



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

Kelly Howard
Director

MEMORANDUM

DATE: July 12, 2012

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

FROM: Kelly Howard

RE: SCAO Administrative Memorandum 2012 – 06
2012 Public Act 163: Child Protection Removal Standards and Procedures

The Governor recently signed into law Senate Bill (SB) 320, which modifies child protection removal proceedings. The new law heightens the standards required to place a child into foster care, and creates a clear procedure for emergency removals by law enforcement and the Department of Human Services (DHS). The law also allows a judge or referee to provide a written order authorizing the removal or placement of a child who is taken into protective custody, and specifies that a referee order takes effect as an interim order pending the preliminary hearing.

The legislative revisions require changes to court practice, the development of new SCAO forms, and amendments of the Michigan Court Rules. A summary of the new law, and guidance in implementing the necessary reforms, follows. Please review the proposed changes in the attached SCAO form JC 05b, and provide questions or comments to Amy Garoushi at elgaroushia@courts.mi.gov by July 31, 2012.

If you have any questions, please contact me at howardk@courts.mi.gov or (517) 373-8671, or Christine Piatkowski at piatkowskic@courts.mi.gov or (517) 373-9272.

2012 PUBLIC ACT 163 (SB 320): STANDARDS FOR PLACING A CHILD IN FOSTER CARE / EMERGENCY REMOVAL PROCESS

A. Purpose of the Law

The law is designed to prevent incidents in which children are inappropriately taken into protective custody and placed in temporary foster care. There now must be reasonable cause to believe that a child is at *substantial risk of harm* or *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. Emergency removal without a court order is reserved for situations in which there are exigent circumstances. To eliminate the varying practices across the state, the law was amended to create a consistent process with clear standards for removal and placement. 2012 PA 163 amends sections 10, 13a, and 14 of the Juvenile Code (MCL 712a.10, 712a.13a, and 712a.14) and creates two new sections, MCL 712a.14A and 712a.14B.

B. Standards for Placing a Child into Foster Care (MCL 712a.13a[9]):

The amendments specify the standards that must be met for the court to place a child into foster care.¹ To place a child into foster care, the court must determine that **all** of the following conditions exist:

1. Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
2. No service or other arrangement except removal is reasonably available to adequately safeguard the child from the risk.
3. Continuing in the residence is contrary to the child's welfare.
4. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for the child's removal.
5. Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

C. Emergency Removal Standards and Procedure (MCL 712a.14):

The amendments heighten the standards required for an officer to take a child into protective custody. To take a child into protective custody without a court order, there must be 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 from those surroundings is necessary to protect the child's health and safety.² The bill defines "officer" as a local police officer, sheriff or deputy sheriff, state police officer, or county agent or probation officer of a court of record.

¹ The new standards for placement into foster care are not limited to emergency proceedings.

² Before this change in the law, an officer could remove a child without a court order if the child's surroundings were such as to *endanger his or her health, morals, or welfare*.

The amendments also create a new procedure for handling emergency removals and placements. There are distinct procedures for removal and placement. DHS workers must have a written court order to remove a child from his/her home or place a child into foster care.

1. Law Enforcement Removal – Seeking a Placement Order

Law enforcement officers do not need a court order to remove a child from a dangerous environment. Upon taking a child into protective custody without a court order, the officer must immediately notify DHS. The child cannot be held in a detention facility while awaiting DHS involvement. If the child is not released, the law requires the officer or DHS to contact the designated judge or referee³ to seek a placement order pending a preliminary hearing.

If the court is closed when a child is in need of foster care placement, DHS must provide the designated judge or referee a written petition or affidavit of facts electronically “or otherwise,” requesting placement into foster care. Upon receiving the petition or affidavit, the judge or referee may issue a written ex parte order authorizing that the child be placed into foster care. The order must be communicated in writing, electronically or otherwise, to the appropriate county DHS office and filed with the court the next business day. A referee’s order takes effect as an interim order pending the preliminary hearing. The preliminary hearing must be held within 24 hours after the child is taken into protective custody, excluding Sundays and holidays. MCR 3.965(A)(1).

2. DHS Removal – Seeking Removal and Placement Orders

Unlike law enforcement and under DHS policy, DHS is not authorized to remove a child from his/her home, or physically take a child from an officer who has removed the child, without a written court order authorizing the action.⁴ Therefore, the DHS worker must obtain an order to remove and place the child.

If the court is closed, DHS is required to contact the designated judge or referee and provide a petition or affidavit of facts electronically or otherwise. Upon receiving the petition or affidavit, the judge or referee may issue a written ex parte order authorizing DHS to take the child into protective custody and place the child into foster care pending the preliminary hearing.

The parent(s) shall receive immediate written or oral notice of the preliminary hearing.

³ MCR 3.934 and MCR 3.963(C) require the court to designate a judge or referee to be on call during hours the court is not open.

⁴ DHS Policy PSM 715-2.

D. Implications for the Court

Before the enactment of this law, court practices varied on emergency removals. Some courts authorized DHS to verbally request removal and placement in emergency situations. The on-call jurist would verbally authorize the actions and complete a written order the following business day. Other courts required DHS to provide a written petition to the on-call jurist, who would provide a written order in response.

2012 PA 163 prescribes uniform standards for removal, and a basic written petition and court order process; however, courts have discretion in developing the means for communication. SCAO encourages courts to meet with DHS representatives and local law enforcement to develop an after-hours emergency removal and placement plan. The group should determine the most efficient and effective way to communicate the case-specific information to the on-call jurist, provide for the preparation and signature of the order, and ensure return of the order to the DHS worker. The plan should include at least all of the following statutory provisions:

1. A petition or affidavit of facts requesting removal and/or placement into foster care may be received electronically or otherwise by the designated judge or referee.
2. The judge or referee may issue an ex parte order for placement if the court is closed. A referee's order is considered an interim order pending a preliminary hearing under these circumstances.
3. The court must find all of the following:
 - a. There is reasonable cause to believe that the child is at substantial risk of harm or that the surroundings present an imminent risk of harm to the child's health and safety;
 - b. That the child's immediate removal is necessary to protect the child's health and safety;
 - c. The circumstances warrant issuing an ex parte order pending the preliminary hearing;
 - d. Reasonable efforts were made to prevent or eliminate the need for removal;
 - e. No other remedy is reasonably available to protect the child;
 - f. Continued placement in the home is contrary to the child's welfare;
 - g. The ex parte order shall be supported by written findings of fact.
4. The order must be communicated in writing, electronically or otherwise, to the appropriate county DHS office and filed with the court the next business day.
5. The case should be scheduled for a preliminary hearing within 24 hours.

E. Amendments to Court Rules and SCAO Court Forms

SCAO is in the process of preparing court rule amendments to reflect the new statutory standards and procedure. In addition, SCAO is preparing revised court forms to reflect the statutory changes. One particular form that has already been reviewed is JC 05b.

Please review the proposed changes in the attached draft of SCAO-approved form JC 05b, and provide questions or comments to Amy Garoushi at elgaroushia@courts.mi.gov by July 31, 2012.

Summary: The JC 05b is used when the court orders DHS to take a child into protective custody and place the child into foster care. Use of the form is not limited to emergency removals, but may also be used following a preliminary hearing. The proposed changes are summarized below, with the new language reflected in ALL CAPS.

1. The form is renamed Order to Take Children into Protective Custody AND PLACE.
2. Item 3.b was renumbered on the form to 3.a, but otherwise unchanged.
3. Item 3.b is modified to reflect the statutory standards for placing a child into foster care. The statutory condition of “circumstances warrant issuing an ex parte order” is moved into an independent check box, which should be checked when using this form pursuant to emergency removals under 2012 PA 163, MCL 712a.14a or 712a.14b.
4. The Note reminding the court to schedule a permanency planning hearing within 30 days when checking the “Reasonable efforts are not required” box was moved out of item 5 and placed at the foot of the form. This change is not specific to 2012 PA 163, but was done to provide more space in the body of the form.
5. On page 2, there are two new check boxes to indicate whether the order is entered ex parte or following a preliminary hearing.
6. The signature line is amended to Judge/REFEREE, indicating the new authority for the referee to sign the order as specifically authorized by statute.
7. A new Note is added to clarify that a referee can be designated by a judge to sign the order pursuant to MCL 712a.14a or 712a.14b; however, a referee cannot sign the order under MCR 3.974(B) [post-disposition emergency removal/placements] or MCR 3.979(F) [removal from a juvenile guardian].

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER TO TAKE CHILD(REN) INTO PROTECTIVE CUSTODY AND PLACE (CHILD PROTECTIVE PROCEEDINGS), PAGE 1	CASE NO. PETITION NO.
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Court address _____ Court telephone no. _____

1. In the matter of name(s), alias(es), DOB _____ (see reverse side for other identifying information)

2. Date of entry of order: _____ Judge/Referee: _____ Bar no. _____

THE COURT FINDS:

3. a. The child(ren) has/have already been removed from the parent(s), guardian, or legal custodian and is/are absent without leave from court-ordered placement.
- b. There are reasonable grounds for this court to remove the child(ren) from the parent(s), guardian, or legal custodian in compliance with MCL 712A.2(b) and MCR 3.963(B). MCR 3.974(B)(1), **and (1) custody of the child(ren) with the parent(s), guardian, or legal custodian presents a substantial risk of harm to the child(ren)'s life/lives, physical health, or mental well-being; (2) no provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from this risk; (3) conditions of child custody away from the parent(s) guardian, or legal custodian are adequate to safeguard the child's health and welfare; and (4) continuing the child(ren)'s residence in the home is contrary to the welfare of the child(ren) because:**

Circumstances warrant issuing an ex parte order.

4. a. Reasonable efforts to prevent removal of the child(ren) from the home were not made.
 b. Reasonable efforts were made to prevent removal of the child(ren) from the home. Those efforts include: (Specify.)

5. a. Reasonable efforts are not required to prevent the child(ren)'s removal from the home due to **(See note below.)**
 the mother father subjecting the child(ren) to the aggravated circumstance(s) of _____ as provided in section MCL 722.638(1) and (2), and as evidenced

by _____

- the mother's father's conviction for murder of another child of the parent.
 the mother's father's conviction for voluntary manslaughter of another child of the parent.
 the mother's father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.
 the mother's father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.
 the mother's father's involuntary termination of parental rights to a sibling of the child(ren).

- b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are
 not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
OR
 still recommended because:

6. The child(ren) is/are Indian as defined in MCR 3.002(5), subject to the exclusive jurisdiction of a tribal court but temporarily located off the reservation, and removal of the child(ren) is necessary to prevent imminent physical harm to the child(ren).

(SEE SECOND PAGE)

Do not write below this line - For court use only

NOTE: When item 5 is checked, schedule a permanency planning hearing within 30 days of this determination.

STATE OF MICHIGAN
JUDICIAL CIRCUIT - FAMILY DIVISION
COUNTY

ORDER TO TAKE CHILD(REN) INTO
PROTECTIVE CUSTODY AND PLACE
(CHILD PROTECTIVE PROCEEDINGS), PAGE 1

CASE NO.
PETITION NO.

Court address

Court telephone no.

In the matter of

IT IS ORDERED: ex parte after preliminary hearing

TO: _____
(specify whether child protective services worker, an officer, or other person deemed suitable by the court pursuant to MCR 3.963[B][1])

7. The child(ren) shall be taken into protective custody and

- a. placed with/returned to the Department of Human Services for care and supervision.
- b. placed at _____ for medical observation and
treatment until medically released to _____
for placement at _____.

Placement shall continue until resumption of the next scheduled hearing.

8. To effect this order you are authorized to enter the premises located at _____
_____.

9. The parent(s), guardian, or legal custodian of the child(ren) shall be directed to appear for a preliminary hearing in this matter
to be held on _____ at _____ at _____.
Date Time (if known) Location
(Item 9 is not applicable for orders to take children into custody who are absent without leave from court-ordered placement.)

10. This authorization to enter the premises and take the child(ren) into protective custody expires _____.
 Enter on LEIN

_____ Date

_____ Judge/Referee

USE NOTE FOR REFEREE: A referee can be designated by a judge to sign an order to remove or place pursuant to MCL 712A.14a and MCL 712A.14b. A referee cannot sign an order to remove or place under MCR 3.974(B) or MCR 3.979(F).

NOTE to parent(s), guardian, or legal custodian: If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

IDENTIFYING INFORMATION

Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Home address			City	State	Zip	Telephone number	
Father's name		Address		City	State	Zip	Telephone number
Mother's name		Address		City	State	Zip	Telephone number
Pickup radius <input type="checkbox"/> Statewide <input type="checkbox"/> Other:				Court ORI MI			
Reason for removal is stated in item 3 on page 1 of the order to take child(ren) into protective custody.							

CUSTODY STATEMENT AND RECORD OF NOTIFICATION

1. I certify and return that I have taken _____
Child(ren)'s name(s)
 into custody on _____ at _____ and have delivered the child(ren)
Date Time
 to _____
Place of temporary placement
2. I notified attempted to notify the parent(s), guardian, or legal custodian listed below that the child(ren) has/have been taken into protective custody and that a **emergency**/preliminary removal hearing will be held on _____
Date
 at _____ at _____
Time Location

NAME	METHODS USED (reasons for failure to notify must be noted)	DATE	TIME
Father			
Mother			
Guardian/Legal custodian			
Other			

I declare that this custody statement has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

Agency name