

2008

# Conducting Effective Post-Termination Review Hearings



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## **A. Purposes of Post-Termination Review Hearings**

Following termination of parental rights, the court's role shifts from adjudicating parental rights to reviewing the supervising agency's progress toward achieving a timely permanent placement for the child. Michigan law requires the court to hold periodic hearings to review (a) the appropriateness of the permanency planning goal, (b) the appropriateness of the child's placement, and (c) the efforts to arrange an adoption.<sup>1</sup> Post-termination review (PTR) hearings help ensure that the supervising agency makes reasonable efforts to achieve timely permanency for children whose legal relationship with their parents has been severed. The law requires the hearings to be held when parental rights are either involuntarily terminated by the court, or voluntarily relinquished by the parents after the initiation of child protective proceedings.<sup>2</sup>

After termination, the superintendent of the Michigan Children's Institute (MCI) becomes the child's legal guardian as soon as the court commits the child to the Department of Human Services (DHS). The MCI then oversees the care, custody, and placement of the child. The MCI approves the permanency plan developed by the caseworker, resolves placement-change issues, consents to appropriate medical care, and consents to guardianships and adoptions.

The court's continuing role is to ensure that the agency moves forward on the child's permanency plan. The court may order the agency to refer the child for adoption services, order that the child be listed on the Michigan Adoption Resource Exchange, or make appropriate orders regarding children who run away from their placements. The court may require the MCI superintendent or a designee to attend a PTR hearing and respond to any claims that the MCI is not acting on the child's behalf to maintain a safe, stable, and permanent environment. But this should occur only after the court confirms that the child's lawyer guardian ad litem (LGAL) has discussed the concerns directly with the caseworker, the caseworker's supervisor, and MCI. As an alternative to compelling MCI attendance at a hearing, the court may require that MCI submit a written report regarding the concerns.<sup>3</sup>

The caseworkers' PTR tasks include reporting on the actions taken to achieve permanency, and projecting dates for eliminating permanency barriers and actually attaining permanency for the child. The foster care worker must ensure that the child's immediate needs are met, while the adoption worker focuses on identifying and recruiting adoptive families.

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<sup>1</sup> [MCL 712a.19c.](#)

<sup>2</sup> Children committed to the state following involuntary termination of parental rights are "Act 220 wards." Children committed to the state following their parent's voluntary relinquishment of parental rights are "Act 296 wards." The review hearing process is the same for both categories; therefore, this document refers to both Act 220 and 296 wards as "state wards."

<sup>3</sup> MCL 400.203

## **B. Frequency of Post-Termination Review Hearings**

Michigan law establishes mandatory timeframes for review hearings. The deadlines differ depending on the length of time the child has been in placement following termination.

### a. First Year Following Termination

The court must conduct a PTR hearing within 91 days after termination, and every 91 days thereafter *for the first year the child is in placement*. An exception to this requirement comes into play if the child is in a permanent placement with either a relative or a foster family pursuant to a permanent foster family agreement. In those cases, the court must conduct a review hearing every 182 days.

### b. Child in Placement More than One Year Following Termination

If the child remains in placement *for longer than one year*, the court must conduct a review hearing every 182 days, measured from the immediately preceding review hearing.

In addition, the law requires the court to hold a *permanency planning hearing* within 12 months after removing the child from the parental home.

The review and permanency planning hearings may be combined if appropriate notice has been provided as described in section C (Notice Requirements). SCAO recommends that courts routinely combine PTR and permanency planning hearings. This will help the courts meet the periodic deadlines for conducting both hearings. In addition, as shown in the example below, combining the hearings can streamline the process.

#### Example

The child is removed from home January 15, 2008. The court terminates parental rights on October 15, 2008. The first post-termination review hearing must be conducted by January 14, 2009 (91 days following termination).

The first permanency planning hearing must be conducted by January 15, 2009 (12 months after removal from the home). Therefore, holding a single, combined hearing not later than January 14 will satisfy both requirements.

A review hearing may not be canceled or delayed beyond the applicable deadline. On the other hand, the court may routinely conduct review hearings *more* frequently than required, or may accelerate a review hearing in a particular case to ensure that satisfactory progress is being made. For example, the court may schedule a review hearing 21 days after termination, rather than waiting for 91 days to elapse. The accelerated review hearing could ensure that an adoption worker has been timely assigned to the case, something that might not otherwise be known until the 91st day hearing. A child's LGAL may request that the court accelerate a review hearing.

### **C. Notice Requirements**

The court must ensure that the following persons receive written notice of each PTR hearing and post-termination permanency planning hearing:<sup>4</sup>

- a. The agency responsible for the care and supervision of the child.
- b. The person or institution having court-ordered custody of the child.
- c. The guardian ad litem for the child.
- d. The lawyer-guardian ad litem for the child.
- e. The attorneys for each party.
- f. The prosecuting attorney -- if the prosecuting attorney has appeared in the case.
- g. The child, if age 11 or older.
- h. Any tribal leader, if there is an Indian tribe affiliation.
- i. The foster parents, preadoptive parents,<sup>5</sup> and relative caregivers of a child in foster care under the supervision of the state.<sup>6</sup>
- j. Any other person the court may direct to be notified.

Those individuals always have the right to participate in post-termination review hearings. In addition, the LGAL and court may determine that a child under age 11 should participate in a hearing. In addition to the child's age, they should consider the child's wishes, developmental level and maturity, topics to be addressed at the hearing, and practical concerns such as transportation and school attendance. When a child attends a hearing, he or she may gain a greater sense of control, better understand how decisions are made, and provide the court with valuable information.<sup>7</sup>

### **D. Judge/Referee Activities Before Hearing**

Before the hearing, the jurist should review the updated permanent ward service plan and any reports submitted to the court for the upcoming hearing. The jurist should pay particular attention to the following:

- a. The date the child was first removed from home, age at removal, and the circumstances surrounding the removal.

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<sup>4</sup> MCR 3.921(B) and MCR 3.978(B)

<sup>5</sup> The term "preadoptive parent" is not defined in Michigan law or court rule. The term appears in MCL 722.956, where it is used in conjunction with placement.

<sup>6</sup> [SCAO Administrative Memorandum 2008-04](#) describes the legal requirement to provide notice of hearings to foster and pre-adoptive parents, and relatives providing care. It includes a Memorandum of Understanding between DHS and SCAO that designates DHS as the entity responsible for providing the notice.

<sup>7</sup> There is no legal authority for a court to compel a child to attend a PTR hearing by subpoena or otherwise.

- b. Placement history, and the child’s health, general well-being, and known needs (including cultural needs).
- c. Details of, and the progress toward implementing the permanency plan.
- d. Whether the caseworker assigned to the case has changed.

## **E. LGAL Activities Before Hearing**

Michigan law requires a child’s LGAL to meet with or observe the child in order to assess the child’s needs and wishes before a PTR hearing.<sup>8</sup> Generally, the meetings should be conducted in person; however, alternative means of LGAL contact with the child are allowed with the permission of the court if good cause is shown on the record.

In addition to meeting with the child, the LGAL should also focus on the following:

- a. Interview the child’s foster parents or relative caregivers.
- b. Interview the adoption worker to evaluate agency recruitment and assessment efforts, family preparation, barriers to adoption, and services needed to overcome barriers.
- c. Ensure that the child’s needs and interests are appropriately documented in the child adoption assessment.
- d. Determine whether the child should attend a hearing.
- e. Consult with the MCI superintendent regarding the issues of commitment, placement, and permanency planning.<sup>9</sup>
- f. Evaluate competing applicants for adoption, if necessary.
- g. Advocate for appropriate permanency plans.

## **F. Scope of Review Hearing**

During a PTR hearing, the court must review the appropriateness of the child’s permanency goal, the appropriateness of the child’s placement, and the reasonableness of the efforts being made to place the child in a permanent setting.

At each review hearing, the court may consider information from DHS, the licensed child-placing agency, the LGAL, the child, the foster or pre-adoptive parents, and any other person or agency the court thinks might aid in the review. The court should identify any barriers to achieving a permanent placement for the child, identify and resolve disputes, assign tasks, discourage delay, and make a record of the agency’s

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<sup>8</sup> [MCL 712a.17d.](#)

<sup>9</sup> MCL 400.203. If the LGAL has an objection regarding commitment, placement, or permanency planning, the LGAL and MCI superintendent *must* consult with one another.

progress toward achieving permanency. The Michigan Rules of Evidence do not apply at these review hearings.

**a. Permanency Planning Goal.**

The court must review the appropriateness of the child's permanency planning goal. State and federal policies approve four types of permanency goals for children. In order of priority, the goals are:

**1. Adoption.**

When a child is available for adoption, efforts must be made to place the child as quickly as possible with a family who best meets the child's needs as determined by the child assessment. A family with whom the child has already established an attachment or relationship, such as relatives or foster parents, must be given special consideration.

**2. Guardianship.**

Many children are placed with relatives who are willing to raise them, but who do not want to change their legal relationship. Grandparents, aunts, or uncles may be willing to provide a home for the child, but for a variety of reasons do not want to adopt. Appointing one of these caregivers as the child's legal guardian will grant that caregiver the legal authority to make decisions for the child, and also promote permanence. The court should consider the child's age and adoptability, and also the probability that the guardianship will become a permanent placement for the child.

2008 Public Act 203, effective July 11, 2008, allows the court to appoint a guardian for the child at a PTR hearing. Note, however, that if the child already has been committed to MCI, the court may not appoint a guardian without the written consent of the MCI superintendent. [SCAO Administrative Memorandum 2008-05](#) summarizes the new guardianship law.

**3. Placement with a fit and willing relative.**

This could be an appropriate goal if the relative is not willing to pursue adoption. The reasons must be documented in the initial or updated service plans. The court should consider the child's age and adoptability, and the probability that the placement will be permanent.

**4. Another permanent planned living arrangement (APPLA).**

As a last resort, and subject to special conditions, APPLA may be the most appropriate goal. Compelling reasons for this decision must be documented in the permanent ward service plan. [SCAO Form JC 76](#) (Order After Post-Termination Review/Permanency Planning Hearing) lists the following examples of compelling reasons for a placement other than adoption, guardianship, or placement with a fit and willing relative:

- a) No relative has been identified who is appropriate or available to assume the permanent custody of the child.



- b) The current caregiver is not an adoptive resource.
- c) Even after termination, the child has a significant attachment to the parent(s), and it is in the child's best interests that the attachment be preserved through parenting time and contact.
- d) Reasonable efforts to recruit an adoptive home have not succeeded.
- e) The child does not want to be adopted and is of an age at which due consideration must be given to his/her wishes.
- f) It is contrary to the child's best interests to break the child's attachment to the current caregivers.
- g) The current caregiver is committed to providing a permanent placement for the child.
- h) The placement allows siblings to remain together.
- i) The child's special needs can best be met in this placement.
- j) The child wants to remain in the current placement, which is only available as foster care.
- k) The placement is preparing the child for transition into independent living.<sup>10</sup>
- l) The child comes under the Indian Child Welfare Act, and the child's tribe recommends permanent placement in long-term foster care.
- m) Other.<sup>11</sup>

To evaluate the appropriateness of a permanency goal other than adoption, SCAO recommends that during the course of the review, the court ask the following types of questions:

- Why is adoption not in the child's best interest?
- What are the barriers to adoption?
- Are there any assurances that the placement will be permanent?
- If APPLA is now the goal, have you adequately explored all other placement options?
- Does the child's LGAL agree with the permanency goal?

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<sup>10</sup> When using factor (k) as the reason for APPLA, the court must specify the services being provided to the child to assist with the transition, such as referral to an independent living skills program, enrollment in a vocational program, referral for a mentor, continued out-of-home placement in foster care beyond age 18 to allow the child to complete secondary school, placement in a resource that provides on-site training for independent living, and other similar services

<sup>11</sup> The court must specify the findings identified as the compelling reasons for placing the child in an APPLA.

**b. Child's Placement.**

The court must review the appropriateness of the child's current placement, which should directly relate to the permanency goal. SCAO recommends that courts determine the reason for the selected placement and ask how it furthers the permanency goal.

Specific to the child, the court should ask for updates on the child's placement adjustment, the services being provided, and health and educational needs. The court should ask the caregiver, if present, if there are any barriers to permanency that the court can help resolve. For example, if a guardian expresses a need for financial support for the child, the court could refer the guardian to the friend of the court for child support services.

If the child is a **permanent** court ward under [MCL 712A.20](#), the court may order a change in placement if the court determines that a different placement is more appropriate and in the child's best interests.

It is important to note that courts may not order a change in placement for a state ward. The MCI superintendent is responsible for decisions regarding state wards' placement and care.

When parental rights have been terminated and the circuit court has subsequently committed the child to the MCI for adoption planning, that commitment is irrevocable and the court no longer has jurisdiction regarding custody matters.<sup>12</sup> However, SCAO recommends that if the court believes that the child's placement is not appropriate, the court make that belief known and recommend that the child's LGAL and the MCI superintendent consult regarding the court's concerns.

[DHS Foster Care Manual 722-3](#) states that every reasonable effort should be made to maintain stability in the child's placement. However, changing circumstances may prompt DHS to remove a child from the current placement and seek a more suitable home.<sup>13</sup> These changed circumstances might include:

1. The foster parent/relative/unrelated caregiver asks that the child be removed.
2. The change in placement will occur less than 90 days after the initial placement and the new placement is with a relative.
3. The supervising agency has reasonable cause to believe either that the child has suffered sexual abuse or non-accidental physical injury or that there is a substantial risk of harm to the child's emotional well being within the foster parent/relative/unrelated caregiver's home.<sup>14</sup>

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<sup>12</sup> *In re Griffin*, 88 Mich App 184 (1979).

<sup>13</sup> With certain exceptions, a foster parent or caregiver may appeal the removal to the Foster Care Review Board. If the FCRB disagrees with the agency's decision to remove the child, the FCRB must notify the MCI superintendent (if the child is a state ward) or the court (if the child is a permanent court ward),

<sup>14</sup> The manual lists other reasons, but they allow the supervising agency to replace a child before termination of parental rights. This document focuses on post termination reviews.

Additionally, if the child's current foster parent or caregiver expresses an interest in adopting the child, the MCI superintendent must be contacted before the child is removed from that home and placed elsewhere.

2008 Public Act 201, effective July 11, 2008, requires the agency to notify the court and the child's LGAL of a child's change in placement. The notice may be sent by ordinary mail or electronic means as agreed between DHS and the court. It must include all of the following:

1. The reason for the change in placement.
2. The number of times the child's placement has been changed.
3. Whether the child will be required to change schools.
4. Whether the change will separate or reunite siblings or affect sibling visitation.

**c. Reasonable Efforts to Place the Child for Adoption or in Other Permanent Placement.**

The 1997 federal Adoption and Safe Families Act included a significant mandate that was subsequently incorporated into Michigan's laws and court rules. That federal/state mandate requires Michigan courts to make findings on the record as to whether "reasonable efforts" have been made to establish a permanent placement for the child. If Michigan is to continue receiving federal Title IV-E funding for a case, then every 12 months, beginning with the child's removal from home, the court must conduct a permanency planning hearing and properly document its determination that the agency has made "reasonable efforts" to finalize the child's permanency plan.<sup>15</sup>

MCL 712A.19c(1)(c) requires the court to review "[t]he reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner." At each PTR hearing, "[t]he court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child."<sup>16</sup>

If the court finds that reasonable efforts to establish permanent placement for the child have **not** been made, the child becomes ineligible for Title IV-E funding. The period of ineligibility begins at the end of the month in which the judicial finding was made, and continues until the court finds that reasonable efforts have been made. [[45 CFR 1356.21\(b\)\(2\)\(ii\)](#)]

To make those "reasonable efforts" findings, the court should track the actions the agency has taken since the last hearing and consider whether there are any possible permanent placements that the agency has not explored. The court should ask the caseworker to describe the actions taken since the previous hearing, and to inform the court of any barriers.

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<sup>15</sup> [45 CFR 1356.21\(b\)\(2\)\(i\)](#).

<sup>16</sup> MCR 3.978(D).

### **1. Gauging Reasonable Efforts When Permanency Goal Is Adoption and an Adoptive Family Has Been Identified.**

When adoption is the permanency goal, and an adoptive family has been identified, the court must determine if the agency is doing everything possible to approve the home, complete the adoption assistance agreement, and move towards finalization.

Michigan law, and the [\*DHS Adoption Services Manual\*](#), outline specific adoption responsibilities for caseworkers. SCAO recommends that the court ask on the record if the processes have been followed, using the schedule below as a guideline for timeliness.

This recommended schedule assumes a minimal need for recruitment efforts, such as when the current foster parents apply to adopt. The timeframes should be extended if the agency must search for an adoptive family, or if more than one family seeks to adopt the child.

#### **MODEL ADOPTION SCHEDULING ORDER**

<b><u>Task</u></b>	<b><u>Time Goals (from the date of the termination)</u></b>
• Refer case to adoption services	Within 14 days
• Preliminary identification/recruitment of adoptive family	Within 30 days
• Complete Child Adoption Assessment	Within 45 days
• Adoption subsidy application	Within 90 days
• Family assessment/Home study	Within 120 days
• Adoption subsidy approval	Within 120 days
• Consent from MCI	Within 150 days
• Adoption petition filed	Within 180 days

### **2. Gauging Reasonable Efforts When Permanency Goal is Adoption but no Adoptive Family Has Been Identified.**

If adoption is the child's permanency goal, but no adoptive family has yet been identified, the court should ask the following questions.

- What efforts have been made since the last hearing to identify potential adoptive homes?

- Has the child been photo-listed on the Michigan Adoption Resource Exchange (MARE)?
- Is the child listed on other adoption exchanges and internet sites?
- How many potential adoptive families have expressed interest in the child, and what is the status of the agency’s investigation of those families?

Note: The court may not **finalize** an adoption during the period for appealing a court’s termination or adoption ruling. A parent may appeal the termination of his or her parental rights to the Michigan Court of Appeals and the Michigan Supreme Court.<sup>17</sup> Additionally, a prospective adoptive parent who is denied consent to adopt a child may file a motion pursuant to MCL 710.45 to challenge the denial. During this period, an adoption petition may be filed with the court and the court may issue a placement order, but the court may not finalize the adoption.

### **G. MCI Restoration of Physical Custody to Parent or Relative**

The law allows the MCI superintendent to enter into an agreement with the parent or a relative to restore physical custody of the child to that parent or relative even after a termination of parental rights. Restoration of physical custody to the parent **does not** restore parental rights, but it does authorize placement with the “former” parent. [MCL 400.207\(6\)](#) states in part:

“If a parent . . . of a child who is a ward of the institute establishes a suitable home and is capable and willing to support the child, the department may restore the child to his or her parent . . . .  
The institute may assist the parent . . . with the support of the child if the aid is less than the cost of care the institute would otherwise provide.”

A request for restoration to the parent or a relative, including the rationale for the placement selection, must be submitted to the MCI superintendent. Agency responsibility for supervision continues until the case is discharged. The MCI superintendent has the authority to cancel the placement agreement in order to protect the child’s interests. [DHS Foster Care Manual CFF 722-15](#).

### **H. Terminating Court or MCI Jurisdiction and Agency Supervision**

By law, the court’s jurisdiction over a child ends when the child reaches age 20, unless the court terminates its own jurisdiction sooner pursuant to MCL 712a.2a(1). Additionally, [MCR 3.978\(D\)](#) states that a court *may* terminate its jurisdiction over a child protective proceeding when the court enters an order terminating the rights of the entity with legal custody and enters an order *placing the child for adoption*. While courts are authorized to terminate jurisdiction as soon as the child is placed for adoption, SCAO recommends that courts retain jurisdiction until the *final adoption order is entered*. This

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<sup>17</sup> [MCL 710.56\(2\)-\(4\)](#). Also see [In re JK](#), 468 Mich 202 (2003).

will allow the court continue its oversight of the case in the event that an adoption is disrupted within the six month waiting period.<sup>18</sup>

The MCI superintendent's jurisdiction over a child committed to the MCI terminates when the child turns 19, but the superintendent or DHS may discharge the child sooner under [MCL 400.203\(1\)](#). According to [DHS Foster Care Manual CFF 722-15](#), the MCI superintendent may discharge the child for purposes of adoption, marriage (if the child is under age 18), or emancipation.

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<sup>18</sup> MCL 710.56 requires a six month waiting period from the time the child is placed in the adoptive home until the final adoption order is entered, unless the waiting period is waived for good cause.