

# Wayne County Juvenile Court Attorney Training

Legal Updates  
March 26, 2014

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# STATUTES

- ▶ Setting Aside Juvenile Adjudications
- ▶ 2012 PA 527, effective 12/28/12
- ▶ MCL 712A.18e
- ▶ SCAO forms JC 66 (application) and 105 (Order)
  - If adjudicated of not more than 3 juvenile offenses, and no more than 1 felony, can set aside 1, 2 or 3 of the adjudications.
  - Multiple adjudications arising out of a series of acts/continuous time of 12 hours/single intent and goal are 1 offense
    - Except for assaultive crime or crime involving use of or possession of a weapon or an offense with a maximum penalty of 10 years or more.

# STATUTES

- ▶ Setting Aside Juvenile Adjudications (con't)
  - Motion can be filed the latest of the following:
    - 1 year after imposition of disposition OR
    - 1 year following term of detention OR
    - When the person turns 18
  - Offenses that cannot be set aside
    - Offenses with maximum imprisonment of life
    - Traffic offense involving the operation of a motor vehicle (felony or misdemeanor)
    - Conviction under MCL 712A.2d (Designation)
      - But may be set aside in adult court

# STATUTES

- ▶ Juvenile Competency
- ▶ 2012 PA 540 and 541, effective 3/28/13
- ▶ SCAO Forms JC 107, 108, 109 and 110
  - Juvenile under 10 years of age presumed to be incompetent to stand trial.
  - Juvenile 10 and older presumed competent unless the issue of competency is raised by either party or the Court.

# STATUTES

- ▶ Michigan Indian Family Preservation Act (MIFPA)
- ▶ 2012 PA 565, effective 1/2/13
- ▶ MCL 712B.1-41
  - Strengthens and clarifies the federal Indian Child Welfare Act (ICWA) into Michigan Law.
  - Does not replace ICWA
- ▶ Some comparisons between ICWA and MIFPA
  - MIFPA does not require a child to be a biological child of a tribal member.
  - MIFPA defines good cause for court not to transfer to tribal court.

# STATUTES

- ▶ MIFPA and ICWA comparisons (con't)
  - MIFPA includes guardianships under EPIC and the Juvenile Code.
  - MIFPA identifies circumstances which the court, Department of Human Services or other party has reason to believe a child may be Indian
  - MIFPA defines active efforts and establishes the burden of proof for active efforts to be clear and convincing evidence which includes the testimony of at least one expert witness.

# STATUTES

- ▶ MIFPA and ICWA comparisons (con't)
  - MIFPA identifies 2 categories of expert witnesses
  - MIFPA specifically lays out the order of placement for an Indian child and places the burden of establishing good cause to NOT follow the order of preference on the person requesting deviation.
  - MIFPA defines “good cause” for not following the order of preference.
  - For voluntary placement or TPR, MIFPA requires consent of both parents and also includes guardianships in voluntary placements.

# STATUTES

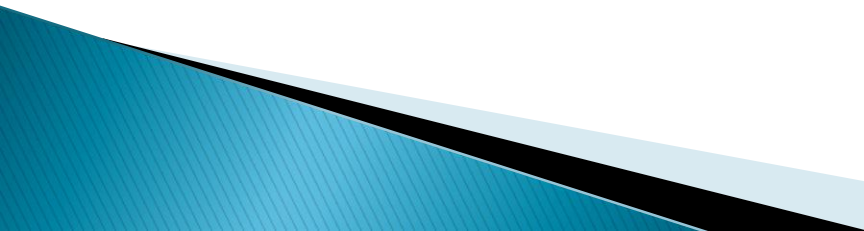
- ▶ MIFPA and ICWA comparisons (con't)
  - In addition to sending a copy of the final decree in an adoption to the BIA, MIFPA requires a copy to be sent to the tribal enrollment officer of the tribe.
- ▶ Michigan Court Rules were amended on 3/20/13 and given immediate effect to incorporate MIFPA requirements. (ADM file no. 2013-02). Rules affected were 3.002, 3.800, 3.802, 3.807, 3.903, 3.905, 3.920, 3.921, 3.935, 63.961, 3.963, 3.974, 3.977 and 5.402.



# STATUTES

- ▶ 2013 PA 4636, effective 10/22/2013
- ▶ MCL 780.766, MCL 780.794, MCL 780.826
  - Amends the Crime Victim's Rights Act to require restitution, or the remaining portion of restitution, to be paid to a victim's heirs.

# STATUTES

- ▶ 2013 PA 152, effective 11/5/2013
  - ▶ MCL 28.242a
    - Amends the Fingerprinting Act.
    - All juvenile history record information can be disseminated to someone only by a fingerprint based search unless the person is authorized to access LEIN, then the information can be by fingerprint or name search.
    - No one is permitted to disseminate information that is non-public.
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# STATUTES

- ▶ 2013 PA 183, effective 12/13/2013
- ▶ “Student Safety Act”
  - Allows for confidential reports of unsafe, potentially harmful, dangerous, violent or criminal activities to a 24 hour a day, 7 days a week toll-free hotline.
  - Attorney General required to develop the program.
  - MSP with Attorney General and the Department of Education to establish, operate and staff the program.

# STATUTES

- ▶ 2014 PA 22, effective March 4, 2014
- ▶ 2014 PA 23, effective March 4, 2014
- ▶ Amends the penal code statutes requiring mandatory life sentences for juveniles.
  - Side note.....oral arguments at the Supreme Court regarding retroactivity of *Miller v Alabama* on current prisoners were heard on March 6, 2014.

# STATUTES

- ▶ Proposed House Bill #4356
  - Submitted on 2/28/13
  - Defines “best interests of the child” in juvenile proceedings, listing factors that the Court SHALL consider, such as the likelihood of adoption, the value of the child maintaining a relationship with a parent or relative, the parents participation in services, and the child’s views (giving great weight to the preference of a child over 14).
  - Referred to, and remains in, the House Judiciary Committee

# COURT RULES

- ▶ On October 2, 2013, the amendments to the court rules to incorporate MIFPA were retained.
- ▶ In addition, MCR 3.965 was amended to allow for an adjournment of a preliminary hearing for up to 21 days if the Court “knows or has reason to know the child is an Indian” to make sure proper notice is given to the tribe or the Secretary of the Interior as required by MCR 3.920(C)(1).

# COURT RULES

- ▶ MCR 1.111 and Rule 8.127, effective 9/11/13
  - Provides for appointment of interpreters for Limited English Proficient (LEP) persons.
  - Each court required to adopt a language access plan.
  - Court needs to appoint a “certified” interpreter whenever practicable, but may appoint a “qualified” interpreter if a certified interpreter not readily available.
  - Provides for circumstances when a noncertified, nonqualified interpreter may be appointed.

# COURT RULES

- ▶ **MCR 3.932, effective 9/1/13**
  - The prosecuting attorney is required to consent to placing a juvenile on the consent calendar.
  - Assaultive crimes are specifically prohibited from consideration on the consent calendar.
  
- ▶ **MCR 3.913, 3.963, 3.974, effective 9/1/13**
  - Incorporated the statutory changes from the Ex-Parte placement of children (SB 420)
  - Either an Attorney Referee or a non-Attorney Referee may issue an Ex-Parte placement order.



# COURT RULES

- ▶ Effective 5 / 1 / 13
  - MCR 3.925
    - Retention and destruction of files/court records
      - ROA's must be maintained permanently
      - DL legal records may be destroyed upon the person turning 30 years old. NA legal records may be destroyed 25 years after the court's jurisdiction ends.
      - DL and NA social records (confidential file) may be destroyed 3 years after the termination of jurisdiction or when the person turns 18, whichever is later.
      - Traffic violations pursuant to MVC are destroyed when the person turns 30.

# COURT RULES

- ▶ Effective 5/1/13
  - MCR 3.976 Permanency Planning Hearings
    - If the Court does not require the agency to initiate proceedings to terminate parental rights if the child has been in foster care for 15 out of the most recent 22 months, the Court SHALL state on the record the reason(s) for its decision.
  - MCR 3.616 Proceeding to Determine Continuation of Voluntary Foster Care Services
    - Only Department of Human Services and the youth are entitled to access to records in the file; otherwise the file is confidential.

# CASES

- ▶ To read a case in its entirety
  - Go to the State Court Administrator's web page
    - Courts.mi.gov
  - Click on "Cases, Opinions & Orders"
  - Click on "case search"
  - Click on "by docket number"
  - Enter the case number in the box and check either Supreme Court or Court of Appeals.
  - Hit "enter"
  - Scroll down toward the bottom and click on the PDF link.

# DELINQUENCY CASES

## ▶ Restitution

- *People v Lloyd*, page 1
  - Treble damages for serious impairment of bodily function
  
- *In re Chaddah*, page 1
  - Attorney fees are non-recoverable losses under the CRVA in this situation.
  - To be recoverable, must be a sufficient nexus between the crime and the loss.

# DELINQUENCY CASES

- ▶ Determination of age
  - *People v Woolfolk*, page 2
    - Case of first impression
    - *Miller v Alabama*
    - Should Michigan follow the common law rule of age or the birthday rule?
- ▶ Extradition
  - *In re Boynton*, page 3
    - Should the Uniform Criminal Extradition Act apply to juveniles with delinquent behavior?

# NEGLECT

## ▶ ICWA

- *In re Morris*, page 4
  - Nothing requires the petitioner to conduct independent research to provide a detailed genealogical history.
- *Adoptive Couple v Baby Girl*, page 4–5
- *In re Randolph*, page 5–6
  - List of federally regulated Indian tribes
    - <http://www.mcsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx>

# NEGLECT

## ▶ Best Interests

- *In re White*, page 6
  - If the best interests of the individual children significantly differ, the trial court should address those differences.
- *In re Moss*, page 6
  - No statute, court rule or prior case law that best interest standard is clear and convincing evidence.
  - The appropriate standard for the best interest determination is a **preponderance of the evidence standard**.

# NEGLECT CASES

## ▶ **Best Interests (con't)**

- Bottom line with all these best interest cases
  - Use preponderance of the evidence standard.
  - Address each child separately, unless similarly situated.
  - Use expert opinion, caseworker opinion and the GAL recommendation.
  - Consider the placement of the child and, if with relatives, articulate clearly the reasons why termination is or is not in the child's best interests.
  - Consider the likelihood of the child being adopted.
  - Consider the child's age.



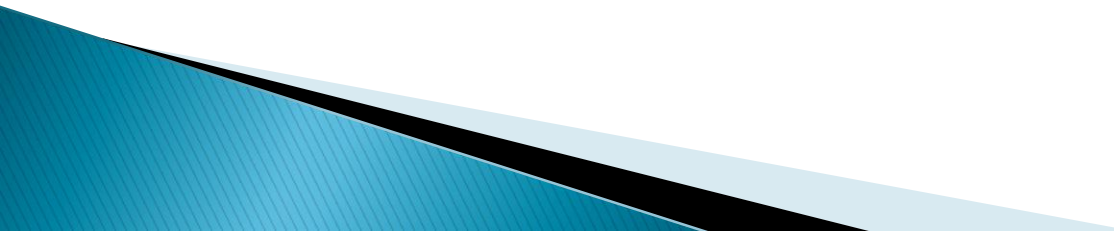
# NEGLECT CASES

## ▶ **Best Interests (con't)**

- Consider the child's wishes, if old enough to express an opinion.
- Consider the child's relationship with other relatives.
- Consider the child's special needs, if any.
- Consider the ethnic and/or cultural considerations, if any.
- Consider the length of time the child has been in foster care and any bond that developed with the foster family.
- Consider the bond that exists between siblings and/or the parent.

# NEGLECT CASES

## ▶ **Best Interests (con't)**

- Consider the parent's parenting ability
  - Consider the child's need for permanency, stability and finality.
  - Consider continuing involvement with domestic violence.
  - Consider the parent's parenting techniques.
  - Consider the advantages of the foster home over the parent's home.
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# NEGLECT CASES

## ▶ Central Registry

- *In re Harper*, page 9–10
  - Trial court cannot order that a name be removed from the central registry.
- *Nicastro v Department of Human Services*, page 10
  - Court's review of ALJ's decision is not a *de novo* review.

## ▶ Parenting time suspension

- *In re Laster*, page 11
  - Between adjudication and termination, trial court has discretion to suspend parenting time without a showing of “harm”.

# NEGLECT CASES

## ▶ Service/amended petitions

- *In re Dearmon*, page 13
  - Personal jurisdiction does not evaporate if an amended petition is not served upon a parent.
  - If evidence of post-petition facts are relevant and admissible under the rules of evidence, then it may be admitted.

## ▶ Evidence

- *In re Nolan*, page 14
  - MDOC's website is non-admissible hearsay
- *In re Brooks*, page 14
  - Polygraph evidence

# NEGLECT CASES

## ▶ Juvenile Guardianship

- *In re COH*, page 17

- Trial courts cannot use the Child Custody Act's best interest factors, comparing the grandparent to the foster parents.
- Trial courts need to recognize the preference of children to be placed with relatives.

# NEGLECT CASES

## ▶ Step parent adoptions

- *In re TALH*, page 18
  - The 2 year “look back” is the 2 years immediately preceding the filing of the termination petition.
  - The Court **URGED** the legislature to revisit the statute to address this type of situation.
- *In re AJR*, page 19
  - Difference between “a” and “the”
  - Supreme Court heard oral arguments on March 6, 2014.

# NEGLECT CASES

## ▶ One Parent Doctrine

- *In re Sanders*, Page 20

- Does the one parent doctrine violate due process or equal protection of the unadjudicated parent?
- Father requested a trial; trial court assumed jurisdiction through the mother.
- Supreme Court heard on November 7, 2013.

## ▶ Sibling visits

- *Wilson v King*, page 20

# CASES OF INTEREST

- ▶ *Ratte v Corrigan, et al*, page 25
  - Mike's Hard Lemonade case
  - No judicial immunity when a judge pre-signs a form order and a non-judicial officer completes the form at a later time.
  
- ▶ *Porter v Hill*, page 25–26
  - Oral arguments on the leave to appeal to the Supreme Court were heard on January 15, 2014.
  - Grandparent visitation/termination of parental rights



# CASES OF INTEREST

- ▶ *People v Prominski*, page 26
  - Mandatory reporters/expectation of privacy
- ▶ *People v Koon*, page 26
  - MMMA and OWI
- ▶ *In re Sardy*, page 27
  - Sanctions
  - Independent verification of motions

# ATTORNEY GENERAL OPINIONS

- ▶ Application of Medical Marihuana Act (MMMA) to Child Protective Proceedings, AG opinion #7271, May 10, 2013
  - Substance abuse or addiction, including the medical use of marijuana, does not in and of itself constitute evidence of abuse or neglect, but, if the marihuana use affects the parents ability to adequately care for a child or presents a particular danger to a child could create an unreasonable danger.
  - Each situation must be evaluated on its own.

# NEGLECT

- ▶ MMMA AG opinion (con't)
  - The unreasonable danger to the child must be clearly expressed and supported with evidence.
  - The affirmative defense stated in the MMMA is not applicable in a child protection proceeding, only a criminal proceeding.
  - The court may not independently determine whether a person is a qualifying patient under the MMMA.
  - The court may entertain evidence that a patient's use of marijuana was not for the purpose of alleviating a debilitating medical condition or

# NEGLECT

- ▶ MMMA AG opinion (con't)
  - symptoms associated with the debilitating medical condition and find that the person's use or possession of marihuana is not in accordance with the MMMA. If this finding occurs, the person is not entitled to the protections of the MMMA.