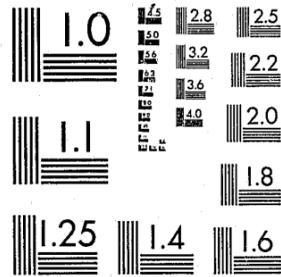


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2-4-82

LAW MANUAL FOR PROTECTIVE SERVICES WORKERS

- by -

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75503

Prepared under contract for:
MICHIGAN DEPARTMENT OF SOCIAL SERVICES
Protective Services Division
January 1978

NCJRS

FEB 13 1981

ACQUISITION

DSS Publication No. 374 (1-78)

LAW MANUAL FOR PROTECTIVE SERVICES WORKERS

TABLE OF CONTENTS

Contents	i
Chart: Court Systems in the State of Michigan	vii
Chart: Child Protection System: Legal Process	viii
PART ONE: SOME LEGAL THEORY	
A. The Rights of the Child, the Parents, and the State.	1
B. The Role of the Juvenile Court	2
C. The Concept of Due Process of Law	4
D. Personal Liberties Issues in Child Protective Services	6
E. Legal Base for Protective Services in Michigan	9
1. The Department of Social Services Has a Duty to Act in Cases of Neglect, Abuse, Exploitations, Cruelty or Abandonment of Children.	10
2. The Child Protection Law	10
3. Note the Important Differences in Scope and Purpose Between the Child Protection Law and the Juvenile Code	10
PART TWO: GATHERING, ORGANIZING AND PRESENTING FACTS 12	
A. Assessment and Investigation	12
1. The Social Function - Assessment and Evaluation	12
2. The Legal Function - Investigation	13
3. Reliable Fact Gathering in Investigation	14

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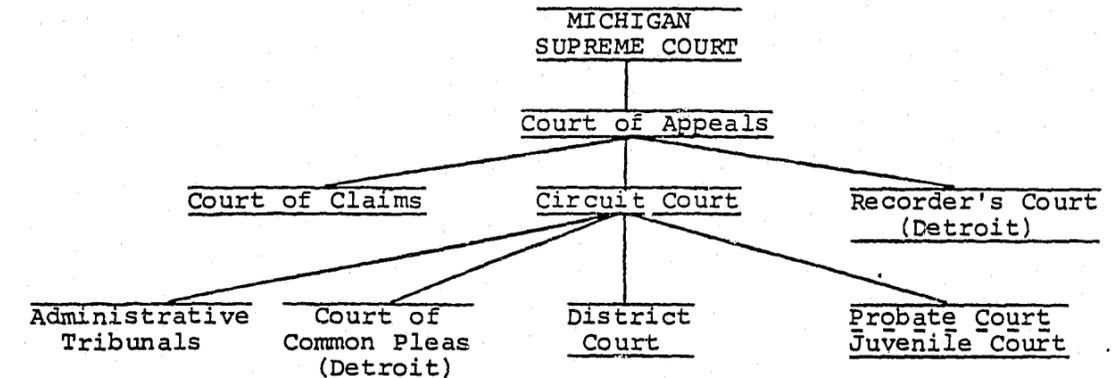
4. Collection and Evaluation of Factual Data	15
5. Checklist: Collection and Evaluation of Factual Data	18
6. Record-Keeping	19
7. Some Credible Evidence	21
B. The Decision to Petition the Court	22
1. Is Court Action Socially Desirable	22
2. A Non-Exhaustive List of Possible Reasons to Initiate Juvenile Court Action	24
3. What is Legal Neglect?	25
a. Statutory Definition of Neglect: Void for Vagueness?	25
b. A Normative Fact Judgment is Required	27
4. Ascertaining the Community's Minimum Standard of Child Care	28
5. Assessing the Facts	29
a. CHART: Legal Neglect: Statutory Chart for Michigan	31
b. Keep Social Intervention Strategy in Mind Even in Early Stages of Court Process	32
6. CHECKLIST: The Decision to Petition	33
C. Drafting the Petition	34
1. Legal Requirements	34
2. Techniques of Drafting	35
a. Petition Example #1 - Abandonment	36
b. Petition Example #2 - Physical Abuse	37
c. Petition Example #3 - Neglect	38
d. Comment on Emotional Neglect	40
e. Petition Example #4 - Emotional Neglect	42
f. Petition Example #5 - Failure to Thrive	43

3. Filing and Serving the Petition	44
4. Identifying and Locating Interested Parties	44
D. Amended Petitions	45
E. Supplemental Petitions	47
PART THREE: JUVENILE COURT PROCEDURE - EMERGENCY PLACEMENT TO PRE-TRIAL CONFERENCE	48
A. Emergency Placement	48
1. The Police	48
2. Emergency Court Order	49
3. The Hospital	49
B. Preliminary Inquiry	50
C. Preliminary Hearing	51
1. Nomenclature	51
2. When Required	52
3. CHART: Preliminary Hearing Central Purposes	53
4. Purpose of Preliminary Hearing	54
a. Advise Parents (Respondents of Rights)	54
b. Whether grounds exist for Authorizing Petition	54
c. Detention of the Child	55
5. Evidence at Preliminary Hearing	55
6. Adjournments of Preliminary Hearing	57
7. CHECKLIST: Preparation for Preliminary Hearing	57
8. FLOW-CHART: Preliminary Hearing	58
D. Preliminary Orders	59
1. Placement Orders	59

2. Visitation Orders	60
3. Medical Care	60
4. Orders for Further Investigation; Examination of Child	60
5. Mental and Physical Exams of Parents before Adjudication	61
E. The Consent Docket	62
F. The Pre-Trial Conference	63
G. Negotiation and Mediation in Juvenile Court	64
1. Why Negotiate?	64
2. Fluidity of Positions Promotes Negotiated Resolutions	65
3. Protecting the Child in Negotiation	66
4. Negotiating Options	67
5. Child's Attorney as Mediator	68
 PART FOUR: AN INTRODUCTION TO EVIDENCE	 70
A. Evidence in Juvenile Court	70
B. Relevancy	72
C. The Hearsay Rule and Its Exceptions	72
1. Assertive Conduct	73
2. Exclusions from the Hearsay Rule	74
3. Exceptions to the Hearsay Rule	74
a. Party Admissions	75
b. Declarations against Interest	75
c. Excited Utterances	75
d. Statements of Present Physical Sensation	76
e. Statements of State of Mind	76
f. Public Records and Documents	76
g. Business Records	76

D. Expert Witnesses	77
E. Admission of Written Documents and Tangible Evidence	78
1. Authentication	78
2. Photographs	79
3. Reports	79
4. Orders of Other Courts	80
5. Letters and Other Written Documents	80
 PART FIVE: TRIAL PREPARATION	 81
A. The Legal Roles	81
1. The Parents' Attorney	82
2. The Child's Attorney	85
3. The Prosecutor: Protective Services Attorney	88
4. The Role of the Judge	89
B. Confidentiality and Privileged Communication	90
C. Subpoenas	92
D. On Testifying in Court	92
1. Checklist for Testifying as a Witness	93
E. CHECKLIST: Preparation for Trial	95
 PART SIX: THE TRIAL (Contested Hearing)	 96
A. Outline	97
1. Ascertain Presence of Proper Parties	97
2. Service	97
3. Issues Before the Court are Identified	97
4. Proceedings and Legal Rights Explained	97

5. Opening Statements	97
6. Testimony	97
a. Direct examination	97
b. Cross examination	98
c. Re-direct examination	98
d. Re-cross examination	98
e. Questions by the Judge	98
7. Objections	98
8. Petitioner's Case	98
9. Respondent's Case	98
10. Child's Independent Witnesses	99
11. Closing Argument	99
12. Decision	99
13. Disposition	99
 PART SEVEN: POST-ADJUDICATION	 100
A. Disposition - Own Home Placement	100
B. Supplemental Orders of Disposition	101
C. Statutory Review Hearings	102
D. Rehearings	102
E. Appeals	103
 GLOSSARY OF TERMS	 104

A. The Court System of the State of Michigan

"Supreme Court" - the highest appellate court in the State of Michigan, hearing cases which are appealed to it, at its discretion granting or not granting an "application for leave to appeal". It also functions in (1) the promulgation of rules designed to serve as guides of practice and procedure in all of the courts of Michigan, and (2) supervision and control over all other courts in the state.

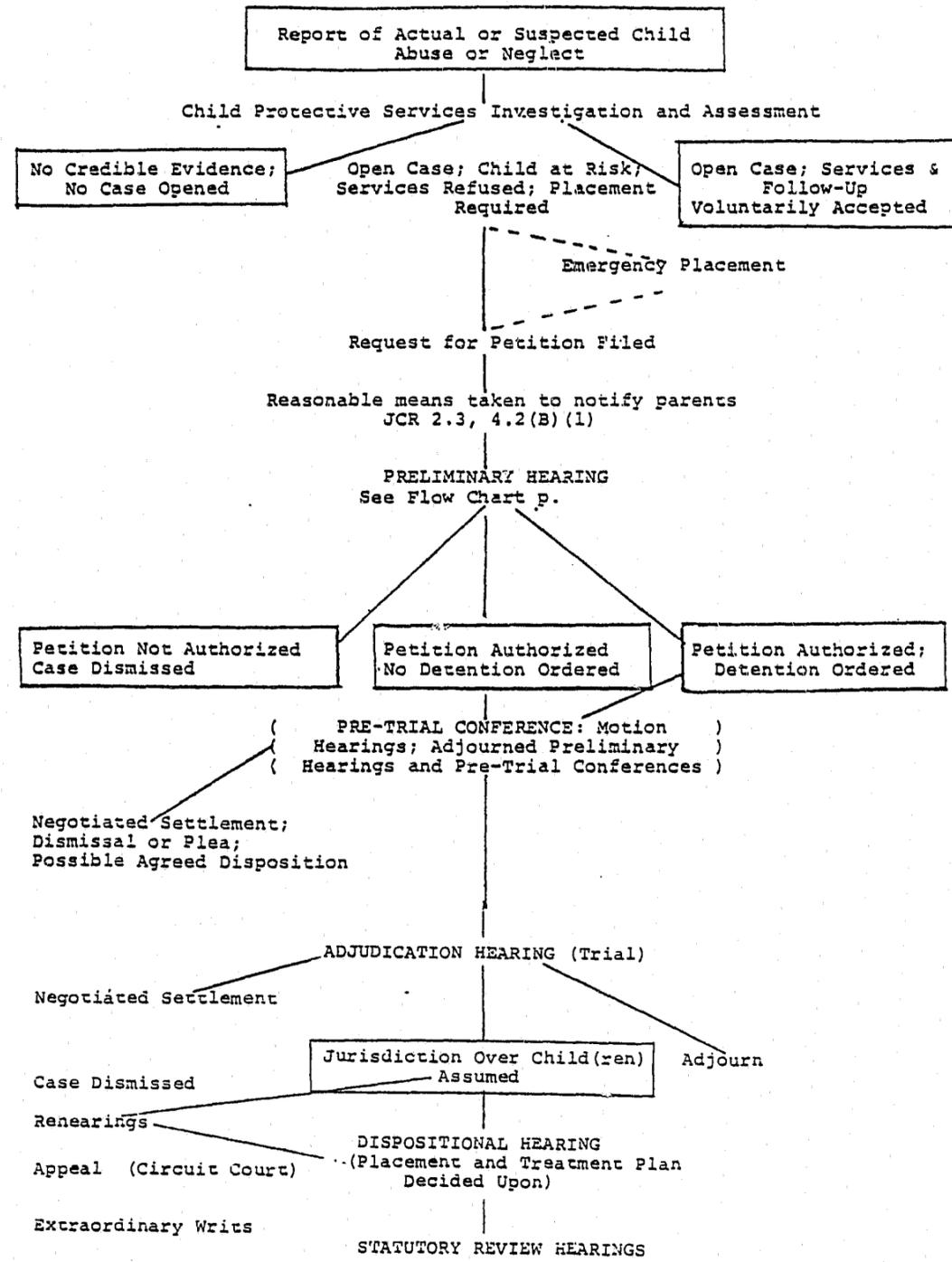
"Court of Appeals" - established first by the 1963 Constitution. Primarily an appellate court, intermediate between the Circuit Courts and the Michigan Supreme Court. A decision of the Court of Appeals is final, except for those cases the Supreme Court consents to review.

"Circuit Court" - as of January, 1973 the state was divided into 46 judicial circuits, each of which consists of one to four counties, and has 1-28 judges. Sessions are held in county seats - at least four times a year at each. Referred to as "trial courts of general jurisdiction", they do hear cases, too, that are appealed from lower courts and some administrative agencies of the state government. They supervise inferior courts and tribunals within their jurisdiction.

"Probate Court" - one in each county in the state (except that Clare and Gladwin Counties share one, as do Charlevoix and Emmet Counties.)

"Juvenile Court" - a juvenile division of the Probate Court. In most cases the Probate Judge also serves as Juvenile Court Judge. It handles cases of children under age 17 who are delinquent, neglected or abandoned; also adoptions.

B. Child Protection System: Legal Process



PART ONE: SOME LEGAL THEORY

PART ONE
SOME LEGAL THEORY

A. The Rights of the Child, the Parents, and
the State

The law is an essential partner to the social worker in coping with children who are abused and neglected and their families. The perspective and orientation of the lawyer and the judge, however, is somewhat different from the social worker's. Personal rights and liberties, their protection and their abrogation in certain cases, is the unique business of the court. In a writing which attempts to be an aid to Protective Services Workers in dealing successfully with the law, we should begin with an overview of the rights and interest of the child, the parents, and the state which need to be balanced by the Court in the child protection context.

Children have a right to be free of abuse and neglect, to have a home free of outside interference, to have any intervention which may take place, take place carefully and wisely and with minimum detriment to the child.

Parents have the right to raise their children as they see fit unless they are harming their children. They have a right to be free of state interference in child rearing unless and until the state can show justification for abridging that right.

Society at large, that is, the state, has an interest in assuring the safety and good health of its children,

has an interest in preserving and strengthening families within our society, and has a responsibility to protect children from harm but also to protect families from unwarranted intrusions.

The power of the state to intervene in family and personal life is regulated by the Constitution of the United States, the Constitution of the State of Michigan, statutes of the State of Michigan, and by court decisions interpreting the Constitutions and the statutes. The Michigan Legislature has given the Juvenile Court jurisdiction over abuse and neglect cases except in those few cases in which criminal charges are brought. The Juvenile Court is a court of limited or statutory jurisdiction which means that the Juvenile Court judge must find authority in the statutes for any and all power exercised.

B. The Role of the Juvenile Court

The distinguishing feature of the Juvenile Court which sets it apart from all other elements of the Child Protection Network is that the Juvenile Court acts as an arbiter of personal rights. When the society at large, through Child Protective Services, attempts to intervene in the life of a family on behalf of a child it is the Court which must assure that the rights of the parents and the rights of the child as well as the rights of the society generally are properly protected and are abridged

only after full and fair and objective court process. It is only the Court that can abridge these personal rights in other than emergency situations. It is only the Court that can compel unwilling parents (or children) to submit to the authority of the state. The Court, then, controls the coercive elements of our society and allows those coercive elements to be unleashed only after due process of law.

Although the Juvenile Court has social service resources at its disposal, and sometimes under its own roof, the Court is not primarily a social treatment institution. Even though social treatment is one part of its function, the Juvenile Court is first of all a judicial body. It is true that once the Court has completed its judicial function and taken jurisdiction over a child, our Juvenile Laws and the structure of our Juvenile Court allows broad latitude in devising a "disposition" which will best meet the needs of the child in question and his family. At the Dispositional Phase of the court process Juvenile Court is a partner with social workers and other behavioral science practitioners in devising and following through on an appropriate family treatment plan, i.e. a disposition. However at the Pre-Dispositional Phases of the process the Court's formal role is purely judicial.

After first assuring the safety and well-being of the child, the court procedures will allow the Judge to thoughtfully and fairly balance and test the rights of

the child, the parents, and society at large. This balancing and testing of rights is accomplished in a manner devised over centuries to protect against arbitrary and unwarranted intrusions upon personal rights and to ensure fairness - a method of proceeding come to be called "due process of law".

C. The Concept of Due Process of Law

In the context of child protection both parents and children face deprivation of their liberty. Parents may lose custody of their children or may have their constitutionally protected rights to raise their children as they see fit suspended. Children may be taken from their parents' home. Our U. S. Constitution and the Constitution of the State of Michigan guarantees that the state shall deprive no person of life, liberty or property except by due process of law. What is "due process of law" and how does that legal concept apply to child protection?

It is difficult to define "due process of law" except generally. Every person is entitled to protection of certain fundamental rights of liberty and justice which lie at the basis of all our social and political institutions. Among those fundamental rights is the right to custody and care of one's children, the right to privacy free from governmental interference, and the right of a child to live undisturbed with his own parents

in his own home. The principle of due process was first codified in the Magna Carta and was designed to protect the subjects from arbitrary actions of the Crown. Due process is equivalent to our society's commitment to assuring fundamental fairness consistent with a universal sense of justice for all individuals facing a loss of liberty. A parent's loss of a child and a child's loss of a parent constitute a loss of liberty.

The elements of due process are not fixed as specific requirements of law but rather vary according to factual circumstances, the legal interest involved and the necessities of the situation. Each state is free to establish procedures in its courts or agencies in accordance with the state's own conception of good policy and fairness. Administrative as well as court procedures must conform to principles of due process when fundamental personal interests are at stake. State statutes or administrative policies may be declared unconstitutional if the procedures so established offend some principles of fundamental justice such as the requirements of notice and hearing, or if those procedures are unreasonable or arbitrary.

Although the content of due process cannot be defined specifically, its purpose is clear: that is, to insure fair and orderly administration of the laws. The effect of the due process guarantee in child protection is to prohibit invasions of personal liberty

(of both parents and children) except in emergency situations, without notice and opportunity for hearing. The orderly administration of child abuse and neglect laws in our state is spelled out in the Child Protection Law, the Juvenile Code and the Court Rules. Procedural due process requires that one subject to deprivation of liberty be given notice of the proceedings and the charges against him, he must be given an opportunity to defend himself, and the question of the appropriateness of the deprivation under the circumstances presented must be resolved according to some settled course of judicial proceedings.

This manual is devoted to describing the "settled course of judicial proceedings" around child protection in Michigan. We will examine the details and specifics of the orderly administration of justice and the role and responsibility of Child Protective Service Workers in that process. From the perspective of a Protective Service Worker we ask: What is necessary before a court can take jurisdiction over a child? How is a legally sufficient case prepared and presented in Court? What responsibility should the Protective Service Worker take for making the Court case? How does he/she meet that responsibility?

D. Personal Liberties Issues in Child Protective Services

The "reaching out" with Protective

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D. Personal Liberties Issues in Child Protective Services

The "reaching out" with Protective

Services, whether by a public welfare department or a voluntary agency, presents a problem which the good motives of the agency ought not to obscure. If help is offered when it is not wanted, the offer may contain an element of coercion. There is a danger of overreaching when the agency deals with the most vulnerable members of the community who may easily be cowed by a apparent authority. [What is] the extent to which the offering of Protective Services should be reviewed by some judicial or administrative agency [?]...The privacy of a family ought not to be upset lightly.*

Child Protective Services is an area of state control over individuals and families that is rarely visible to most members of the community. Social workers and other helping professionals involved in child protection activities intend no harm to client families but aspire instead to stabilize the family as a unit, protect the child, and impart skills of child rearing where they are lacking. In spite of the benevolent motives of child protective services, however, significant intrusions by government into personal and family life is possible without the safeguards of due process of law. The governmental intrusions, in the form of child protective services, may not be warranted in some cases.

Protective service workers and supervisors should recognize that their clients often attribute considerably more power and authority to them than they may actually possess. The threat of court action is present in every protective service case, whether expressed or implied. Clients may agree to protective services involvement out of fear of

*Paulsen, "The Law and Abused Children" in The Battered Child, Second Edition, 158 (R. Helfer and H. Kempe, eds. 1974).

protective services authority or fear of court petition. Overestimating the power of protective services, the family may believe that a petition to the court is tantamount to removal of their children, not understanding that they have rights in the legal process too. The exaggerated perception of protective service authority and the fear of the court process may intimidate clients so that they will acquiesce in "voluntary" plans for services or for placement of their child. Such "voluntary" and non-judicial arrangements provide neither safeguards for the rights of the parent and the children nor checks on a possibly over-zealous agency or social worker. A good part of any legal case brought on behalf of children (and against their parents, as the parents may see it) often comes from the parents' own statements and admissions. Parents are often "condemned out of their own mouths".

Add to the above the fact that protective service clients are often poor and powerless, and the risk of arbitrary social work action, of agency coercion, and of overreaching in violation of personal liberty and personal integrity looms large indeed. How shall personal freedoms of parents and children be preserved in child protection? Shall procedural safeguards be established within the administrative structure of protective services to protect the privacy and personal liberties of clients? Or shall we rely on individual social workers to be respectful of personal liberties and clearly advise clients of their legal rights and the limitations of Protective Services

whenever involuntariness and coercion may exist?

Some civil libertarians have suggested that all protective services clients be given a warning upon first contact that anything they say can be used against them in court. Such warnings are not now required by law. Basic fairness and good social work practice and ethics may require that clients be fully advised of the protective services role and the limits of protective services authority at early stages of investigation and evaluation.

Because child abuse and neglect cause such great societal concern and because the child protection network has been seen as benevolently motivated, society has, up to now, been willing to run the risk of occasional coerced and perhaps unwarranted invasions of family privacy in exchange for swift identification and response to child abuse and neglect and related ills. The law has not required that notice and hearing be provided before Child Protective Services is allowed to become involved with the family. Protective Services Workers, however, ought to be aware of the personal liberty issue and be responsive to it in their every dealing with their clients.

E. Legal Base for Protective Services in Michigan

The Legal base for Protective Services' authority and duty to act in Michigan is set forth in complete detail in the Services Manual. The statutes which provide that legal authority will not be repeated here. However, since the legal authority of Protective Services to act in cases

of suspected child abuse and neglect lies at the foundation of what follows, the legal base is summarized below.

1. THE DEPARTMENT OF SOCIAL SERVICES HAS A DUTY TO ACT IN CASES OF NEGLECT, ABUSE, EXPLOITATION, CRUELTY OR ABANDONMENT OF CHILDREN. (Social Security Act, Title IV, Part A. Sec. 402(a) and PA 1939, No. 280, Sec. 14(1): being CL 1948, Sec. 400.14(1), as amended.

2. THE CHILD PROTECTION LAW (PA 1975, No. 238, being MCLA 722.621 et. seq.) PROVIDES THAT CASES IN WHICH THERE EXISTS A REASONABLE CAUSE TO SUSPECT CHILD ABUSE AND NEGLECT BE REPORTED TO, INVESTIGATED BY, AND SERVICED BY THE DEPARTMENT OF SOCIAL SERVICES. The very important details and specifics of the Child Protection Law should be read and understood by every Protective Services social worker.

3. NOTE THE IMPORTANT DIFFERENCES IN SCOPE AND PURPOSE BETWEEN THE CHILD PROTECTION LAW AND THE JUVENILE CODE.

The child protection law deals primarily with the discovery of suspected cases of child abuse and neglect. Among other things, that statute governs who must report, to whom, and how the investigation should proceed. The responsibilities of the Department of Social Services for responding to child abuse and neglect are spelled out. To encourage complete discovery of child abuse and neglect immunity is provided for reporters, privileged communications are abrogated, and hospitals are allowed to detain a child and do certain exams without permission of parents. There are additional provisions in the child protection law, of course, dealing with central registry, the child's attorney and services to be provided by the Department of Social Services. The essential thrust of that statute, however, is to encourage discovery of child abuse and neglect.

Once cases of child abuse or neglect are discovered only a small minority are brought to the attention of the court. Generally this is so because the families volun-

tarily accept the services offered by protective services. Occasionally, the coercive power of society is necessary to protect the child and to move toward rehabilitation of the home or, in the extreme case, toward termination of parental rights. The state can intervene coercively in family life only after due process of law. The Juvenile Code is the statute that governs the circumstances under which the personal rights and liberties of parents and children can be suspended. The Juvenile Code sets the scope of the court and agency power to intervene in the life of a family. The Juvenile Code and the Juvenile Court Rules provides the legal base for most of this legal manual and the presentations which follow.

PART TWO

GATHERING, ORGANIZING AND PRESENTING FACTS

A. Assessment and Investigation

"Sec.8.(1) Within 24 hours after receiving a report made pursuant to this act, the department shall commence an investigation of the child suspected of being abused or neglected.

(2) In the course of its investigation the department shall determine if the child is abused or neglected."

CHILD PROTECTION LAW

1. THE SOCIAL FUNCTION - ASSESSMENT AND EVALUATION

Within the Department of Social Services, Protective Services bears the responsibility for investigating suspected child abuse and neglect. (See Services Manual B225.) Protective Services workers assume two different yet overlapping and sometimes conflicting functions at this stage. The first function, as a benevolent intervenor and helper to the family, is to evaluate the family situation to determine whether or not a child is at risk and what services or casework supports might be employed to remove that risk. The first function is distinctly social in nature, as opposed to legal. It assesses the family's strengths and weaknesses and offers, in a non-coercive way, services to meet the needs of the family and defuse the risks to the child. Traditional social work training and skills prepare one well for the eval-

PART TWO: GATHERING, ORGANIZING AND
PRESENTING FACTS.

uation/assessment function.

2. THE LEGAL FUNCTION - INVESTIGATION

The second function of protective services in the Assessment and Investigation stage is a legal, quasi-law enforcement, one. Protective Services workers must investigate the case and determine whether or not the child is an abused or neglected child as defined by the child protection law. The investigation must also determine whether or not the child may fall within the jurisdiction of the Juvenile Court according to the Juvenile Code, Sec. 712A.2 (b), and whether court action on behalf of the child is appropriate.

The social assessment and evaluation of a family situation is not a subject within the scope of this manual. Note, however, that the mechanics of the assessment/evaluation, i.e. visits to the home, conversations with the parents, the child and relevant family and neighbors, and consultation with other involved professionals, etc. are also the mechanics of the legal investigation. The two separate but concurrent functions of protective services requires analysis of the family situation from differing perspectives. In practice the two functions are performed simultaneously. Recognizing the conceptual distinction between the social work and legal roles of Protective Services ought to clarify and expedite day-to-day activities.

3. RELIABLE FACT GATHERING IN INVESTIGATION

Verifying reports of child abuse and neglect is almost always difficult. It is sometimes impossible. No matter how thorough the investigation, sometimes there is simply no clear evidence, no proof, of what happened. Most acts of abuse and neglect take place in the privacy of the home. Unless a family member is willing and able to tell what happened, there are no witnesses to step forward. In most cases, then, "verification" of a report means that, based upon certain signs or indicators, including the physical condition of the home and the worker's evaluation of the psycho-social forces operating within the family, the protective services worker has formed a professional opinion that the report seems to be true or does not seem to be true. His decision is often tentative and fraught with uncertainty.*

Social workers and their agencies have been criticized as being untrained in the law, particularly in rules of evidence. "Without adequate investigation and attention to evidentiary details, facts are often not collected which justify a fact-finding determination of abuse or neglect."**

*Besharov, Juvenile Justice Advocacy, PLI Institute, 1974, pp. 147-8.

**id. Quotations from Hon. George F. Follett, New York Family Court at 153.

Legal action, however, must be taken with some measure of certainty in spite of the ambiguity and elusiveness of suspected abuse and neglect cases. After a period of assessment and investigation the protective services worker must move decisively to deny the case, to open a case; or to petition the juvenile court on behalf of the child. How does a social worker go about making decisive legal decisions and taking decisive legal steps? How indeed does the protective services worker evaluate his case so as to be able to make and support his legal actions?

The protective services worker faces two kinds of legal actions. The first is the decision whether to open a case or not. The second is the decision whether or not to petition juvenile court. Both actions rest on a foundation of factual data that must be reliably obtained and admissible in court. The following checklist is offered as a guide:

4. COLLECTION AND EVALUATION OF FACTUAL DATA

- a. Break down the case to specific concrete facts.

Ask yourself: What do I know? How do I know it?

Example: What do I know? That the house is always dirty and chaotic and possibly unhealthy for the children.

How do I know it? I visited the home on 6-1-77, at which time food remnants were scattered all about the kitchen, on counter, table and floor,

milk was sitting out in the sun. Garbage in unsealed plastic bags was stacked in a corner of the kitchen about four feet high, dog or child feces was noted in the living room next to the sofa. The eight month old was creeping around these floors.

How do I know it? The public health nurse has visited the home bi-weekly and has observed the same conditions. Her notes, kept after each visit, describe what she observed. It is her opinion, especially in view of the oral exploration that the eight-month-old is doing, that the home environment is unsafe and unhealthy.

- b. Gather first hand information.
Ask yourself the worker, what have I or someone else who may be called to testify, seen, heard, touched, smelled, or tasted, which tends to prove or disprove the suspicion of abuse or neglect? Who has such first hand knowledge?
- c. Identify allegations or suspicions that are unconfirmed.

Ask yourself: What do I suspect is true about this family? On what basis do I have these suspicions? How can I confirm or disconfirm these suspicions?

Remember: If your social work judgement is that court action for the protection of the child is warranted, the full development of the legal case can take place after the preliminary hearing. At the preliminary hearing you must only show that probable cause exists to believe certain facts are true. The court must find that if those facts were true they would constitute abuse or neglect. You may then use the power of the court after preliminary hearing to order certain examinations (see Preliminary Orders, p. 59.

- d. Distinguish personal opinion and conclusions from foundation facts.
- e. Be familiar with the basic rules of evidence, especially the hearsay rule.

5. CHECKLIST

COLLECTION AND EVALUATION OF
FACTUAL DATA

- a. Break case down to specific, concrete facts.
 - i What do I know?
 - ii How do I know it?
- b. Gather first-hand information.
 - i Who has seen, heard, touched, smelled or tasted something that tends to prove or disprove the suspicions of abuse or neglect.
- c. Identify suspicions or allegations that are as yet not reliably confirmed.
- d. Distinguish personal opinions and conclusions from foundation facts.
- e. Know basics of rules of evidence.

6. RECORD-KEEPING

The goals during the Investigation and Evaluation stage are: 1) to seek out specific and reliable information for use in making both the social and legal decisions; and 2) to preserve that information by good record-keeping for possible later use.

The following excerpt is taken from Bell and Mlyniec, "Preparing for a Neglect Proceeding: A Guide for the Social Worker":*

Some social workers have difficulty distinguishing facts from personal opinion and speculation; in addition, there may be reliance on hearsay evidence; poor record-keeping; and inadequate presentation techniques. From the reported cases and from experience, it appears that social workers need to strengthen their work in three areas: (a) collection, preservation, and analysis of factual data for court testimony; (b) management of second-hand information and hearsay testimony; and (c) participation in pretrial conferences with the county attorney.

Building a legally-usable record of facts for possible litigation begins at intake in all cases of suspected child abuse or neglect. Regardless of how receptive to services and workable a parent or guardian may appear, every protective service case has a potential for court action. For it is through such action that the ultimate protection of an endangered child lies.

While a social worker should follow the practice of exploring all nonjudicial resolutions of neglect, such exploration does not obviate the value of laying a foundation of fact in each family case file from which to build an effective case in court should judicial action become necessary. Indeed, the very records kept can be used to make a determination of whether or not to go to court.

*Bell and Mlyniec, "Preparing for a Neglect Proceeding: A Guide for the Social Worker" Public Welfare, Fall 1974, p. 28.

Accurate, complete summaries of parental functioning, over time, can show or fail to show childcare improvement. In the area of neglect the pattern of conduct is considered, rather than one action or omission.

Once the social worker has made the decision to go to court, the protective service records will have various uses. In order for the judicial proceeding to be initiated, the county attorney must file a petition or pleading with the court setting forth the allegations, which, if proven true, will give the court jurisdiction over the child. Failure to prove the allegations will result in a finding that the child is not neglected. It is essential both for the protection of the child and to accord due process to the parent that the petition accurately reflect the facts which the government will seek to prove. Since the worker will most often be the supplier of the information, an accurate case record will insure a valid petition.

Once the case has been formally initiated in court, the primary value of the protective service record is to refresh the worker's memory so that testimony can be prepared for court. Social work records are not generally admissible at trial. Since many cases have long histories before court action, and since case loads are usually high, it is unrealistic to assume that a worker can remember all that has transpired. Also, in cases where termination of parental rights is being sought long after the original neglect finding, prior workers may no longer be associated with the case. If their testimony is essential to a ruling of termination, accurate records will be indispensable for refreshing their memory.

The worker must assume that these records will be discoverable by all the attorneys in the case. The worker who keeps unbiased, well-documented records has no reason to be apprehensive about discovery. However, if the records are inaccurate, or unverified, or contain unsupported conclusions, the worker can expect a vigorous and damaging cross-examination by the parent's attorney.

Protective Services workers should record each contact, its date, and the concrete observations and occurrences shortly after its taking place. Use social work contracts in implementing service plans. If the initial non-court strategy is not successful, contracts provide ready documentations for later court hearings. Social work contracts, besides being useful treatment tools, provide persuasive evidence of continued neglect and the agency's attempts to remedy the family situation. Note carefully parents statements to you. Admissions of abuse or neglect may be used in court. Note them in your record.

7. SOME CREDIBLE EVIDENCE

The first legal decision facing the protective services worker is whether or not to open a protective services case on a family and file a Standard Form 0024 with the Central Registry as Substantiated or Unsubstantiated abuse or neglect. The worker must find "some credible evidence" of child abuse or neglect. The Services Manual dealing with Protective Service says:

Credible evidence is defined as "believable evidence"; that is, the worker believes that there is a causal relationship between the caretaker's behavior and the child's condition or situation. That belief is to be based on something tangible, such as the child's symptoms, parents' behavior, or family relationships known to be associated with abuse or neglect.

For a discussion of the phrase "some credible evidence" as an evidentiary standard of proof, see p.70.

The relevant statutory definition at this stage of legal decision-making is the definition of "child abuse"

and "child neglect" found in the child protection law. The juvenile code definition of legal neglect is not applicable to the decision on opening or denying a Protective Services case, that is on finding the report of suspected child abuse or neglect substantiated or unsubstantiated.

B. The Decision to Petition the Court

The county Juvenile Court will take jurisdiction over a child if the court is persuaded that the child falls within the definition found in the Juvenile Code, (M.C.L.A. 712A.2(b)). The protective services worker faces a two step decision-making process in contemplating a petition to the court. First, he or she must make a social decision as to whether or not juvenile court action is a necessary or desirable intervention strategy for the family. Secondly, the worker must assess the strengths of the legal grounds for the petition and the proofs available to support those grounds and make a legal decision as to whether or not juvenile court action is warranted.

1. IS COURT ACTION SOCIALLY DESIRABLE?

Before the protective services worker needs to analyze the facts of a case and assess them for possible court action, he or she must first exercise a social work judgement and reach a decision as to what intervention strategy is appropriate for the child and the family. The social decision may or may not require court involvement. All non-coercive responses to the family should be

considered first, of course. If the social work judgement is exercised in favor of court actions, a preliminary intervention strategy ought to be clearly in mind before the protective services worker files the petition. The worker should know how the court involvement will interface with other aspects of the contemplated treatment plan.

Before petitioning the court, then, the social worker should have made a preliminary social assessment and diagnosis of the family and should have his/her social objectives fairly well in mind. Ask yourself: If the court takes jurisdiction, what then? What services plan should be implemented? What are the goals for the family; for the child? Avoid going to court without a preliminary idea of a social strategy except when immediate action is necessary to protect the child. To say it another way, first exercise your social work judgement, then pursue the legal action.

DO NOT use court action merely as a release for frustration. Many protective services cases, especially chronic neglect cases, are extremely difficult. Tangible successes and achievements are rare. A social worker may say "I have had it with this family. I am going to court. Maybe the court can do something with them". Ask yourself: What do I want the court to do? What can the court do that I cannot do? If you can attach valid reasons for pursuing court action, fine. Avoid the situation, however, where court action is pursued for the sake of doing "something", à la - "Some-

body's got to do something with this family!"

2. A NON-EXHAUSTIVE LIST OF POSSIBLE REASONS TO INITIATE JUVENILE COURT ACTION

Emergency

Child abandoned

Child seriously physically abused; hospitalized; further assessment of family needed.

Child physically abused; home environment presently unsafe; relative placement unfeasible.

Child's home environment unsafe; immediate placement needed.

Child without proper custody and guardianship; no relatives available; placement necessary.

Child needs immediate medical care; parents unavailable or unwilling to consent.

Non-Emergency

Child abused; full assessment of family indicates home unsafe and child should be removed.

Child abused; full assessment of family indicates child may be safe at home with close supervision; parents unmotivated, or their willingness to cooperate is unreliable.

Child neglected; home unsafe; non-relative placement necessary.

Child neglected; home safe with supervision and social supports; parents unwilling to cooperate or motivation is unreliable.

Child abused or neglected; presently safe in home; parents deny any

problem; petition filed to facilitate identification of problem and to motivate family.

Child chronically neglected; marginally safe at home; social intervention of community agencies presently unsuccessful; court action initiated to both motivate family and provide focus for community response to the family's problems.

Child abused or neglected; presently safe in home or parents willing to place in voluntary foster care as a service to relieve pressures at home not for protection of child; parents willing to agree to any treatment strategy; parents' agreement may not be truly voluntary; petition filed to protect parents' rights.

Child neglected chronically; petition filed to make record for possible termination of parental rights.

Child may be abused and neglected and in continuing danger; petition filed; further investigation requested under court order. (See p. 60.)

3. WHAT IS LEGAL NEGLECT?

- (a) Statutory Definition of Neglect: Void for vagueness?

The relevant statutory standard at this point in the decision-making process is the juvenile code, section 712A.2(b):

...the juvenile division of the probate court shall have:

- (b) Jurisdiction in proceedings concerning any child under 17 years of age found within the county
 - (1) Whose parent or other person legally responsible

for the care and maintenance of such child, when able to do so, neglects or refuses to provide proper or necessary support, education as required by law, medical, surgical or other care necessary for his health, morals, or who is deprived of emotional well-being, or who is abandoned by his parents, guardian or other custodian, or who is otherwise without proper custody or guardianship; or

- (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian or other custodian, is an unfit place for such child to live in, or whose mother is unmarried and without adequate provision for care and support.

Protective services workers know even better than most people that the above definition is not very precise. The statutory definition of legal neglect in Michigan does not provide an accurate or specific guideline as to what the minimum standard of child care is in this State. In fact the definitions of neglect in Michigan as in other states have been alleged to be so vague as to deny persons due process of law. It has been argued that the vagueness of the law does not provide parents with notice of what behavior vis-a-vis their children is prohibited and therefore may result in state intervention. Further, the vagueness of the statutory definitions allow selective and discriminatory enforcement by investigating officials and courts.

Courts hearing these arguments, however, have generally ruled that definitions of neglect are not unconstitutional for vagueness. A common position of the courts has been that a statute need not be more specific than is possible to draft under the circumstances and child neglect by its very nature is incapable of a precise and

detailed definition. The state has a compelling interest in protecting children from abuse and neglect and narrowing of neglect definitions would have the effect of diminishing the rights of children who have no means of protecting themselves. Finally, although the language of the statutes are general, due process does not require standards more specific than can be reasonably applied.

(b) A Normative Fact Judgement is Required.

The question of whether or not legal neglect exists is so very difficult in juvenile court because a two-step analysis is required. First, the worker must determine the facts of the case and how they can be proven. Secondly, the worker and then the judge must make a normative judgement, that is a value judgement, as to whether or not the facts as proven violate the community's minimum standard of child care below which a parent shall not fall lest the state intervene on behalf of the child. When the worker is of the opinion that the community minimum standard of child care is breached in a particular case, i.e. that legal neglect may exist, the worker must then prove it in court. Legal neglect does not exist until the court so declares.

Unlike other areas of the law, therefore, a finding of legal neglect requires a "normative fact judgement". Not only must the facts be proven as true, but the facts as proven must violate community norms of child rearing. In the criminal law, for instance, facts are alleged to be true, "Green struck Red on the head with a beer bottle."

The facts are then proven true or not true and the defendant is convicted or not convicted (assuming other factual elements of the crime are also proven). In child neglect, on the other hand, facts are alleged, "Brown left her nine-year old child alone for ten hours". The facts are proven true or not true. But then a normative judgement must be made: Does leaving a nine year old child alone for ten hours under these circumstances constitute child neglect? Does such an act breach the community norms, i.e. the community minimum standard of child care?

Because interpretation of the facts and the law in child neglect depends so much on normative judgements that are somewhat personal and idiosyncratic, the community minimum standard of child care varies from county to county and even from judge to judge or referee to referee within the same county.

4. ASCERTAINING THE COMMUNITY'S MINIMUM STANDARD OF CHILD CARE.

Early in protective services worker's tenure in a particular county, he or she must ascertain what the minimum standard of child care is in that county. There are three sources to which the worker should look: 1) the juvenile code, 2) the decisions of the county juvenile court, and 3) the active cases of your protective services unit.

The juvenile code provides some general guidance as to minimum child rearing standards but the statute alone is not specific enough for day to day protective service

activity. Until more precise statutory definitions of abuse and neglect are fashioned by the legislature, the protective services worker may ascertain the minimum community standards in two additional ways. First, know your local court and your judge or referees. The community standard of child care is best reflected in the kinds of cases over which the county juvenile court will take jurisdiction. That community standard may vary from county to county and sometimes from judge to judge and referee to referee. Until statutory standards can be made more precise, the personal standard of the judges in your county will be controlling.

Community standards in the context of child protection are reflected in yet another way, albeit in a way which carries less legal authority than the statutes and local court practice. That is, the kind of cases which your protective services unit opens for services reflects minimum community standards of child care. Like the others this standard is not specific, nor is it capable of explicit definition. Yet it is of assistance in your quest to determine just what level of care a child is entitled to before community intervention with or without the parents' permission is warranted.

5. ASSESSING THE FACTS.

Once the yardstick of minimum community standard of child care is ascertained, as reflected in the statute and local court and protective service practice, legal decision-

making for the protective service worker moves to assessment of the facts. How does this particular family measure up to the community standard? What facts are alleged to be true? Are they true? Can they be proven? If so, how? If proven, do the alleged facts amount to a violation of the minimum community standard of child care?

It is development of the facts in the legal context that presents the greatest challenge to the protective services worker. At each stage of the legal process problems of proving and developing facts arise. As a guide and aid in organizing facts from your personal knowledge, from the case record, and from other witnesses, the following chart is recommended:

(a) LEGAL NEGLECT: STATUTORY CHART FOR MICHIGAN

Worker	Children	Parent	Address & Phone
	Agency Objectives:	Parent	Address & Phone
		Other	Address & Phone

BREAKDOWN OF NEGLECT STATUTE IN MICHIGAN

Parent or legally responsible person, when able to do so, neglects or refuses to provide: 1 - Proper or necessary support 2 - Education as required by law 3 - Medical, surgical or other care necessary for child's health 4 - Care necessary for child's morals	Child is: 5 - Deprived of emotional well-being 6 - Abandoned by parents, guardian or other custodian 7 - Without proper custody or guardianship	Child's home or environment is unfit by reason of: 8 - Neglect by parent, guardian, or other custodian 9 - Cruelty by parent, guardian, or other custodian 10 - Drunkenness by parent, guardian, or other custodian 11 - Criminality by parent, guardian, or other custodian 12 - Depravity by parent, guardian, or other custodian 13 - Child's mother is unmarried and without provision for care and support
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ELEMENT OF LEGAL NEGLECT (Enter number from above)	CHILD	FACTS AND DATES	WITNESS (ES), ADDRESS (ES), and DATE (S)	SOCIAL WORKER OBSERVATIONS and DATES

(b) Keep Social Intervention Strategy in Mind - Even in Early Stages of Court Process.

At this point in the legal process the worker should keep in mind that, technically, the court is interested primarily in whether the facts are true and whether the court has any authority to act. The court will take temporary measures to protect the child and obtain further investigation. Your central concern, the social intervention strategy, takes second place in the formal legal proceedings. Informally and in negotiations with the parents, their attorney, and the child's counsel your intervention strategy is very important of course. If you know clearly what it is you wish to achieve in the court process, you may well achieve it without a full trial, through negotiation.

6. CHECKLIST: THE DECISION TO PETITION

- 1. Protective Services gathers facts necessary for a social evaluation and legal investigation of the alleged abuse or neglect.
- 2. Protective Services decides on the appropriate intervention strategy for the family which may or may not include court action.
- 3. In cases in which court action is deemed necessary or appropriate, Protective Services decides on a preliminary intervention strategy for the child and the family, i.e. Protective Services reaches as clear an idea as possible on what is to be gained from the court action.
- 4. Having decided that court action is appropriate and having identified the social objectives to be gained from court action, Protective Services assesses the legal strength of their case.
 - a. What is the minimum standard of child care in this community?
 - b. As specifically and reliably as possible, what are the facts of this case and how can we prove them?
 - c. Do those provable facts amount to a breach of the community's minimum standard of child care? If so, draft and file the petition.

C. Drafting the Petition

1. LEGAL REQUIREMENTS

Due process requires that a person subject to deprivation of liberty be apprised of charges against him with sufficient specificity so that he may prepare a defense. The Juvenile Code establishes the requirements of a petition filed in that court at M.C.L.A. 712A.11:

The petition shall be verified and may be upon information and belief. It shall set forth plainly the facts which bring said child within the provisions of this chapter, and shall state (1) the name, birth date, and residence of the child; the names and residence: (2) of the parents; (3) of his legal guardian, if there is one; (4) of the person or persons having custody or control of the child; and (5) of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known to the petitioner, the petition shall so state.

The petition serves two primary and interrelated functions. First, it is a court document which should state the basis of the court's jurisdiction over a particular child. The petition sets forth the respondents (generally the parents). The petition sets the scope of the judicial inquiry and thereby limits the actions and power of the court. The court may not inquire into matters not alleged in the petition. Failure to include a necessary allegation may preclude introducing evidence of it at trial.

Secondly, the petition is a communication to the respondent parents. It apprises them of accusations

against them so that they might evaluate their situation and prepare a response. The description of the parents' acts of commission or omission should be put in terms specific enough to allow a defense to be prepared.

2. TECHNIQUES OF DRAFTING

In most counties Protective Services workers draft their own petitions without assistance of legal counsel. It is a large responsibility which assumes some measure of legal expertise on the part of the worker. Drafting petitions is a skill that is best developed by practice and experience.

Using the statutory chart on page 31, list each fact which brings or tends to bring the child within the statutory definition of legal neglect. See the following pages for examples.

a. PETITION EXAMPLE #1 ABANDONMENT

STATE OF MICHIGAN

The Probate Court for the County of _____, Juvenile Division. In the matter Baby Boy Doe, Minor.

I, John Jones, respectfully represent that I reside in the City of _____ in said County, and make this petition as Protective Services Caseworker.

I further represent that said Baby Boy Doe is a resident of the City of _____ in _____ County, and is now residing with and under the custody and control of Department of Social Services - Emergency Foster Care and he was born on April 3, 1977.

I further represent upon information and belief that said child, on or about, the 5th day of April, A.D. 1977, in said County of _____

*COMES WITHIN THE PROVISIONS OF ACT NO. 54, PUBLIC ACTS OF MICHIGAN 1944, FIRST EXTRA SESSION AS AMENDED, being M.C.L.A. 712A.2(b),

"Who is abandoned by his parents..." in the following particulars: On April 3, 1977, said newborn child was found in a public laundry, unidentified and unattended. Despite widespread publicity and thorough investigation no one has claimed said child to date.

I further represent that the names, relationship, ages and residences of nearest of kin and guardian of said child, as I am informed and believe, are as follows:

NAME	RELATIONSHIP	AGE	RESIDENCE
UNKNOWN	PARENT(S)		UNKNOWN
-----	-----	-----	-----
-----	-----	-----	-----

I therefore, pray that the Juvenile Court take jurisdiction of said child.

P.O. John Jones

Subscribed and sworn to before me this 5th day of April A.D. 1977, at _____, Michigan

Ursula Upright
Notary Public

County, Michigan
My commission expires:
January 10, 1981.

b. PETITION EXAMPLE #2 - Physical Abuse

STATE OF MICHIGAN

The Probate Court for the County of _____, Juvenile Division. In the Matter of Ralph Roe, a Minor.

I, John Jones, respectfully represent that I reside in the City of _____ in said County, and make this petition as Protective Services Caseworker.

I further represent that said Ralph Roe is a resident of the City of _____ in _____ County, and is now residing with and under the custody and control of Department of Social Services - Emergency Foster Care and he was born on September 22, 1975.

I further represent upon information and belief that said child, on or about the 6th day of January, 1977, in said County of _____

*COMES WITHIN THE PROVISIONS OF ACT NO. 54, PUBLIC ACTS OF MICHIGAN 1944, FIRST EXTRA SESSION AS AMENDED, being Section 712A.2(b)(2) of the Michigan Compiled Laws: "Whose home or environment, by reason of neglect, cruelty, ...on the part of a parent, ..., is an unfit place for such child to live in..." in the following particulars: On January 5, 1977 said child was examined at General Hospital by Dr. Jack Pasture and was found to have multiple bruises on the sacrum, linear bruises on the cheek and right back, bilateral retinal hemorrhages and blood in his cerebrospinal fluid. The mother of the child could offer no explanation for said injuries. Given the nature of the injuries they could not have been self-inflicted nor accidentally caused. I therefore ask that the Juvenile Court take jurisdiction of said child.

I further represent that the names, relationship, ages and residences of nearest of kin and guardian of said child, as I am informed and believe, are as follows:

NAME	RELATIONSHIP	AGE	RESIDENCE
MARY AND JOHN ROE	PARENTS		YOUR TOWN
-----	-----	-----	-----
-----	-----	-----	-----

John Jones

Subscribed and sworn to before me this 7th day of January A.D. 1977, at _____, Michigan.

Ursula Upright
Notary Public, _____ County,
Michigan, My commission expires:
January 10, 1981

c. PETITION EXAMPLE #3 - Neglect

STATE OF MICHIGAN

The Probate Court for the County of _____, Juvenile Division. In the Matter of James Doe, a Minor.

I, John Jones, respectfully represent that I reside in the City of _____, in said County, and make this petition as Protective Services Caseworker.

I further represent that said James Doe is a resident of the City of _____ in _____ County, and is now residing with and under the custody and control of his parents, John and Mary Doe at 123 Fourth Street, _____, and he was born on March 14, 1968.

I further represent upon information and belief that said child, on or about the 10th day of February, 1977, in said County of _____

*COMES WITHIN THE PROVISIONS OF ACT NO. 54, PUBLIC ACTS OF MICHIGAN 1944, FIRST EXTRA SESSION AS AMENDED, being Section 712A.2(b)(1) and (2) of the Michigan Compiled Laws: "(1) Whose parent or other person legally responsible for the care and maintenance of such child, when able to do so, neglects or refuses to provide proper or necessary..., education as required by law, medical,... or other care necessary for his health, ..., or who is deprived of emotional well-being,...;" or "(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian, or other custodian, is an unfit place for such child to live in... in the following particulars:"

In the Fall 1976 semester said child was absent from school 25 days and tardy 15 days by reason of his parent's failure to send him to school properly and to cooperate with school authorities. Said child had an ear infection which was untreated from October to January despite repeated recommendations by petitioner and school personnel that said child be taken to a physician. Said child is often left unsupervised and on 12-28-76 was found locked outside his home without a coat or other protective clothing. Said child's father is an admitted chronic alcoholic who is habitually drunk at home. On January 29, 1977 said child was struck on the head by his father at Joe's Bar and Grill in Your Town. Said child's mother is mentally ill having been admitted to Happy Dale Psychiatric Hospital six times since January 1974. Said mother is currently an active outpatient of Happy Dale Psychiatric Hospital.

I further represent that the names, relationship, ages and residences of nearest of kin and guardian of said child, as I am informed and believe, are as follows:

NAME	RELATIONSHIP	AGE	RESIDENCE
MARY AND JOHN DOE	PARENTS	28, 30	YOUR TOWN
JANE DOE	SISTER	7	YOUR TOWN

I therefore ask that the Juvenile Court take jurisdiction of said child.

P.O. John Jones

Subscribed and sworn to before me this 15th day of February
A.D. 1977, at Your Town, Michigan.

Ursula Upright
Notary Public, _____ County,
Michigan
My commission expires:
January 10, 1981

(d) Comment on Emotional Neglect

The Juvenile Code provides that the court may take jurisdiction over a child "who is deprived of emotional well-being". Because of the elusive nature of "emotional neglect" such cases have long caused social workers particular concern. What is "emotional neglect"? How does one prove emotional neglect in court when court action becomes indicated?

First, as with any other legal neglect, a minimum standard of emotional well-being must be identified in the particular community. Children are often subjected to emotional trauma by their parents. At what point does it become legal emotional neglect? Given the state of development of social sciences and the law, the minimum standard of emotional well-being can best be ascertained in the manner discussed above for other kinds of legal child neglect.

Secondly, the court must be advised of the specifics of the child's mental, emotional and physical condition and that mental, emotional or physical condition must be considerably below that expected for normal children of that age.

Thirdly, particular acts of omission or commission by the parents or a pattern of abnormal relationship between the parents and child must be established.

Finally, the acts of omission or commission by the parents or the pattern of abnormal relationship between the parents and child must be shown to be causally related

to, that is, to be a cause of, the child's mental, emotional or physical condition.

Proving emotional neglect in court is a complex matter requiring close collaboration between expert behavioral scientists and a lawyer. Both the behavioral science issues and the legal issues are very difficult. The psychiatrists or psychologists on such a case should be familiar with the workings of the law. The lawyer should appreciate the discipline of the behavioral scientists and the complexities of interpersonal dynamics.

Examples #4 and #5 which follow are illustrative of how the petition could be drafted in two kinds of emotional neglect cases. The difficult question of how to present persuasive proof is primarily a legal one best handled on a case-by-case basis and is therefore beyond the scope of this writing.

PETITION EXAMPLE #4 - Emotional Neglect

STATE OF MICHIGAN

The Probate Court for the County of _____, Juvenile Division. In the Matter of Louis Tick, a Minor.

I, JOHN JONES, respectfully represent that I reside in the City of _____ in said County, and make this petition as Department of Social Services Caseworker.

I FURTHER represent that said Louis Tick is a resident of the City of _____ in _____ County, and is now residing with his parents at 123 4th Street and he was born on September 25, 1968.

I FURTHER represent upon information and belief that said child, on or about the 5th day of June, A.D. 1977, in said County of _____

*COMES WITHIN THE PROVISIONS OF ACT NO. 54, PUBLIC ACTS OF MICHIGAN 1944, FIRST EXTRA SESSION AS AMENDED, being M.C.L.A. 712A.2(b): in the following particulars:

Said child is deprived of emotional well-being in that his parents, Respondents herein, cause an environment to exist in the family home and toward said child such that his physical stature is stunted and his mental and emotional functioning is seriously disturbed and retarded. Said child's short stature and seriously disturbed and retarded mental and emotional functioning is a result of the stresses and conflicts created by respondents.

I FURTHER represent that the names, relationship, ages and residences of nearest of kin and guardian of said child, as I am informed and believe, are as follows:

NAME	RELATIONSHIP	AGE	RESIDENCE
W. D. Tick	Father	34	123 4th Street, (city)
Bette Tick	Mother	32	" " " "

I therefore, pray that the Juvenile Court take jurisdiction of said child.

John Jones

Subscribed and sworn to before me this 5th day of June A.D. 1977, at _____, Michigan.

Ursula Upright
Notary Public, _____ County

PETITION EXAMPLE #5 - Failure to Thrive

STATE OF MICHIGAN

The Probate Court for the County of _____, Juvenile Division. In the Matter of Louise Little, a Minor.

I, FRED FRIENDLY, respectfully represent that I reside in the City of _____ in said County, and make this petition as Protective Services Caseworker.

I FURTHER represent that said Louise Little is a resident of the City of _____ in _____ County, and is now residing in City Hospital and she was born on September 22, 1976.

I FURTHER represent upon information and belief that said child, on or about the 3rd day of January, 1978, in said County of _____

*COMES WITHIN THE PROVISIONS OF ACT NO. 54, PUBLIC ACTS OF MICHIGAN 1944, FIRST EXTRA SESSION AS AMENDED, being Section 712A.2(b)(1) and (2) in that said child is deprived of emotional well-being and her home environment is unfit by reason of neglect on the part of her parents in the following particulars: Said child was admitted to City Hospital on November 13, 1977 for failure to thrive with a weight of 13 pounds 11 ounces and length of 27 1/2 inches (less than the 3rd percentile); said child was hospitalized on two previous occasions for malnutrition and failure to thrive; each period of hospitalization has resulted in rapid and substantial weight gain, gross motor development and socialization; on December 29, 1977, after seven weeks of hospitalization; said child weighed 21 pounds and exhibited marked personality change and developmental progress; the condition of said child is a result of a disturbed parent-child relationship.

I FURTHER represent that the names, relationship, ages and residences of nearest of kin and guardian of said child, as I am informed and believe, are as follows:

NAME	RELATIONSHIP	AGE	RESIDENCE
Sam Little	Father	25	16 1/2 Eighth St. (City)
Sarah Little	Mother	22	" " " " "

I therefore, pray that the Juvenile Court take jurisdiction of said child.

Fred Friendly

Subscribed and sworn to before me this 7th day of January A.D. 1978, at _____, Michigan.

Ursula Upright
Notary Public, _____ County,

3. FILING AND SERVING THE PETITION

Once the petition is drafted it must be typed in a form acceptable to the court, filed with the court, docketed (that is scheduled for hearing) and properly served (that is delivered) to all interested parties. In nearly all counties court personnel attend to the technical details of typing, filing, docketing and serving the petition. Practices vary so widely, however, that no attempt will be made here to describe those processes step-by-step.

Suggestion: Local protective services units and the court staff should prepare a written policy on the details of typing, filing, docketing and serving petitions. The local procedure will then be readily available and understandable to all who need to know. Experienced workers will function more effectively in a predictable setting and new workers will be more easily trained for dealing with the court.

4. IDENTIFYING AND LOCATING INTERESTED PARTIES

Upon filing a petition or very shortly thereafter the protective service worker should provide the court with the names and last known address of legal parents, putative fathers, legal guardians and any other person who may have a legal interest in the custody of the child. Most importantly the social worker should make a "diligent search" to determine the identity of a child's legal or putative father and his whereabouts. Birth certificates and other records should be consulted and known relatives should be asked of

identity and location.

Local practice varies considerably on this point. Some counties hold formal diligent search hearings in which the protective service worker must show by affidavit and on a record that reasonable efforts have been made to locate interested parties. "...if the judge is satisfied that it is impracticable to serve personally such summons or the notice...he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct." (MCLA 712A.13) In some counties, however, the decision to serve by registered mail or by publication is made without a hearing. In other counties protective services has no responsibility for ensuring proper service.

Each local protective service unit and court staff should prepare a written policy on service and protective service responsibility for same.

D. Amended Petitions

Any petition or other court records may be amended at any stage of the proceedings, as the ends of justice may require.
(M.C.L.A. 712A.11.)

Occasionally new facts relevant to the alleged abuse or neglect come to the attention of protective services after the petition has already been filed. These facts may be newly discovered or they may be facts whose relevance to the legal proceedings became appreciated only after some period of reconsideration of the court strategy.

An amended petition which incorporates the original allegations and adds new factual allegations, is the proper procedural vehicle for getting those new factual issues before the court.

Allegations made in the original petition may be deleted on choice of protective services, by motion of counsel or as part of negotiation. Some courts may consider the petition so modified as an amended petition.

Although the language of the statute seems quite liberal in its allowance of amendments to the petition, local courts may be reluctant to approve amendments adding allegations, especially in the later stages of the proceedings. As discussed above, the petition provides notice to the parents of the charges against them. If those charges are subject to change at any time the parents' opportunity to prepare a defense could be jeopardized. Out of concern for the parents' rights, a judge may grant an amendment only after he is convinced that the amendment is important and that it was not omitted in the first petition because of petitioner's negligence. Generally, the earlier in the court process, the easier it will be to amend the petition. The decision to allow or disallow an amendment is at the discretion of your local judge. Know your local court practice and the judge's attitude regarding amended petitions.

E. Supplemental Petitions

After the court has taken jurisdiction over a child it may enter "supplemental orders of disposition". Supplemental orders of disposition most familiar to protective services workers are orders to return temporary ward children to their home after a period of foster care placement and orders removing temporary ward children from their own homes and returning them to foster or relative placement. Some counties refer to such supplemental actions as "change of plan". When new facts develop which warrant a change in an earlier dispositional order of the court those facts can be brought to the court's attention at a regular statutory review hearing (see page 101). or by a supplemental petition.

The supplemental petition is drafted in the same format as original petitions except that they are entitled (i.e. labeled) "Supplemental Petition". Since the court already has jurisdiction the procedure is different from what occurs on original petitions. The parents are notified of the hearing on the supplemental petition according to the statute (712A.12 & 13). The court may act on the petition in a single hearing if it seems appropriate.

PART THREE: JUVENILE COURT PROCEDURE
EMERGENCY PLACEMENT TO PRE-TRIAL CONFERENCE

PART THREE: JUVENILE COURT PROCEDURE

A. Emergency Placement

Occasionally workers encounter a child under circumstances that warrant immediate removal of the child and placement in a safe and secure environment. The obvious first alternative is placement with a relative on a voluntary basis. If cooperation of the parents cannot be obtained or if no relatives are available an emergency placement may be indicated. There are three ways under Michigan Law to take custody of a child on an emergency basis pending a preliminary hearing.

1. THE POLICE

Protective Service workers are not empowered to detain children. When faced with a situation in which a child's surroundings are "such as to endanger his health, morals or welfare", the worker should contact the police, sheriff or court probation officer who have the authority under the statute and court rules to take such a child into custody.

M.C.L.A. 712A.14

Any municipal police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child...whose surroundings are such as to endanger his health, morals or welfare.

JCR 3.2

A child under the age of 17 may be taken into the temporary custody by any peace officer without the order of the court when:

...
(D) Conditions or surroundings under which the child is found are such as to endanger his health, morals or welfare...

2. EMERGENCY COURT ORDER

Secondly, the Protective Service worker may file a Complaint (called Request for Petition in some counties) with the court and immediately request an Emergency Order of Detention (called a Writ of Apprehension in some counties) from the judge or referee. M.C.L.A. 712A.15 provides:

In the case of a child concerning whom a complaint has been made or a petition or supplemental petition...has been filed pursuant to this chapter, the court may order the child, pending the hearing, detained in such place of detention as it shall designate.

...
Detention, pending hearing, is limited to the following children:

(a) Those whose home conditions make immediate removal necessary.

...
(d) Those detained for observation, study and treatment by qualified experts.

Emergency court orders are generally issued ex parte, that is without a formal hearing and the presence of all interested parties. Typically the Protective Service worker confers with the judge or referee in his office and presents the facts and circumstances and the written Complaint or Request for Petition. If the judge or referee agrees that the child's home conditions make immediate removal necessary the Emergency Orders or Writ of Apprehension will be issued. This ex parte conference with the judge or referee is called in some counties an Emergency Hearing. Some county Juvenile Courts will issue Emergency Orders on the basis of a telephone conference.

3. THE HOSPITAL

Thirdly, if a child is brought to a hospital and the attending physician determines that the release of the child would endanger the child's health or welfare, the Child Protection Law, M.C.L.A. 722.626(1) provides:

If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by...section 712A.14 of the Michigan Compiled Laws, or order the child released to the child's parent, guardian or custodian.

B. Preliminary Inquiry

M.C.L.A. 712A.11 provides in part:

Sec. 11. Whenever any person gives information to the juvenile division of the probate court that a child is within the provisions of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or of the child require that further action be taken.
(emphasis added)

The Preliminary Inquiry is not held in all counties nor in all cases in the counties which hold Preliminary Inquiries in some cases. The Preliminary Inquiry is essentially an intake conference with court staff. The court staff often provides a judgement to the protective services worker as to whether court action is possible or desirable given the facts of a particular case. In some counties court staff consult on petition drafting and give advice on court procedures. (Note, however, that constitutionally protected due process rights of parents

and children may be violated if the same individual who consults on drafting the petition is also the judicial officer (judge or referee) at a later preliminary hearing or trial. Both parents and children are entitled to having their case heard by an objective judicial officer.)

C. Preliminary Hearing

1. NOMENCLATURE

The hearing or hearings held by the court between issuance of an emergency detention order and the Adjudicatory Hearing or Trial are variously named. Some counties distinguish between an Emergency Hearing, a Detention Hearing, a Preliminary Hearing, a Plea Hearing and a Pre-trial Hearing. Other counties label that first hearing a Preliminary Inquiry with various other hearings following. Still other counties use the single appellation, Preliminary Hearing for all the court hearings that precede the Adjudicatory Hearing or Trial. For the sake of clarity and simplicity of terminology the latter approach will be adopted. All hearings before the trial will be considered Preliminary Hearings or adjournments of a Preliminary Hearing. The description of the legal process should be clearer and yet will remain accurate. Your individual county use may have different nomenclature. The substance or essence of what occurs in each county is the same despite differences in labeling the hearings.

2. WHEN REQUIRED

A Preliminary Hearing is required in all cases in which a child has been detained and not returned to his parents. In cases where the child has been detained, a Preliminary Hearing must be held within forty-eight (48) hours of the child's detention.

A Preliminary Hearing may be held even where the child is not previously detained, as for instance, to request detention for the first time, to authorize the filing of a petition, to seek a Preliminary Order of one sort or another, or to advise parents of their legal rights and to appoint legal counsel.

3. Chart

PRELIMINARY HEARING CENTRAL PURPOSES	
1.	To advise the parents of allegations in <u>petitions</u> , of their legal rights including right to counsel, and to explain the nature of the proceedings.
2.	To determine whether grounds exist for <u>authorizing the petition</u> . (a) The court must find probable cause to believe that the facts alleged are true and that the facts alleged constitute legal neglect.
3.	To decide whether or not the <u>child</u> should be <u>detained</u> pending a <u>full hearing</u> . (a) The court will continue detention if it finds that the home conditions are such as to endanger the child's health, morals or welfare.

4. PURPOSE OF PRELIMINARY HEARING

Both parents and children face loss of significant personal liberties in these proceedings. Certain due process safeguards including a Preliminary Hearing are present to protect those rights and ensure that any state intervention that takes place is warranted. Three central purposes of the Preliminary Hearing deserve to be highlighted.

(a) Advise Parents (Respondents) of Rights.

At the Preliminary Hearing the judicial officer will first advise the respondents (i.e. the parent(s) in most cases) of the allegations in the petition. The judge or referee will explain the nature of the proceedings to the parents and will advise them of their right to counsel and will offer to appoint a lawyer on their behalf if they cannot afford to hire one.

(b) Whether grounds exist for authorizing petition.

The petitioner must assume the burden of demonstrating to the court that there exist sufficient legal grounds for authorizing the petition. After the petitioner has presented his case, the court must find probable cause to believe that the facts alleged are true and that those alleged facts constitute legal neglect. That is, the court must find probable cause to believe that the child comes within the jurisdiction of juvenile court pursuant to the power given that court by M.C.L.A. 712A.1 et. seq., the Juvenile Code.

(c) Detention of the child.

The second major issue before the court at Preliminary Hearing is whether or not to order detention of the child pending a full hearing. Pursuant to a preliminary hearing in abuse and neglect cases the court may order a child detained when a proper custodian cannot be located, when his home conditions make immediate removal necessary, or when he is detained for observation, study and treatment by qualified experts. (JCR 4.2, 3.1). Unless the court finds grounds for detention as set forth in JCR 4.2 and 3.1, the child shall be released to his parent or guardian. The petitioner, often Protective Services, bears the burden of showing that grounds exist to order detention.

5. EVIDENCE AT PRELIMINARY HEARING

The protective services worker, as petitioner, will in all likelihood be required to present testimony at this stage of the proceedings. Some evidence must be presented to the court on the record to support whatever action the court may take. The social worker should tell the court succinctly and with clarity the facts he knows from first hand experience.

The following evidentiary questions are very common but have no clear answer. Is hearsay admissible at this stage of the proceedings? To what extent must evidence be "competent" i.e. adhering to the general rules of evidence in civil cases?

Many county juvenile courts proceed quite informally at the Preliminary Hearing allowing hearsay testimony within reasonable limits and not requiring strict adherence to the general rules of evidence. Technically the rules of evidence need not be strictly adhered to at Preliminary Hearing according to the juvenile code. "The petition shall be verified and may be upon information and belief." M.C.L.A. 712A.11 (emphasis added). Under this view of the law, written reports from experts and other supporting witnesses as well as hearsay statements as to what persons not present in the courtroom have seen may be admissible. The test of hearsay admissibility at this stage seems to be its reliability.

Most judges and referees, however, seem to recognize that the consequences of a Preliminary Hearing are potentially great for both parents and children. Considering the seriousness of the deprivation of personal liberty that can result from a Preliminary Hearing those judicial officers prefer and sometimes require competent evidence. Competent evidence is usually more reliable, free from misstatement, and subject to cross-examination by parents' counsel. Corroborative witnesses in addition to the protective services worker, such as a school person, a police officer, doctor or medical record or the like may be required. Determine your own local practice as to whether evidence which is technically above reproach is required at Preliminary Hearing or whether the more informal standard is allowed.

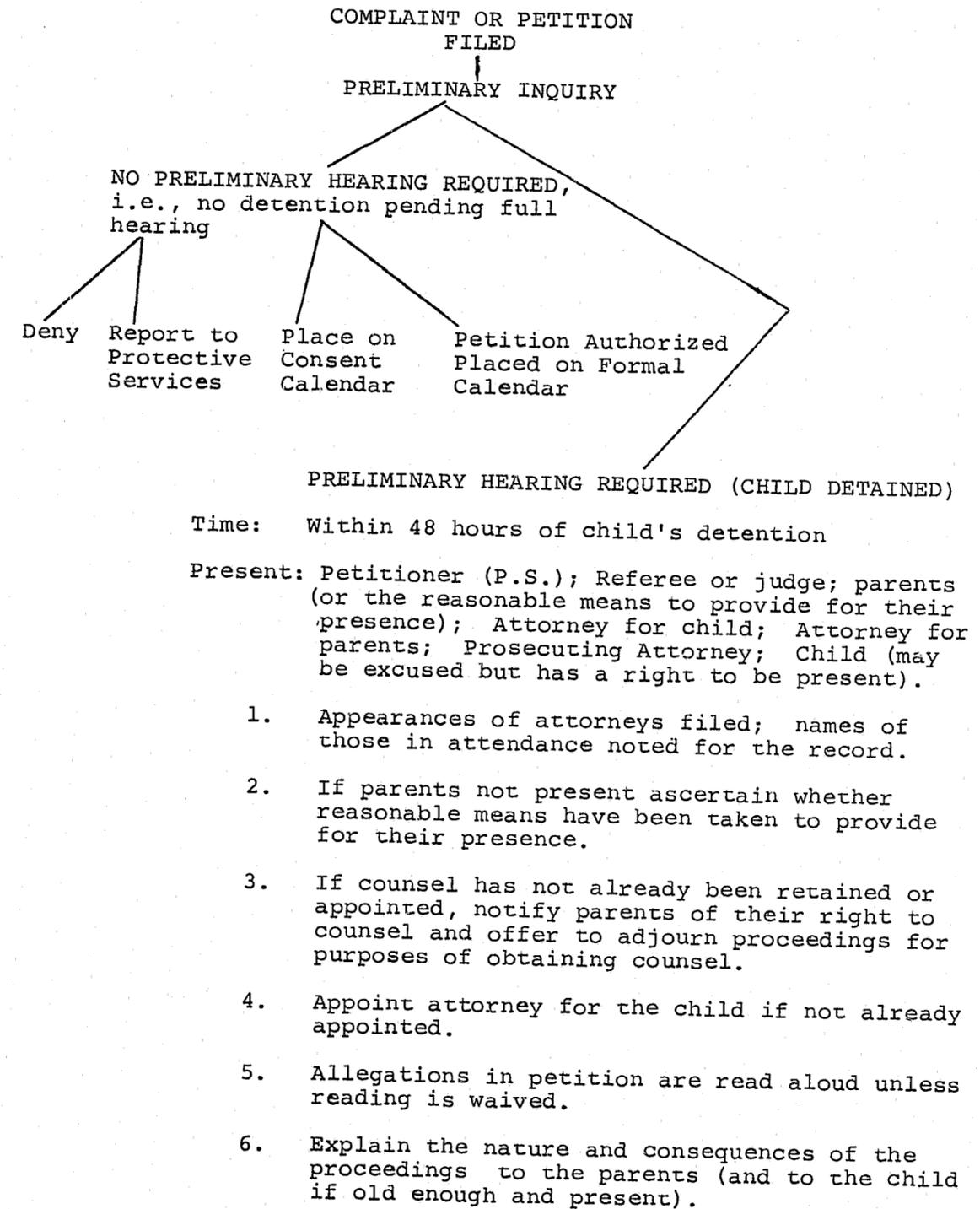
6. ADJOURNMENTS OF PRELIMINARY HEARING.

Once parents are advised of their rights as specifically set forth in JCR 4.2(B)1-4, and the child remains in detention, the court may adjourn the Preliminary Hearing for the taking of testimony or for other good cause. Adjournments shall be for no longer than is reasonably required for attendance of witness, for obtaining counsel, or for similar necessary cause and in no event shall exceed 10 days without consent of the parties. (JCR 4.2(B)(6)).

7. CHECKLIST: PREPARATION FOR PRELIMINARY HEARING

- 1. Child is legally detained under proper authorization. (see page 48).
- 2. Petition is drafted and filed with court. (see pages 34, 44).
- 3. Reasonable efforts made to notify parents and to ensure their presence at preliminary hearing.
- 4. Social worker testimony prepared. Supporting witnesses or records arranged for if needed.
- 5. Consultation made with Protective Services attorney and/or child's attorney to advise them of facts and to consider legal strategy including introducing amendments to petition.

8. FLOW-CHART: PRELIMINARY HEARING



7. Testimony taken from petitioner (usually Protective Services Worker). Parents' attorney may cross-examine.
8. Other evidence or testimony taken as required.
9. PETITION AUTHORIZED OR NOT:
Referee or judge decides whether or not there are grounds for authorizing a petition. He authorizes the petition, denies the petition, or adjourns for taking further testimony, to observe progress or parents, or for other good cause.
10. CHILD DETAINED OR NOT:
Referee or judge decides whether the child should be released to his parents or placed/continued in detention pending a full hearing.
11. If petition authorized, advise child and parents of their rights to a trial with or without a jury.
12. Preliminary orders entered.
13. Next court date is set.

D. Preliminary Orders

Following a preliminary hearing in which the petition is authorized the court may enter several kinds of preliminary orders. The Protective Services worker should be prepared to request the court to enter such orders when needed in a particular case. The following is a listing of the most common of the preliminary orders but is not necessarily exhaustive:

1. PLACEMENT ORDERS.

When the petition is authorized the court is required to direct placement of the child pending investigation

and hearing. The placement may be in the home of parents, guardian or custodian, in a relative's home, in a foster or group home of a licensed child care agency, or in a suitable place of detention authorized by the court.

(M.C.L.A. 712A.14)

2. VISITATION ORDERS.

When the court makes a placement of a child as provided above it may regulate or restrict visitation of the child or delegate that authority to a suitable person, including the supervising agency or individual.

3. MEDICAL CARE.

The court may enter orders for the medical care and treatment of a child detained pursuant to its order (M.C.L.A. 712A.15(d)). The court may consent or delegate the power to consent to routine and non-elective medical treatment and emergency medical and surgical care. Elective, non-emergency elective surgery must be consented to by parents unless the child is a permanent ward of the court. (M.D.L.A. 722.124a).

4. ORDERS FOR FURTHER INVESTIGATION; EXAMINATION OF CHILD.

After a petition has been filed the court may direct further investigation including ordering the child to be examined by a physician, dentist, psychologist or psychiatrist. (M.C.L.A. 712A.12). It often happens that a social worker believes that before a petition can even be filed he must have his case perfectly prepared and be ready to meet the ultimate proof burdens of trial. That approach overlooks the power of the court to order certain expert

evaluations which may be essential to assessing the risk facing the child. The evaluations may put suspicions and concerns to rest or provide expert evidence in support of the petition.

5. MENTAL AND PHYSICAL EXAMS OF PARENTS - BEFORE ADJUDICATION.

Whether or not Juvenile Court has the power to order parents evaluated by experts after the petition has been authorized at a preliminary hearing and in preparation for the Adjudication is a question not yet resolved in Michigan law. Local practice varies greatly. Some county juvenile courts enter such order, others do not. Authority for entering such orders may be found in M.C.L.A. 712A.6:

The juvenile division of the probate court shall have jurisdiction over adults as hereinafter provided and may make such orders affecting adults as in the opinion of the court are necessary for the physical, mental or moral well-being of a particular child or children under its jurisdiction: Provided, that such orders shall be incidental to the jurisdiction of the court over such child or children.

M.C.L.A. 712A.12 also seems to provide that authority:

After a petition shall have been filed and after such further investigation as the court may direct....(emphasis added.)

In civil litigation in Michigan mental and physical exams of all parties prior to trial is permitted where it is at issue. (General Court Rules 311). The results of those exams are later admitted as evidence. A logical inference is that pre-trial mental and physical exams as allowed by General Court Rule should also be allowed in

juvenile court on the strength of Juvenile Court Rule 8.3 and the statutes cited above. The General Court Rules themselves may not be specifically applicable to Juvenile Court.

Consult an attorney as to the court's ability in a particular case in your county to issue an order for physical or mental exam of an adult following authorization of a petition and before Adjudication. Differences in legal opinions on this point are likely. As to the power of the court to enter orders affecting adults after Adjudication see M.C.L.A. 712A.18(i)

E. The Consent Docket

The consent docket is little used today but authority to place an uncontested case on the consent docket remains. Proceedings on the consent docket may be especially useful as a middle ground when negotiating a resolution without trial. It protects the parents since no change of custody may be ordered on the consent calendar yet other orders of disposition may be entered. JCR 4.3(C) describes the consent calendar:

- C. If it appears protective and supportive action by the court will serve the best interests of the child and of society, the court may, upon authorizing the filing of a petition, proceed informally to hear the matter. No commitment or change of custody may be ordered as a part of a disposition of cases on the consent calendar.

Proceedings with regard to a child may not be transferred from the consent to the formal calendar.

Nothing herein shall foreclose the filing of a complaint or petition alleging a new offense and the hearing thereof on the formal calendar. In the event further court action shall not be required, the court may order all records relating to matters on the consent calendar expunged.

F. The Pre-Trial Conference

A pre-trial conference is an informal meeting among the attorneys, social workers and other professionals involved in a case at which the goals and objectives of the social worker/petitioner are discussed and the facts of the case are clarified. Assessments are made as to what issues remain in controversy and the issues are narrowed for formal hearing (trial). The scheduled pre-trials in some counties take place some days or weeks after the preliminary hearing and before the matter is set for contested hearing.

The pre-trial is a structured way to seek settlement short of contested trial. The matter could be dismissed or the respondent could enter a plea to the petition as it stands or some other negotiated settlement could be reached with possibilities limited only by the facts of a case and the imagination of the participants. Generally the parties are present, i.e. the parents and the child, if old enough, although they do not participate directly in the conference. Their presence allows the attorneys to confer with them and negotiate settlements or stipulations with full information from the client and with their consultation and approval. Sometimes the judge or referee is present at parts of the conference to discuss procedural points and to clarify issues still in controversy.

G. Negotiation and Mediation in Juvenile Court

1. WHY NEGOTIATE?

The fact that the court process has begun indicates that the protective services worker has attempted everything within his imagination to preserve the safety and well-being of the child short of court action. Having filed the petition, the social worker recognizes that contested court proceedings are costly to the child and his family in many ways. Additional stresses are placed upon the family. The relationship between agency and parents becomes, at least for a time, adversarial. Resolution of contested cases are time-consuming for all concerned. The service goals of protective services for the child and his family are not furthered while the court action is pending. In a case in which court action is deemed necessary, the negative effects of court action may be minimized by a negotiated resolution.

In child abuse and neglect cases competing and conflicting rights and interests must be balanced by the court. There are generally differing points of view as to the wise and proper response to the problem presented to the court. One purpose of the court process is to achieve a resolution of the problem which is fair and reasonable to all involved in view of the totality of the circumstances. Professionals regularly involved in the court process can generally predict with some accuracy what the court is likely to do given the strength of each side's legal case and the reasonableness of their position. In the process of negotiation, information

is shared in a persuasive fashion so as to convince the other side of the strength and reasonableness of one's position. Likewise one assesses the case of the opponent and in light of that assessment modifies one's position if one's case is found to be weak or not reasonable. By the process of mutual give and take some prediction is made by each side as to what the court is likely to do even after full hearing. Negotiation is an opportunity to agree to a resolution of the problem which is pretty close to what the court would order if a contested and adversarial trial were to take place.

If the assessments of the strengths and weaknesses of the case differ, no negotiated settlement will result. In addition, certain elements of each case, e.g. the safety of the child, will be non-negotiable always. The process of give and take, of assessing one's own case and the case of an opponent is quite complicated. No attempt will be made to fully explore the art of negotiation here.

2. FLUIDITY OF POSITIONS PROMOTES NEGOTIATED RESOLUTIONS.

Even the most intractible parent may change his position once court action is begun. The reality of appearing in court and the advice of a lawyer may temper a formerly uncompromising attitude. On the other hand, information not previously available to the social worker may surface which tends to alter his evaluation of the case. The social worker may have been mistaken as to the true facts or may have misjudged important elements of the case.

Therefore, positions of both the social worker and the parents may become fluid as the court process starts. A negotiated resolution may become possible.

In a given case, nothing short of court wardship and a period of foster care will adequately safeguard a particular child. The legal case may also be quite strong. Unless the parents are willing to admit the petition or not contest the petition, there may be no basis for negotiation. Likewise the parents' attorney may disagree with the allegations of the petition and the workers' assessment of the petition's strength. His clients may be unwilling to consent to any form of state intervention and may have instructed him to contest all allegations. Negotiations under such conditions will not be successful. Contested hearing (trial) will likely result.

In many cases, however, new information as to the reasonableness of each side's position and the strength of their legal case can be discovered. New information or new understanding creates some degree of fluidity and fosters voluntary or negotiated resolutions.

3. PROTECTING THE CHILD IN NEGOTIATION.

Even though the child's safety is always non-negotiable, there may be various ways to safeguard the child's safety besides foster care or besides removal from the parents. Those options can be explored in negotiation without compromising protection of the child.

4. NEGOTIATING OPTIONS.

To effectively negotiate in the legal context, one must be keenly aware of the various options available. On the issue of whether or not the court should take jurisdiction of a child, without considering where the child should be placed, consider several options in escalating degrees of court involvement:

- a. Agreement not to petition the court.
- b. File petition.
- c. Agreement to withdraw a petition already filed or to recommend dismissal by the court.
- d. Amend the petition to add or delete allegations.
- e. Adjourn.
- f. Parents plea no contest.
- g. Parents admit allegations of petition.
- h. Parents deny allegations of petition, trial date set.

Custody of the child(ren) is generally paramount to the parents. In that regard consider the following negotiating options:

- a. Return the child home forthwith.
- b. Return the child home soon (on the condition that....)
- c. Return the child on a date certain (on the condition that....)
- d. Visitation arranged daily, weekly, overnight, weekends, supervised or unsupervised, depending on the child's needs; visitation arrangements may be conditioned on parents' actions of one sort or another.

- e. Place child in a home requested by parents, e.g. relative, licensable friend of family.

Certain elements of a treatment plan that the social worker considers desirable may be particularly onerous to the parent. Identify them. Attempt to fashion a treatment plan most likely to be accepted by the family. You may wish to bargain away an element of a plan that is particularly distasteful to the family in exchange for their agreement to accept court jurisdiction and a dispositional order that will meet the family needs.

Consider negotiated resolutions like the following:

- Withdraw petition - - - parents agree to accept services plan
- Adjourn - - - - - parents agree to use time to improve conditions and correct deficiencies
- Return the child - - - -) Parents admit petition, or plead no contest and agree to needed services contained in dispositional order.
- Child placed in parent requested home - - -)
- Generous visitation allowed - - - - -)

5. CHILD'S ATTORNEY AS MEDIATOR

The child's attorney may play a significant role as mediator at this stage of the process. He is neither the petitioner's attorney nor the defence attorney. He need not take an adversarial position to either side. The interests of his client is often served by voluntary

resolution of the legal dispute thus avoiding contested trial. A contested hearing will not only delay full adoption of a treatment plan but will add additional stresses to the family. A child's return home may be delayed by contested hearings. The child's counsel therefore may be a useful mediator and may assume responsibility for finding terms of settlement which all parties find acceptable.

PART FOUR: AN INTRODUCTION TO EVIDENCE

PART FOUR: AN INTRODUCTION TO EVIDENCE

This section is an attempt to provide a brief synopsis of the rules of evidence which most frequently arise in the child protection context. Other references should be consulted on most evidentiary questions but this brief primer ought to be of assistance in case preparation.

Evidence is defined as:

Any species of proof or probative matter legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects etc., for the purpose of inducing belief in the mind of the Judge or Jury as to the truth of their contention. (Blacks' Law Dictionary 4th Ed., 1968)

A. Evidence in Juvenile Court

The most important evidentiary rule applying specifically to the juvenile court is found in JCR 8.3:

.3 Evidence

(a) Adjudicative Phase. In the absence of a valid plea in confession only competent, relevant, and material evidence is admissible at the adjudicative stage, subject to the general rules of evidence in civil proceedings.

(b) Dispositional Phase. In the dispositional phase only such matters as are relevant and material may be considered.

In the adjudicative phase, then, the evidence must be "competent"; in the dispositional phase it need not be. That is, the usual rules of evidence in civil proceedings apply in adjudication but not at dispositional phase where the evidence need only meet the lesser standard of being relevant.

There are several other evidentiary rules applying specifically to juvenile court. Evidence of how a parent treats or has treated one child is admissible to show how that parent may treat other children. (In re La Flure) Evidence admitted in connection with any hearing as to custody of a neglected child may be considered evidence in all subsequent hearings. (In re la Flure)

LaFlure is a permanent custody case but the evidentiary rules of LaFlure are often applied at all stages of child neglect cases. Evidentiary rulings lie within the discretion of the court. Because of the statutory mandate to liberally construe the Juvenile Code (M.C.L.A. 712A.1) and the informal nature of juvenile court, evidentiary rules are generally more flexibly applied than in criminal or other civil proceedings. The juvenile court generally tries to get all the evidence before it so that a decision regarding the child and his family can be made on the basis of all available information.

B. Relevancy

For our purposes we will not distinguish between relevant and material. The two terms have essentially the same meaning and we will use only the term "relevancy". Relevancy means a logical relationship between the evidence offered and the facts to be established. There must be some known and ordinary connection between the facts proposed to be proved and the ultimate issue to be decided. There are two basic questions to be asked: (1) What does this evidence prove? (2) Does what it prove have a logical relevancy to the ultimate facts to be proved? All logically relevant evidence is admissible if it clears all other exclusionary rules. For example, in a child abuse case testimony that a child has bruises on his body is relevant because it tends to support the conclusion that the child was abused. Testimony that the child has blue eyes is irrelevant because it does not have a logical relationship to the question of abuse. Testimony about the adjustment of a child in foster care may be objected to at trial as irrelevant to the question of whether or not the child is neglected. Counsel may argue that questions of the child's adjustment in foster care should be reserved to disposition only.

C. The Hearsay Rule and Its Exceptions

Hearsay is an out of court statement offered to prove the truth of the statement. For example, "The neighbor told me that the children had been left alone for six hours", is hearsay.

Evidence that the children had been left alone for six hours should be provided by the neighbor's direct testimony assuming he has first-hand direct knowledge of the incident. Each witness can testify only to those facts which he knows from his own direct personal experience. First hand knowledge is required. Conclusions are not permitted. Only witnesses qualified as experts before the court are permitted to testify as to their opinion.

The rationale behind the hearsay rule is to assure the reliability of the evidence presented in court and to preserve fairness of the proceedings. Direct testimony can be subjected to cross-examination so that the judge or jury can evaluate the reliability of the evidence presented especially as to accuracy of perception, memory and communication, sincerity and credibility. Hearsay statements cannot be subjected to cross-examination and therefore, unless otherwise reliable and trustworthy, will be excluded by the court. Exceptions to the general rule excluding hearsay (discussed below) have been accepted because of their inherent reliability.

1. ASSERTIVE CONDUCT

Certain acts intended primarily as communication, i.e. "assertive conduct" may be hearsay. For example, "When I asked her who burned her she pointed to Mrs. Jones."

2. EXCLUSIONS FROM THE HEARSAY RULE.

A statement is not hearsay, however, when not introduced to show the truth of the matter asserted but only to show that the statement was made. The most common "exclusions" from the hearsay rule are statements showing 1) a relevant state of mind ("I don't care what happens to those children."); 2) Prior inconsistent statements used to impeach credibility ("Mrs. Smith just testified that the Jones children were always well-supervised and never left alone but when I first visited the neighborhood about April 10 she told me that the Jones children were often left alone, begged food from neighbors and ran wild in the neighborhood."); and 3) command and questions ("I heard Mrs. Jones say to sixteen year old Sally Smith 'You look after the children while I am gone. Call me at my mother's if you need to.'")

3. EXCEPTIONS TO THE HEARSAY RULE

Certain hearsay statements, that is, out of court statements offered to prove the truth of the matter asserted may be admitted under one of several exceptions to the hearsay rule. The hearsay exceptions are normally based on the notion that certain statements are inherently trustworthy so that the ability of an opponent to cross-examine the person making the statement is not essential to ensure either reliability or fairness. Listed below are some of the most common exceptions to the hearsay rule with examples.

a. Party Admissions

Words or acts of a party may be offered against that party. E.g. "Mrs. Jones told me that she struck her children and did it often."

b. Declarations Against Interest

A statement is admissible hearsay if made by a now unavailable declarant (dead, out of jurisdiction, etc.) concerning facts within his personal knowledge which were against his money interest at the time the statement was made. E.g. "Mr. Brown (now unavailable) said to me, 'I know I've been living pretty good with Mrs. Jones and her children what with her welfare and my disability income, but I can't be quiet any more. I've got to tell you that I have seen that woman hit those children without mercy. And I've seen her do it a lot. I don't care if telling you this means the children get taken out of here and I have to go someplace else.'"

c. Excited Utterances

A statement is admissible hearsay if it is made spontaneously at the time or immediately following an exciting event if the statement relates to the immediate facts of the event. E.g. "I saw the baby-sitter run out of the apartment clutching the baby. She was hollering 'She hurt him! Mrs. Jones threw him on the floor and hurt him!'"

d. Statements of Present Physical Sensation

A statement is admissible hearsay if it is of a present physical sensation to prove the existence of the sensation. E.g. "Just after I saw him give her the 'candy; the girl told me, 'I feel woosy and light-headed and really funny.'"

e. Statements of State of Mind

A declarant's direct statement of his state of mind is admissible hearsay. E.g. "She said to me, 'I've had it with those kids. They're really getting to me.'" "He said, 'I'm going home and teach John a lesson he won't forget.'"

f. Public Records and Documents

Public records made by public employees reporting matters within their personal knowledge and made in the course of official duty at or near the time of the act recorded are admissible. E.g. birth certificates, marriage licenses, etc. If properly certified authentication by a witness present in court is not generally required.

g. Business Records

Records are admissible as an exception to the hearsay rule if 1) they were made in the regular course of business, 2) it was the regular course of business to make such records, 3) the records were made at the time of the act or occurrence or a reasonable time

CONTINUED

1 OF 2

thereafter, and 4) the records are relied upon in the regular course of business. (See M.C.L.A. 600.2146) In the Child Protection context medical records, school records and social agency records are the ones most commonly used in court proceedings.

Remember that, as with all documentary evidence, a witness present in court must testify as to the authenticity and relevance of the record. Sometimes, however, subpoenaed medical records are sent without a "sponsor" in reliance upon General Court Rules 506.7.)

D. Expert Witnesses

Persons properly qualified before the court and accepted by the court as experts may testify as to their opinion. Expert opinion is allowed only when the subject matter of the inquiry is such that only persons of skill and/or experience can form the correct judgment, that is, when the matters are beyond the knowledge of the average person. Before a witness is accepted as an expert he must first be "qualified" as an expert in the field about which he is to testify. An expert is qualified if by his skill, training or experience he is better able to form a more accurate opinion on the matter under consideration than the average person in the community. The opinions of the expert must be based on evidence properly admitted before the court or on facts which will be proven in court.

The most common experts in child protection cases are physicians, psychologists, and psychiatrists. Protective Service workers may be experts, on the basis of their skill, training and experience, on issues of adequacy of a home environment for a child or whether or not the child is at risk in a particular setting. Social workers, however, do not usually testify as experts. Often the same result is obtained in direct testimony without formal qualification as when a worker describes the reasons for filing a petition and lays out the facts supporting his/her assessment that court jurisdiction is warranted. The very fact that the protective service worker has filed a petition and is in court speaks for his opinion on the home environment.

E. Admission of Written Documents and Tangible Evidence

1. AUTHENTICATION

Whenever a written document or other form of tangible evidence such as a photo, a belt, etc. is introduced in court a witness must "sponsor" it by identifying it and showing its reliability and relevance.

2. PHOTOGRAPHS

Photographs may be invaluable evidence in child protection cases that require court action. Child Protection Services should use photos whenever necessary and should encourage police and hospital personnel to take them. The person taking the pictures should be responsible for developing them, marking them for identification, filing them and finally testifying about them in court. Color photos are preferred. The photo should be a clear, accurate and faithful representation of the person, place or subjects which it purports to portray. While the above should be established by the person taking the picture it can also be done by someone familiar with the contents of the photo and the circumstances of its taking.

3. REPORTS

Reports by the social worker, court worker, psychologist, psychiatrist, etc. are not admissible at trial unless the writer of the report is present for cross-examination (or unless opposing counsel stipulates to the admission of such reports thus waiving the right to cross-examination).

At disposition, however, such reports are admissible although most judges will grant opposing counsel the right to call the writer of reports to court for cross-examination if requested.

4. ORDERS OF OTHER COURTS

Most juvenile courts will take judicial notice of a certified copy of orders of other Michigan courts and perhaps an out-of-state court. Such orders are useful to show court jurisdiction over children, to show divorces and child custody or support orders, to show conviction for crimes which reflect on the character and fitness of a particular parent or custodian. Authentication beyond certification is generally not required.

5. LETTERS AND OTHER WRITTEN DOCUMENTS

Letters and other written documents may be admitted if they fall within one of exclusions or exceptions to the hearsay rule. If a document is admitted not to show the proof of its contents but merely that such a letter or document exists or was mailed there are no hearsay problems.

PART FIVE: TRIAL PREPARATION

A. The Legal Roles

The social worker in the Juvenile Court must deal with lawyers in four different legal roles: that of the judge, the prosecuting attorney, the child's attorney and the parents' attorney. The expectations you should have of an attorney will vary according to the role he is to play in the court process. Remember that attorneys are trained as advocates for a position and that the success of the legal process depends on each attorney fulfilling his role -- sometimes whether or not the attorney personally agrees with the position that the role expects. Occasionally an attorney may not act in a manner agreeable to the social worker. Sometimes the attorney is fulfilling a necessary and appropriate legal function which may include challenging a worker's opinion, a worker's conclusions and judgements, or a worker's credibility and reliability. No one likes to be pressed in such a fashion but the lawyer may be duty bound to put you to the test.

On the other hand, a lawyer may come to court unfamiliar with the case with no valid reason. He may not have prepared the case in a fashion that allows him to properly and competently represent the client. A social worker should have some understanding of what can reasonably be expected from the lawyer in Juvenile Court. Knowing generally what the lawyer roles should be, the social worker will be able to cope with inevitable differences

of opinion and adversarial tactics. Likewise the social worker may be able to identify the lawyering which does not seem to meet minimal expectations. Question the lawyer about it. Lawyers will be resistant to challenges from social workers about proper legal roles and rightly so - to a point. Determine from conversations whether a lawyer is performing adequately. If you have complaints, make them to the judge, the court administrators, to department supervisory and administrative staff. One way to make the child protection system better is to identify both successes and shortcomings so that successes can be multiplied and shortcomings overcome.

1. THE PARENT'S ATTORNEY

The parents' lawyer must overcome the same feelings of dismay and alienation from his client that other professionals dealing with child abuse and neglect must face. With some experience and insight into the dynamics of abuse and neglect the attorney is better prepared to deal with his personal feelings and thus better able to represent his client.

The attorney for the parents is charged with representing the interests of his clients zealously within the bounds of the law. Advocacy for the parent usually takes the form of minimizing the effects of state intervention on the family. Advocacy for parents may include diplomatic attempts to get petitions dismissed, in-court

advocacy for dismissal, insistence that the charges brought by the state be legally proven in court, and negotiation for dispositions that are most acceptable to the parents.

Where responsibility of the parent for injuries to or possible neglect of a child is a contested issue, the lawyer has a duty to defend his client with the utmost vigor and resourcefulness. The lawyer in Juvenile Court, no less than in any other court, must stand as the ardent protector of his client's constitutional and personal rights. He must bring to the task the usual tools of the advocate -- familiarity with the applicable law, the ability to logically present the pertinent facts, and the facility for forceful and persuasive exposition of his client's cause.

The parents' lawyer is more than a trial advocate, however. Many attorneys will emphasize the equally important function of counselor. Advice to a client to admit responsibility or to agree to a particular treatment plan recommended by the agency or even to waive some legal rights is not a violation of the lawyer's professional trust. In various fields of law, including child protection, consideration of the totality of a client's long-range interest often compels counsel to forego immediate legal advantage, or technical legal rights, in favor of some more important ultimate objective. In child abuse and neglect cases, the lawyer, in his role as

counselor to the parent, may properly advise his client to admit or not contest a petition when the lawyer knows that without some therapeutic intervention, his client will be continuously exposed to the temptation of inflicting even more serious injuries on his child and will subject himself to more serious punishment in the future.

The parents' attorney can perform valuable functions for the parents by encouraging non-judicial resolutions of the case. A voluntary plan of treatment may avoid formal court jurisdiction and still protect the child and address the problems which may have been identified by protective services. Non-judicial resolutions with legal representation of the parents avoids the danger of improper invasion of personal liberties without due process. A lawyer representing parents provides an assurance that whatever agreement the parents enter into is done voluntarily and knowingly.

In the dispositional phase of a case, the parents' lawyer may serve several different functions. 1) He can insure impartiality by acting as a counterbalance to pressures exerted on the court by the very nature of the issues. 2) He can assure that the basic elements of due process are preserved, such as the right to be heard and the right to test the facts upon which the disposition is to be made. 3) He can make certain that the disposition is based upon complete and accurate facts and that all the circumstances which shed light upon the conduct

of his client are fully developed. 4) He can test expert opinion to make certain that it is not based on mistakes either arising from erroneous factual premises or limited expertise. 5) He can give the frequently inarticulate parent a voice in the proceeding by acting as his spokesman. 6) His relationship with the parents may even enable him to give the protective services or court staff new and meaningful insights into the family situation. 7) Finally, the parents' attorney can interpret the court and its processes to his client and thus assist the parent in genuinely accepting the actions of the court.*

2. THE CHILD'S ATTORNEY

Section 10 of the Child Protection Law reads as follows:

The court, in every case filed under this act in which judicial proceedings are necessary, shall appoint legal counsel to represent the child. The legal counsel, in general, shall be charged with the representation of the child's best interests. To that end, the attorney shall make further investigation as he deems necessary to ascertain the facts, interview witnesses, examine witnesses in both the adjudicatory and dispositional hearings, make recommendations to the court, and participate in the proceedings to competently represent the child.

The child's attorney is charged first with ascertaining the facts. He may rely entirely on the protective

*Isaacs, "The Role of the Lawyer in Child Abuse Cases" in Helping the Battered Child and his Family, C. Henry Kempe and R. Helfer eds., J. B. Lippincott Company, 1972.

services investigation or he may personally interview family members, neighbors and relevant witnesses depending on the nature of the case. The traditional role of guardian-ad-litem is not as advocate but is rather a technical one. Traditionally the guardian-ad-litem would examine pleadings and other material in the file and ascertain that the proceedings which affect the child are legally correct.

Our Michigan statute requires that the lawyer act as counsel, that is, as advocate for the child. In child protection proceedings the child needs more than a technician to insure legal precision, he needs more than a passive observer and advisor, he needs an advocate.

The emphasis of protective services and the prosecutor in the court is often on proving the facts alleged in petition and gaining court jurisdiction. Child's attorney role goes beyond that to look at the entire proceeding - both legal and social aspects - from the child's perspective. He must come to an independent judgement as to what course of action will be best for the child based on conversation with the child, where the child is articulate, and his personal appraisal of the totality of circumstances affecting the child.

Despite disclaimers to the contrary, child protection proceedings normally partake of most of the essential elements of an adversary proceeding. Counsel for the child, however, unlike attorney roles in most other litigations, is not required to take an adversary position. He is not

called upon to either prosecute or defend, but rather to ensure that there is presented to the court all relevant facts necessary to adjudication and disposition, and to exert his efforts to secure an ultimate resolution of the case which, in his judgement, will best serve the interests of his client.

The child's counsel role is far from simple. He must synthesize the results of the protective services investigation; the child's psychological, developmental and physical needs; the child's articulated wishes; his own assessment of the facts, and the treatment resources available. The ultimate decision as to the course of action to be taken by child's counsel in any given case is basically non-legal in character. The role of child's counsel imposes an awesome responsibility and requires independent social judgements.

Do not expect the child's lawyer to agree with social work recommendations without question. Expect him to question closely and to extract the underlying basis for the social work position and recommendations. The child's counsel may defer to the social work judgement and agree with the recommendations, but he should reach his conclusions by independent thought processes even though the protective service worker is the person most often relied upon to supply fact. The child's attorney may disagree with protective services on occasion. Expect it and take it professionally.

Child's counsel may play a significant role in

negotiation and mediation. (See page 68.)

3. THE PROSECUTOR: PROTECTIVE SERVICES' ATTORNEY

The Juvenile Code, M.C.L.A. 712A.17 reads in part:

...Provided, That the prosecuting attorney shall appear for the people when requested by the court.

With the exception of Wayne County, most populous counties of Michigan provide legal assistance for protective services in the person of an assistant prosecuting attorney. Because of staff limitations that attorney may not be able to provide the depth of legal assistance that the social worker might wish. In practice it is the social worker who drafts the petition, gathers and organizes the evidence, and identifies and subpoenas the essential witnesses. These are all functions of a lawyer. Although social workers are not usually well-versed in the use of law and the courts this manual is an attempt to ameliorate some of those shortcomings. You should recognize the lawyer's expertise and utilize his skills whenever the need arises and whenever his services are available.

Ideally the attorney representing the interests of protective services as petitioner, i.e. the prosecuting attorney, will understand and appreciate the child protection system and the emphasis on non-judicial (yet fair) handling of these cases. In addition to traditional legal skills, he should understand juvenile court and family law. He should know and respect the functions, the capabilities

and even the limitations of social workers and other behavioral scientists.

Collaboration between protective services and their legal representatives varies considerably from county to county in Michigan. Protective service workers should be encouraged to develop a working relationship with the local prosecutor. Lawyer skills are especially necessary in petition drafting, contested trials and permanent custody cases.

In cases in which the child's counsel agrees with the protective services' position, legal assistance may be obtained from him even to the point of direct examining witnesses.

4. THE ROLE OF THE JUDGE.

The judge should be the only disinterested lawyer connected with the proceedings. Although parents and children have a right to jury trial at the adjudication stage of the legal process, jury trials are rare. It is generally the judge who listens to the facts presented, weighs the evidence, and decides which facts are true. He then decides whether or not the facts proven amount to legal neglect. Following a finding of neglect, the judge enters orders of disposition based upon evidence and recommendations presented.

The judge's conduct must be such as to avoid even the appearance of partiality or impropriety. The judge must remain impartial and objective. He should not hear

about a case without the presence of all parties (with the exception of requests for emergency orders).

In the course of the judicial proceedings it is the judge's responsibility to see that the court process remains orderly and that the facts are fully and properly developed. To that end he may ask questions of witnesses after counsel have completed their questioning. He rules on evidentiary and procedural questions argued by the attorneys before him and may call additional witnesses. The judge should not be partisan and should avoid assuming the role of prosecutor, or appearing to show favoritism toward a particular family or child.

B. Confidentiality and Privileged Communication

A client's confidentiality refers to his right to have certain conversations and records remain private unless he release them or they are ordered released by valid court order. Privilege refers to the right of a client or patient to prevent a physician, lawyer, psychologist, social worker and several professionals from testifying in court or other legal proceedings about the contents of their professional relationship.

Michigan statutes create a privilege for the following professional relationships, among others:

- a. Physician-patient
- b. Psychiatrist-patient
- c. Psychologist-patient
- d. Marriage counselor-client

e. Social worker-client

f. Teacher-pupil

Certain records and other information are considered confidential and protected under the law. The most common confidentiality concerns in child protection arise with regard to medical records, social agency records, and mental health records. Such records can be obtained with a voluntary release of information from the client. Such records may also be obtainable through subpoena although the law is complex in this regard and an attorney should be consulted around a particular fact situation.

Privileged communication may be abridged in several ways. The most common ways in the child protection context are:

- a. By release of information signed by the client. (A release amounts to a waiver of the privilege generally).
- b. Under the authority of the Child Protection Law Section 11 which abrogates all legally recognized communication for purposes of reporting suspected child abuse and neglect and testifying in court about such reports. The abrogation of privilege in the child protection law extends so far as necessary to report the acts of suspected abuse and neglect and testifying about them.
- c. By court subpoena in certain kinds of cases. You should consult a lawyer around a given fact situation.

JCR. 7.2(E)(4) should be read in the context of giving testimony as to privileged communication in Juvenile Court.

C. Subpoenas

All parties to a litigation have the right to compulsory process to require the presence of witnesses and non-privileged evidence at a trial. Contact the Prosecuting Attorney or the Juvenile Court for issuance of subpoenas for witnesses or subpoena duces tecum for records needed. The court has the power to enforce subpoenas through its contempt power (M.C.L.A. 712A.26) and a person failing to comply with a properly served subpoena can be fined and jailed.

D. On Testifying in Court

In nearly all child protection cases, it is the protective services worker who bears responsibility for gathering, organizing and presenting the facts of a case. If the facts are gathered and organized as recommended in Part Two above, the actual in-court testimony should not be difficult.

Before the trial of a contested case the protective service worker should meet with the attorney responsible for examining the petitioner's witnesses. That attorney, generally the prosecutor, should receive a summary outline of the case including a list of witnesses and what they will testify to. The attorney needs to know what facts make up the case so that he may elicit them in court.

PART FIVE: TRIAL PREPARATION

The following checklist for testifying may be useful:

1. CHECKLIST FOR TESTIFYING AS A WITNESS.

In preparing for an experience as a witness in Juvenile Court, the following suggestions may be helpful to keep in mind.

1. Tell the truth.
2. Always remember that as a Protective Service Worker, your main purpose is to give the facts as you know them.
3. You are only to give the information which you have readily in mind. If you do not know certain information, do not give it and do not speculate about it.
4. Do not answer any question unless you thoroughly understand it.
5. Answer each question to the best of your ability completely but do not offer or volunteer more than is asked.
6. Pause briefly before answering each question. Gather your thoughts carefully before answering and do not permit yourself to be hurried.
7. Take your time in answering a question.
8. If your attorney begins to speak, stop whatever answer you may be giving and allow him to make his statement. If he is making an objection to the question that is being asked of you, do not answer the question until after he has made his objection, and the hearing officer advises you to go ahead and complete your answer.
9. Never attempt to explain or justify your answer. You are there to give the facts as you know them. You are not supposed to apologize or attempt to justify those facts. Any attempt to do so would make it appear as if you doubt the accurateness or authenticity of your own testimony.

10. Never state facts that you don't know. Quite frequently you will be asked a question, and in spite of the fact that you feel that you should know the answer, you do not, and therefore, you will be tempted to guess or estimate what the answer should be. This is a mistake. If you do not know an answer to a question, even though you would appear ignorant or evasive by stating that you don't know, you should nevertheless do so because a guess or an estimate for an answer is almost always the wrong answer and one from which the opponent can show that you either don't know what you are talking about or imply that you are deliberately misstating the truth.
11. Do not memorize your testimony, instead tell the facts as you know them and in a manner intelligible to those who have no knowledge whatsoever of the case.
12. Avoid demonstrations of anger, belligerency, sarcasm or discourtesy.
13. Do not let the opposing counsel get you angry or excited.
14. Your initial testimony will be similar to what follows:
 - (a) You will be called by name and should come forward.
 - (b) You will swear to give honest answers.
 - (c) The counsel who has summoned you will probably ask:
 - (1) Your name
 - (2) Your occupation
 - (3) Your place of work
 - (4) How long you have been at your place of current employment
 - (5) The title of your job
 - (6) The qualifications for the job you perform
 - (7) The type of work you perform
 - (8) Your acquaintance with respondent and the child
 - (9) What occurred at specific time(s) and place(s)
 - (10) Any other pertinent questions
 - (d) Following the above, opposing counsel will ask you questions.

E. Checklist: Preparation for Trial

- Petition properly filed and authorized.
- Pre-trial conferences held; No further legal motions will be made.
- Trial date and time is set and properly docketed.
- Negotiation attempted. No common ground for non-trial settlement appears possible.
- Parties in interest; father, mother, putative father and legal guardian have been properly served.
- Child's Counsel has completed his independent assessment and has taken a position as to his view of the child's best interest and has communicated this view to you, the Protective Service Worker.
- Parents' attorney has taken a position on behalf of his clients and has communicated it to you. You know therefore what the parents want as outcome of these proceedings.
- Prosecutor has been consulted and his advice incorporated into your court strategy. He has been provided an outline of the case.
- All subpoenas and subpoenas duces tecum have been issued.
- Witnesses are prepared for testifying.

PART SIX: THE TRIAL
(Contested Hearing)

PART SIX: JUVENILE COURT PROCEDURE: THE TRIAL

At this stage of the process the Protective Services Worker no longer carries the prime responsibility for handling the case. The trial stage of the proceedings is the unique responsibility of the lawyers whether protective services is represented by the Attorney General, the County Prosecuting Attorney, or not represented at all. Occasionally, in counties where no attorney appears on behalf of the petitioner, the child's counsel may be counted on to present the Protective Services' case. Many lawyers, however, feel that it is inappropriate for the child's lawyer to present the case for the petitioner since his objectivity is lost by taking an adversarial position. The child's attorney should be free to disagree with the petitioner and to recommend a course of action different from that recommended by the agency when he deems it appropriate.

If the Protective Services Worker prepares the case as outlined above, his role in the trial will be as witness and as advisor to the attorney during trial. It is advisable for the Protective Services Worker to sit next to the attorney at the counsel table during the trial. That proximity during trial facilitates communication and serves to ensure that all the facts are elicited from each witness.

Even though a Protective Services Worker has little formal responsibility during the trial it will be useful to know the essentials of what is to take place. The following outline is provided not as a comprehensive description of the trial without a jury, but as a broad outline of the basic elements of a trial.

A. Outline

1. Ascertain presence of proper parties. Appearances are entered on the record by all counsel; all persons present in the courtroom are identified.
2. Service. The Judge determines that notice of the proceedings has been properly served on all interested parties or that notice has been properly waived.
3. Issues before the court are identified. The allegations of the petition are read.
4. Proceedings and legal rights explained. The nature of the proceedings is explained. Parties are asked if they understand the proceedings. If Respondents do not have counsel they are told of their right to counsel. Respondents are told of their right to have the matter tried by the judge or by a jury. Respondents and children are told of their right to remain silent and that any statement they make may be used against them.
5. Opening Statements. Each party may present an opening statement to the court outlining the case that they will present and the witnesses they will call. It is an opportunity to familiarize the judge with the case so that he may better follow the testimony and see how it all relates together. Opening statement may be waived.
6. Testimony. Witnesses are sworn, their testimony is taken, and all other evidence is introduced. The order of examining all witnesses is generally as follows:
 - a. Direct Examination. In a question and answer format the witness's testimony is elicited by the attorney who called him.

- b. Cross-examination. Other counsel has an opportunity to cross-examine the opposing witness.
 - c. Re-direct examination. At the conclusion of cross-examination the attorney whose witness is on the stand has an opportunity to ask some additional questions on re-direct.
 - d. Re-cross examination. Other counsel has an opportunity to ask additional questions of the witness on re-cross.
 - e. Questions by the Judge. Finally the Judge may ask questions of the witness.
 - f. The witness is then excused by the Judge.
7. Objections. During examination of witnesses and presentation of other evidence, opposing attorneys may object on a variety of legal grounds generally based on a failure to comply with the rules of evidence. The Judge will allow the objecting attorney to state his objection and the grounds for it; will then hear argument from the counsel objected against; and will rule on the objection. The trial will then proceed. Unless an evidentiary objection is made at trial, it cannot be raised again on appeal.
 8. Petitioner's case. The petitioner, through his attorney, calls the first witnesses and presents all his evidence first.
 9. Respondent's case. The respondents, through their attorneys, present their case next. They need not present a defense nor need they take the witness stand. Often the respondent's attorney will make a Motion to Dismiss or a Motion for Directed Verdict asking the court to dismiss the petition on the grounds that the petitioner did not prove a prima facie case in support of the petition. After presenting their case, the respondents rest.

10. If the child's attorney has independent witnesses to call, he usually does so following the respondents.

11. Closing Argument. After all parties have presented their cases to the Judge, each has an opportunity to make a closing argument. Most closing arguments summarize the evidence presented in a way most favorable to the side arguing and then suggests proper resolutions of the issues to the Judge in the most persuasive manner possible (the most persuasive manner might be short and sweet).

12. Decision. Upon hearing all sides of the case the Judge will decide the issue of whether or not the court will take jurisdiction over the child or children. The Judge may enter his decision directly from the bench or take the matter under advisement for a period of time.

13. Disposition. Only after the court has taken jurisdiction over a child does the question of proper disposition become relevant. Local practice varies but in most counties the Judge will not hear testimony as to disposition until after jurisdiction is formally taken. The proofs at the dispositional phase need not adhere to the formal rules of evidence, meaning that reports and other forms of hearsay evidence may be admitted as long as they are reliable. (See Evidence section page 71) Oftentimes the court adjourns the proceedings to another date for dispositional hearing.

PART SEVEN: POST-ADJUDICATION

PART SEVEN: JUVENILE COURT PROCEDURE: POST ADJUDICATION

Child Protective Services involvement in the post-adjudicative stages of the juvenile court process is generally quite limited. In some counties, however, agreements exist between the Department and the juvenile courts whereby the Department supervises adjudicated neglected children in their own homes. For completeness sake and to provide some guidance to those workers retaining responsibility after adjudication the following summary of post-adjudication procedure is provided.

A. Disposition - Own Home Placement

Section 18 (b) of the Juvenile Code provides the legal authority for the court to place the child under supervision in his own home following taking of jurisdiction:

Sec. 18. If the court finds that a child, concerning whom a petition has been filed, is not within the provisions of this chapter, he shall enter an order dismissing the petition. If, however, the court finds that a child is within the provisions of this chapter, it may enter any of the following orders of disposition which shall be appropriate for the welfare of the child and society in view of the facts so proven and ascertained:

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(b) Place the child on probation or under supervision in his own home, upon such terms and conditions, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, designed for the physical, mental or moral well-being and behavior of the child as the court shall determine.

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B. Supplemental Orders of Disposition

Once a child is made a ward of the court the court may enter additional orders of disposition including dismissal of the case, placement in foster care, and termination of parental rights. No orders of disposition may be entered unless the parents are given notice of the fact and a hearing is held on those issues. (M.C.L.A. 712A.20) The statutory authority for entering orders of further disposition is found in Sections 19 and 21 of the Juvenile Code:

Sec. 19. Such cause may be terminated or such order may be amended or supplemented within the authority granted to the court in the preceding section 18, at any time or from time to time, as to the court seems necessary and proper, as long as the child remains under the jurisdiction of the court,...

Sec. 21. . . . At any time the court may enter an order for supplemental disposition as long as the child remains under the jurisdiction of the court.

The significance of proceeding as "further disposition" in such cases is that the standards of evidence are more flexible in disposition than in adjudication and no right to jury trial is present at the dispositional stage. Protective Service Workers most commonly utilize these sections of the law covering supplemental disposition when they seek to dismiss a case or when a child is placed at home and no progress is made or the child again is placed at risk. The statute allows petitioning the court for a supplemental order of disposition on the basis of new developments in the family -- as long as jurisdiction over the child has been established in earlier proceedings.

C. Statutory Review Hearings

Some counties hold statutory review hearings pursuant to section 19 of the Juvenile Code even when the child has been placed in his own home. The statute only requires review hearings when the child is placed in foster care. Those hearings are required after six months and, if the child remains in foster care, every year thereafter. At such hearings the parents are required to show what efforts were made by them to reestablish a home for the child and also to show why the child should not be placed in the permanent custody of the court. At the review hearings the Protective Services Worker, in counties with such agreements, will be expected to show what attempts the agency has made to assist the family in overcoming obstacles to reestablishing a proper home. The worker shall submit reports to the court regarding the situation of the child's family and close relatives and the possibility of their reestablishing a home for the child.

D. Rehearings

Section 21 of the Juvenile Code provides for a rehearing on all matters and any orders in a case upon petition by any interested party. The statute reads in part:

Sec. 21. Any interested person, at any time while the child is under the jurisdiction of the court, may file a petition, in writing and under oath, for a rehearing upon all matters coming within the provisions of this chapter, and upon rehearing the court may affirm, modify, or set aside any order so reviewed . . .

E. Appeals

The Juvenile Code provides as follows:

Sec. 22. Appeal may be taken to the circuit court by the prosecuting attorney or any person aggrieved by any order of the juvenile division of the probate court . . .

Although the protective services worker as petitioner to the court has a right to appeal under the statute cited above, appeals from an order of the juvenile court are generally not pursued by social workers themselves but rather by a lawyer representing them. Considering its technical complexity, the attorney will assume nearly total responsibility for all aspects of an appeal once the decision to file an appeal is made.

The most common forms an appeal will take are:

1) a direct appeal to the Circuit Court as provided by statute (see above); 2) a Writ of Superintending Control, also filed in Circuit Court; 3) and a Writ of Habeas Corpus, filed in the Circuit Court in the county in which the child is found.

GLOSSARY

GLOSSARY

A

ABANDONMENT

Giving up with the intent of never again claiming a right or interest in. Abandonment in law depends on the concurrence of an intention to abandon and some overt act and failure to act which carries the implication that the owner or parent neither claims nor retains any interest.

ABRIDGED

To deprive, to reduce in scope, to diminish as in to abridge the right of free speech.

ABROGATE

To abolish by authoritative action; to annul, repeal.

ADJOURN

To suspend until a later stated time; to postpone or defer action of the court until another specified time or indefinitely.

ADJOURNMENT

A putting off or postponing of a session of court until another time or place.

ADJUDICATION

In Juvenile Court the judicial decision as to whether or not legal neglect exists and therefore whether or not the court is entitled to extend its power or its jurisdiction over a particular child.

ADJUDICATION PHASE

That phase of the juvenile court process preliminary to the judicial decision as to whether or not the court's power extends to a particular child.

ADJUDICATION HEARING

Also called Contested Hearing, Formal Hearing or Trial. A court proceeding in which all parties to a contested neglect case present their evidence to the judicial officer for a decision on the merits of the case.

ADVERSARY PROCEEDING

One having opposing and disagreeing parties or interest; a contested proceeding in which the petitioner's action is resisted by one of the named parties.

ADVISEMENT

As in "the judge takes the matter under advisement".

A period of careful consideration and deliberation after which a decision will be rendered.

ADVOCATE

One that pleads the cause of another.

ALLEGE

To assert without proof or before proving.

ALLEGED

Asserted to be true or to exist; avowed, questionably true.

ALLEGATION

A positive assertion; a statement by a party to a legal action of what he undertakes to prove.

AMEND

To alter formally by modification; deletion or addition; to change or modify.

AMENDMENT

The act of amending; a change, ordinarily for the better.

APPELLATE COURT

A court having jurisdiction of appeal and review; a court which reviews possible errors of lower courts.

AUTHENTICATION

In the law of evidence the act or mode of giving authority or legal authenticity to a writing or a copy of a writing so as to render it legally admissible in evidence e.g. "I recognize that document as a letter I wrote to Mr. Brown on November 3, 1977."

AUTHORIZE

To empower; to invest with legal authority. To authorize a petition means to sanction the petition as the authoritative foundation of the legal proceedings to follow.

B

C

CASE LAW

Law established by judicial decision in particular cases; the totality of cases reported and published forming a body of jurisprudence.

CERTIFICATION

An authoritative attestation that a document or record is true or correctly represented.

CIVIL PROCEEDINGS

Civil actions relate to private rights and to remedies sought through legal action or suit which are distinct from criminal proceedings. Civil suits relate to and affect only individual rights whereas criminal prosecutions involve public wrongs. A civil action or civil proceeding is brought to recover some civil right or to obtain redress for some wrong which is not a crime. Juvenile court cases are considered civil in nature.

COMPETENT

In the law of evidence, the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of law; competent is applied in the same sense to documents or other written evidence.

CONCLUSION

A reasoned judgement; an inference; the necessary consequence of two or more propositions taken as premises; in a legal case the final decision or a judicial inference from proven fact.

CONFIDENTIALITY

The relationship between a professional and his client in which the client may assume that his disclosures will not be passed on to others except under certain circumstances and then only for the specific purpose of lending necessary help. Confidentiality is first of all an ethical obligation and may also be a legal obligation as when statutes require that certain records be kept confidential.

CONSENT CALENDAR

A procedure provided for by Michigan Statute and Juvenile Court Rules whereby a proceeding is conducted informally, no commitment or change of custody may be ordered and expungment of records is more easily obtained; little used in most Michigan counties today.

CONTEMPT

Willful disobedience to, or open disrespect of, a court, judge or legislative body.

CONTEMPT POWER

The power of the court to punish for contempt of court any person who willfully violates, neglects, or refuses to obey any order or process of the court by fine or imprisonment. (See M.C.L.A. 712A.26 for juvenile court contempt power.)

COUNSELOR

A lawyer; an attorney; one who gives advice in law and manages cases for clients in court.

COURT CALENDAR

The docket; the schedule of hearings and proceedings before the court.

COURT WARD

As commonly used in Juvenile Court, a minor child over whom the court has formally asserted its jurisdiction; a child that has been declared a temporary or permanent ward of the Juvenile Court.

CROSS EXAMINATION

The process of examining a witness by a series of questions designed to check, test or discredit answers given to questions asked earlier by another side in the judicial proceeding.

D

DECLARANT

A person who makes a declaration or statement.

DETAIN

To hold or keep in custody; in Juvenile Court, to order a child placed with someone other than a parent or guardian.

DIRECT EXAMINATION

The first interrogation, examination or series of questions put to a witness by the party on whose behalf he has been called to testify.

DISCOVERY

In legal practice, the process of finding out facts and evidence in possession of the other party.

DISMISSAL

An order or judgement of the court finally disposing of an action or motion by denying petitioner's request and sending it out of court either without a trial or after trial and adjudication on the merits.

DISPOSITION

That phase of Juvenile Court proceedings in which the court considers what the proper response to a child's situation might be; the disposition follows the adjudication phase and takes place only when the court has formal jurisdiction of the child.

DISPOSITION ORDERS

Orders of the court regarding placement, counseling and other services which give effect to what the court has considered proper and necessary for the child's well-being.

DOCKET

The court calendar; the schedule of hearings and other proceedings to be held before the court.

E

EVIDENCE

Any type of proof or probative matter legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc. for the purpose of inducing belief in the minds of the judge or the jury as to the correctness of their contention.

EX PARTE

An act done for, in behalf of, or on the request or application of one party only e.g., an ex parte conference means a conference with the court with the presence of only one of the parties.

EXCLUSIONARY RULE

A rule which bars certain evidence from consideration by the court.

EXPERT WITNESS

One qualified by skill, training or experience to be better able to form a more accurate opinion as to the matter under consideration by the court than the average person in the community. The expert witness is allowed to testify as to his opinion based on evidence properly admitted before the court.

EXPUNGE

To destroy or obliterate; a physical annihilation; to blot out or efface completely.

EXTRAORDINARY WRITS

A class of legal action in which writs are applied for in higher courts, for instance Writs of Superintending Control, of Habeas Corpus, Mandamus.

F

FORTHWITH

Immediately, right away.

FOUNDATION

The basis upon which a fact or testimony stands or is supported.

G

GUARDIAN

One who legally is responsible for the care and management of the person or the property or both of a child during his minority; a guardian often stands in the place of a legal parent.

GUARDIAN-AD-LITEM

A guardian for purposes of litigation is a guardian appointed by the court to represent the child in any proceeding which may affect the child's welfare.

H

HEARING

A legal proceeding of relative formality with definite issues of fact or of law to be resolved in which a party proceeded against has a right to be heard; for instance, Preliminary Hearing, Trial, Dispositional Hearing, Review Hearing.

HEARSAY

Evidence not based on a witness's personal knowledge but on matters told him by another.

I

INTERVENTION STRATEGY

As used herein, the totality of social, therapeutic and legal responses to a perceived dysfunction within a family or affecting a particular child.

J

JCR

Juvenile Court Rules promulgated by the Michigan Supreme Court to govern the procedure in the Juvenile Division of the Probate Court.

JUDGE

A judicial officer charged with presiding and admin-

istering the law in a court of justice; in Michigan, Juvenile Court judges are elected by the people of each county to serve six year terms.

JUDICIAL

Of or relating to the function of judging, the administration of justice or the judiciary as in judicial act, judicial power, judicial proceedings.

JUDICIAL NOTICE

The act by which a court in conducting a trial or framing it's decision will, of its own motion and without the production of evidence, recognize the existence and truth of certain facts having a bearing on the controversy which from their nature are not properly the subject of testimony or which are universally regarded as established by common notoriety e.g., the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, etc.

JURISDICTION

The power, right, or authority to interpret and apply the law; the notice of jurisdiction encompasses many facets. For example, in Michigan Juvenile Court it encompasses the notion of age and political boundaries which are prerequisite to a court asserting its authority as well as the notion of finding legal neglect which is likewise a prerequisite for the court asserting its authority.

K

L

LITIGATION

A contest in a court of law for the purpose of determining and/or enforcing a right; a judicial controversy; a suit at law.

M

MANDATE

A command, order or direction, written or oral, which the court is authorized to give and a person is bound to obey.

MANDAMUS (Latin - we command)

A writ issued by a superior court commanding the per-

formance of a specified official act or duty.

MATERIAL

Important; more or less necessary; having influence or effect; going to the merits.

M.C.L.A.

Michigan Compiled Laws Annotated, an official publication of the statutes of the State of Michigan.

MEDIATOR

One who mediates between parties at variance; one who interposes between parties in order to reconcile differences; one who intervenes between two contending parties with the view to reconcile them or persuade them to adjust or settle their dispute.

MERITS

A legal term referring to the strict legal rights of the parties; often contrasted with procedural aspects or preliminary aspects of a litigation e.g., the formal hearing is sometimes termed "trial on the merits".

MOTION

A formal application made to a court or to a judge to obtain an order, ruling or direction e.g., Motion to Dismiss, Motion for Psychiatric Evaluation, Motion for Appointment of Counsel.

N

NEGLIGENCE

Failure to do something which a reasonably prudent person would usually do, or failure to exercise the care that a reasonably prudent person would usually exercise. The standard of what constitutes negligence depends on what degree of care persons in the community would normally exercise.

NEGOTIATION

To arrange for or bring about through conference, discussion, and compromises; the action or process of bringing about or concluding by mutual agreement.

NEGOTIATED SETTLEMENT

A resolution of a legal dispute which is resolved by mutual agreement of the parties as opposed to being resolved by a ruling of a court after contested proceedings.

NO CONTEST PLEA, NOLO CONTENDERE

A plea entered to a petition filed in court in which

the one accused neither admits nor denies the accusations but formally does not contest them; the plea has the same legal effect as a plea of guilty so far as the proceedings on that particular petition, but may not be used as an admission against the accused elsewhere or in another court of law.

O

OATH

A solemn pledge in which a person formally pledges and attests to the truth of one's words, often done by a solemn calling upon God to witness the truth of what one says.

OPINION EVIDENCE

Evidence of what the witness thinks, believes or infers in regard to the facts in dispute as distinguished from his personal knowledge of the facts themselves; opinion evidence is not ordinarily admissible in court except in the case of qualified expert witnesses.

P

PARTY

A person who is directly interested in any affair or legal proceeding or who is actively concerned in the prosecution or defense of any legal proceeding. Necessary parties are those parties who have such an interest in the subject matter of a suit or whose rights are so involved in the controversy that no complete and effective decree can be made disposing of the matters in issue and dispensing complete justice unless those persons are before the court in such a manner as to entitle them to be heard in vindication or protection of their interests.

PERMANENT CUSTODY

A description of the legal status of a child after the parental rights of the child's legal parents have been formally terminated by proper court action i.e., the child is placed in the permanent custody of the court.

PERMANENT WARD

A description of the legal status of a child after the parental rights of his legal parents have been formally terminated by proper court action i.e., the child is made a permanent ward of the court.

PETITION

A formal written request of the court which sets forth the alleged facts which bring a child under the jurisdiction of the court and asks the court to assume jurisdiction and exercise it's authority vis-a-vis the child; the petition establishes the scope of the court's inquiry into the family situation.

PLEA

An accused persons answer to a charge or allegations against him.

PLEADINGS

The formal written allegations by the parties of their respective claims and defenses presented to the court for its judgement.

PRELIMINARY INQUIRY

An initial, often informal, conference with or presentation to juvenile court staff to determine whether in the interests of the public or the child further and more formal court action needs be taken, similar to an intake conference.

PRELIMINARY HEARING

See page 51 above.

PREMISE

A proposition antecedently supposed or proved as a basis of argument or inference; something assumed or taken for granted.

PRIMA FACIE

Legally sufficient to establish a fact or a case unless disproved or contradicted by other evidence.

PRIVILEGED COMMUNICATION

A communication made to a professional by a client or patient which is, by statute, not subject to disclosure in a court of law unless waived by the client or patient.

PROBABLE CAUSE

Supported by evidence strong enough to create a presumption but not proof that certain facts are true; a reasonable ground for belief in the existence of facts warranting initiation of judicial proceedings.

PROCEDURE

The mode of proceeding by which a legal right is enforced or abrogated as distinguished from the law which gives or defines the rights, that is the merits of the case; that which regulates the formal steps in a legal proceeding; the form, manner and order of conducting or administering legal suits or prosecutions.

PUTATIVE FATHER

The alleged or reputed father of an illegitimate child.

Q

R

REFEREE

A judicial officer appointed by the judge to whom causes pending in court are referred by the judge for the purpose of taking testimony, hearing the parties, and reporting thereon to the court usually with a recommendation for action whether final or interim.

RELEVANT

Applying to the matter in question, a fact is relevant to another fact when, according to common course of events, existence of one taken alone or in connection with the other fact renders existence of the other certain or more probable.

RESPONDENT

One who answers in various legal proceedings; in juvenile court the parent, guardian or custodian accused of violating a duty which allegedly creates a condition of legal neglect.

S

SERVICE

The delivery of a writ, notice or summons by an authorized person to another person who is thereby officially notified of some action or court proceeding in which he is concerned or has an interest; the person served is thereby advised or warned of some legal action or step which he is advised or commanded to take. For instance the parents are properly served if they have been notified, in a manner required under law, of legal proceedings about to be taken against them.

STANDARD OF PROOF

Refers to how much evidence is required to establish a case. Various standards of proof include "some credible evidence" to open a protective service case, "probable cause" to prevail at Preliminary Hearing, "preponderance of evidence" to prevail at Temporary Custody Trial, "clear and convincing evidence" to prevail at Permanent Custody Trial and "beyond a reasonable doubt" in criminal trials.

STATUTE

An act or regulation of the legislative branch of government declaring, commanding or prohibiting something; a particular law enacted and established by the will of the legislature; the written will of the legislature solemnly expressed according to the forms necessary to constitute the law of the state.

STIPULATE

To arrange or settle definitely as an agreement or covenant.

STIPULATION

An agreement between counsel regarding business before the court; not binding unless assented to by the parties or their representatives; most stipulations are in writing some may be oral.

SUBPOENA

A process and a document to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses and appear before the court named in the subpoena at a time and place named therein to testify for a party also named, under a penalty for failure to do so.

SUBPOENA DUCES TECUM

A process and a document by which the court at the request of a party to a suit commands a witness, who has in his possession or control some document or paper pertinent to the pending controversy, to produce the document or paper before the court.

SUMMONS

A writ issued by the court directing the sheriff or other proper officer to notify the person named in the summons that an action has been commenced against him in court and that he is required to appear on a day named and answer the petition in the legal action.

SWEAR

To administer an oath to a person; to take an oath; to become bound by an oath duly administered.

T

TANGIBLE EVIDENCE

Evidence presented in court which is capable of being touched; physical, material or documentary evidence.

TEMPORARY CUSTODY

A description of the legal status of a child whose parents' legal rights have been temporarily suspended after a formal adjudication of the court i.e., the child is placed in the temporary custody of the court.

TEMPORARY WARD

A description of the legal status of a child whose parents' legal rights have been temporarily suspended after a formal adjudication of the court i.e., the child is made a temporary ward of the court.

TESTIMONY

A solemn declaration usually made orally by a witness under oath in response to interrogation by a lawyer or authorized public official; evidence given by a competent witness under oath or affirmation as distinguished from evidence derived from writings and other sources.

TRIAL

In Juvenile Court also called Formal Hearing or Contested Hearing; a contested judicial examination of a legal cause on the merits of the case based on adversarial presentation of proofs by the parties whether the issues are of law or fact in order to resolve the issues.

TRIBUNAL

The seat of a judge; a court or forum of justice; a judicial court.

U

UNCONTESTED CASE

Used to describe the situation in which the respondent or accused does not wish to present a defense but accepts the jurisdiction and authority of the court.

V

W

WAIVE

To abandon, repudiate or surrender a claim, a privilege, a right or the opportunity to take advantage of some

defect, irregularity or wrong; a person is said to waive a benefit or right when he intentionally and voluntarily renounces or disclaims it.

WRIT

A formal legal document in letter form issued under seal in the name of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing an act specified therein.

WRIT OF APPREHENSION

Called in some counties a "Pick-Up Order" or "Detaining Order", such a document is directed to the police or other authorized official to take custody of a child upon order of the court issuing the writ.

WRIT OF HABEAS CORPUS (Latin "You have the body")

A writ or order requiring that a detained person be brought before a court at a stated time and place to decide the legality of his detention or imprisonment.

WRIT OF SUPERINTENDING CONTROL

A writ which is issued only to correct erroneous rulings made by a lower court within its jurisdiction where there is no appeal or the remedy by appeal cannot afford relief, and gross injustice is threatened as the result of the rulings of the lower court.

X

Y

Z

END