

MICHIGAN PROBATE JUDGES ASSOCIATION

437 East Division
Cadillac, Michigan 49601
(231) 779-9510

EXECUTIVE COMMITTEE

June 10, 2011

Hon. KENNETH L. TACOMA
President

Hon. KAREN A. TIGHE
President-Elect

Hon. ELWOOD L. BROWN
Vice-President

Hon. LISA SULLIVAN
Treasurer

Hon. C. JOSEPH SCHWEDLER
Secretary

Hon. ROBERT J. BUTTS
Presiding Judge

Hon. SUSAN DOBRICH
Immediate Past President

AT LARGE MEMBERS

Hon. DAVID MURKOWSKI
Hon. DORENE ALLEN
Hon. THOMAS E. NELSON
Hon. R. TERRY MALTBY

REGIONAL ASSN. PRESIDENTS

Hon. JOHN A. HOHMAN, Jr.
Southeastern

Hon. JACK T. ARNOLD
Central

Hon. LYNNE M. BUDAY
Top of Michigan

Hon. MICHAEL J. ANDEREGG
Upper Peninsula

Hon. WILLIAM M. DOHERTY
Southwestern

NON-VOTING

Hon. MICHAEL J. ANDEREGG
Editor of INTER-COM

Hon. GERALD SUPINA
Emeriti Judges Association

Senator Jones & Committee Members:

The provisions in SB 320 Sec. (14) requiring an order in hand before DHS will act or take steps to place or remove a child changes the balance of priorities between parent interests and child safety.

At present the verbal informing by DHS to the on call referee or judge, and the verbal authorization from the court, followed by a written order as soon as practicable, allows for child safety to be prioritized.

There is a clear public policy question; "which interest will be prioritized in an emergency" Assuming that we are talking about after hours emergencies these are the two relevant scenarios with 3 alternative responses.

1] Placement of a child in temporary protective care

A police officer finds a child in danger and takes them into custody and takes the child to a DHS worker. The DHS worker then either;

A] calls the court and gets verbal authority to place the child followed by an order, or;

B] calls the court and waits with the child to receive an order, or;

C] prepares a petition and affidavit for the court to consider and waits with the child to receive an order.

2] Removal of a child from a dangerous situation

The police and/or DHS learn of a situation where the child should be removed, the DHS worker then:

A] calls the court and gets verbal authority to remove and place the child followed by an order, or;

B] calls the court and waits to receive an order to remove and place the child before acting, or;

C] prepares a petition and affidavit for the court to consider and waits to receive an order to remove and place before acting.

If the reason for having an order in hand before acting is to ensure clarity and protection for DHS then DHS must be willing to assume the potential risk to the child.

In the same vein if clarity of facts and findings are required in order to prioritize the parent's interest then it would seem logical to require DHS to prepare and provide a written petition or affidavit to the on call referee or judge prior to the order, as is done in search warrants.

In those cases where police officers have already acted to remove a child and a judge or referee has verbally authorized emergency placement MPJA does not think that it is good public policy to make children wait with DHS officers. Non-the-less in those cases the risk to physical safety is probably slight and more a matter of inconvenience. However it would seem that DHS should also have the time to prepare and transmit a petition so that the court will have clear representations to rely on.

Similarly in cases of removal it seems that a written petition by DHS should be first provided.

Clearly MPJA thinks that the inevitable delay caused by requiring a prior written petition and order shifts the balance of priorities in a way that further risks child endangerment. Although there are some similarities to the search warrant process the similarity ends when considering what is lost by creating the delay. Risking child safety is not the same as risking the loss of evidence.

While the most prominent case that led to this effort is unfortunate this may be an example where one bad case will in turn make bad law that ultimately does more harm than good.