

Reference Sources for Child Welfare and Juvenile Justice Law

By Marlene Coir

Child protective proceedings and juvenile justice adjudication practice often surprise attorneys familiar with criminal or civil law in Michigan. For the uninitiated, a brief background of the law and procedure may be useful, followed by selected popular research resources.

Hearings involving juveniles are governed by Michigan Court Rules Subchapter 3.900,¹ and the law within this area of practice may appear to be a hybrid of civil and criminal practice. In both child protective and juvenile delinquency proceedings, the process begins with the filing of a petition. In many jurisdictions, child protective and juvenile delinquency proceedings will be heard before a referee unless a judge demand is made. If a judge or judge and jury demand is made and the court takes jurisdiction over the matter, subsequent review hearings may be returned to a referee.

Child protective proceedings

Petitions seeking to remove children from their parents' care because of neglect or abuse are not criminal proceedings. However, the United States Supreme Court has determined that an individual's right to the care and custody of his or her children is a liberty interest; therefore, proceedings involving the parent-child relationship necessitate a higher level of factual certainty than proceedings seeking to award money damages in a civil action.²

Child protective proceedings involving termination of parental rights are afforded a *clear and convincing* evidentiary standard only on the question of termination. *Preponderance of the evidence* is the standard applied to other phases of the proceedings, such as the assumption of jurisdiction over

a child. Parties have the right to a jury trial in child protective proceedings, but only on the question of whether the court has jurisdiction in the matter. If a jury finds that the court has jurisdiction, best interest and disposition are decided by the judge. If the state is seeking temporary court wardship of a child, whether removed from his parents' care or not, the *preponderance of the evidence* standard applies to all phases of the proceeding. A jurist may find that the state has met its burden of proof in a termination proceeding but still decline to terminate parental rights if it is found that termination would not be in the child's best interest.

When Native American children are the subjects of a child protective proceeding, the court must apply the provisions of the federal Indian Child Welfare Act and the Michigan Indian Family Protection Act. At the preliminary stage of the proceeding, the court must inquire as to whether the subject children fall under either or both acts. If there is an allegation that the children have Native American heritage as defined by the act(s), the court must notify any identified tribe(s) and the Bureau of Indian Affairs of the proceedings.

Juvenile justice

Juvenile delinquency proceedings are not considered criminal trials, and disposition in

a juvenile delinquency matter is quite different from the sentencing phase in adult criminal trials. In juvenile delinquency cases, the evidentiary standard will always be *beyond a reasonable doubt*, just as in adult criminal court. There is not a U.S. constitutional right to a jury trial in juvenile justice adjudications; however, Michigan provides that right through statute and court rule.³

Alleged offenses will have the same elements found in the criminal code as it applies to adults; however, minors are not *convicted* of crimes but are *adjudicated* under the juvenile justice system. Minors may also be charged with status offenses, which are delinquency offenses only because of the age of the offender. Status offenses include truancy from school or home and incorrigibility.

There are no sentencing guidelines, and an adjudicated juvenile is not turned over to a separate corrections department. If the prosecution prevails, the court may warn and dismiss, order probation services, or commit the juvenile to a secure or non-secure residential placement;⁴ the court may continue its jurisdiction over the minor for as long as needed to rehabilitate the individual or until he or she reaches age 19. In certain circumstances, an accused juvenile may also be deferred into a program meant to rehabilitate without adjudication. If the juvenile successfully completes

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the deferral program, the charging petition is dismissed.

There is much more to be said about the distinctive character of child protective hearings and juvenile justice law and procedure; however, finding reference and research sources specific to these proceedings is often a challenge. The following are a few titles favored by attorneys practicing within these two areas.

The Institute of Continuing Legal Education

The Institute of Continuing Legal Education (ICLE) has an excellent juvenile justice resource center on its website. To access the topic, open the Select a Practice menu on the My Resources page and choose Juvenile Law. Subtopics include designated proceedings, expungement, pleas and plea agreements, trial, and waiver to adult court. It is also possible to execute a term search limited to the juvenile law section of ICLE's expansive database. Selecting a subtopic opens a page with links to other ICLE online resources, which may include how-to kits, controlling Michigan Court Rules, and online book chapters, e.g., Chapter 13 of Michigan Criminal Procedure.⁵

To find discussion on child protective proceedings, choose Family Law from the Select a Practice menu. This opens a page listing various subtopics of family law, including child protection, Indian children, parenting time, paternity, and termination of parental rights. The online book referenced at the child protection subtopic page is Chapter 24 of *Michigan Family Law*.⁶ ICLE also references relevant how-to kits, model jury instructions, and court rules. If the

subtopic on Indian children is selected, the online book would be the *Michigan Family Law Benchbook*, Chapter 13, "Complying with Indian Child Welfare Statutes."⁷ A subscription is necessary to access ICLE's online books and other materials; however, many of the resources are available in print format at county and academic law libraries.

Michigan Judicial Institute

The Michigan Judicial Institute⁸ (MJI) has published several benchbooks relevant to child welfare law and juvenile justice at the Michigan Courts website. Benchbooks can be accessed free of charge at this website and may be filtered by subject. If you select family law as a topic, you are able to select from subtopics such as adoption, child protective proceedings, and juvenile justice.

The MJI has a wealth of practical information on child protective and juvenile justice proceedings in additions to the benchbooks. Quick-reference materials on adoptive proceedings and juvenile justice proceedings can be found by using the publications drop-down menu at the MJI website; choose Publications, then Quick Reference Material, and Family. A page will open with links to quick-reference materials itemized by proceeding type and governing authority.

Michigan One Court of Justice

The Michigan Supreme Court Administrative Office and the MJI have also published bench cards summarizing the elements of particular types of hearings, including governing authority and advice on when a particular card should be used. Typing the phrase "bench card" in the search box at

the Michigan One Court of Justice⁹ website produces a list of relevant titles.

The resources outlined in this article are not all-inclusive. Journal articles on specific issues in child protective proceedings and juvenile justice can be found by searching databases such as HeinOnline (a proprietary database that can be accessed at many academic and law libraries) and the Google Scholar articles database. Google Scholar can also be a resource for caselaw on a particular issue. Discussing a search strategy with a law librarian is also an excellent method of finding the information you need. ■



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ENDNOTES

1. Michigan Courts, *Admin Matters & Court Rules* <<http://courts.mi.gov/courts/michigansupremecourt/rules/pages/current-court-rules.aspx>>. All websites cited in this article were accessed May 17, 2017.
2. *Santosky v Kramer*, 455 US 745; 102 S Ct 1388; 71 L Ed 2d 599 (1982).
3. See MCL 712A.17(2); MCR 3.911.
4. See MCL 712A.18 for additional sentencing options.
5. Also available in print format: MacKenzie & Reeds, *Michigan Criminal Procedure* (2012).
6. Also available in print format: Kelly, Curtis & Roane, *Michigan Family Law* (2016).
7. Also available in print format: SCAO, *Michigan Family Law Benchbook* (2016). This topic is also discussed in Michigan Judicial Institute, *Child Protective Proceedings Benchbook* (2017) <<https://mjieducation.mi.gov/documents/benchbooks/14-cpp/file>>.
8. Michigan Courts, *MJI* <<https://mjieducation.mi.gov/>>.
9. Michigan Courts, *Michigan One Court of Justice Website* <<http://courts.mi.gov/Pages/default.aspx>>.