status updates regarding AWOLP children.

When a child becomes AWOLP from foster care, the court should ensure that the agency has timely reported the information to law enforcement, that the worker is making diligent efforts to find the missing child,¹⁰ and, where required by the court, that information is being entered into the joint AWOLP web application. When a child returns from AWOLP status, the court should ensure the agency conducts a comprehensive screening of the child and assessment for services.

For more information, courts may refer to the American Bar Association Center on Children and the Law [Issue Brief: The Role of the Court in Implementing the Older Youth Provisions of the 2015 Federal Strengthening Families Act](#).

⁶ MCL 712A.19a(3).

⁷ 42 USC 671(a)(35).

⁸ See AO 2002-04 [here](#).

⁹ [AWOLP FAQs & Best Practice Tips](#).

¹⁰ MDHHS Policy FOM 722-03A.