

CHAPTER 5

PETITION

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5.1. MANDATORY PETITIONS

5.1.1. Severely Physically Injured, Sexually Abused, Exposure to or Contact with Methamphetamine Production

Under certain circumstances the Department of Human Services (DHS) is required to file petitions with the Family Division of Circuit Court.

Within 24 hours after the department determines that a child was severely physically injured as defined in section 8 [MCL 722.628(3)(c)], sexually abused, or allowed to be exposed to or to have contact with methamphetamine production, the department shall submit a petition for authorization by the court under *** MCL 712A.2(b) of chapter XIA of 1939 PA 288, MCL 712A.2.¹

5.1.2. Mandatory Petitions for Termination of Parental Rights

Under some serious circumstances the DHS is required not only to file a petition, but also to request termination of parental rights at the initial dispositional hearing as authorized under MCL 712A.19b.

Termination of parental rights must be sought if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk.² In the following circumstances the DHS is required to file a petition with the court and to ask for termination of parental rights:

- (1) *** if 1 or more of the following apply:
 - (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following³:

¹. MCL 722.637(1). Subsection (2), however, clarifies that the "department is not required to file a petition for authorization by the court as described in subsection (1) if the department determines that the parent or legal guardian is not a suspected perpetrator of the abuse and the department determines that all of the following apply: (a) The parent or legal guardian did not neglect or fail to protect the child; (b) The parent or legal guardian did not have a historical record that shows a documented pattern of neglect or failing to protect the child; (c) The child is safe in the parent's or legal guardian's care.

². MCL 722.638(2); MCR 3.965(D)(2)

³. MCL 722.638(1)

- (i) Abandonment of a young child.
 - (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
 - (iii) Battering, torture, or other severe physical abuse.
 - (iv) Loss or serious impairment of an organ or limb.
 - (v) Life threatening injury.
 - (vi) Murder or attempted murder.
- (b) The department determines that there is risk of harm to the child and either of the following is true:
- (i) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
 - (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

In *In the Matter of AH*, MCL 722.638 was challenged as being violative of the respondent's due process and equal protection rights.⁴ Respondent contended that the statute created two classifications—those parents who have had parental rights terminated in the past, and those parents who have not—and treats them differently without any justification. The court held that there was no equal protection violation even though the statute created two classes of parents because the statute served a compelling State interest. That compelling State interest was the protection of children from unreasonable risks of harm. Further, the court noted that section 638 was simply a codification of the doctrine of anticipatory neglect or abuse that recognizes that “[h]ow a parent treats one child is certainly probative of how that parent may treat other children.”⁵

The court also rejected the due process challenge after careful analysis of the three-part test for due process. The court stated that a request for termination does not necessarily mean that the court will grant the request. The petitioner must still satisfy its burden of proof.⁶

5.1.3. *DHS Deciding Whether to Seek TPR; Notifying Lawyer-guardian ad litem.*

⁴ *In the Matter of AH*, 245 Mich.App.77 (2001); MCL 722.638(1)

⁵ *In re LaFlure*, 48 Mich.App. 377, 392 (1973); *In re Dittrick Infant*, 80 Mich.App. 219, 222 (1977)

⁶ *In the Matter of AH*, 245 Mich.App. 77 (2001)

(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1) the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.⁷

5.2. PETITION LEGAL REQUIREMENTS

Due process requires that a person subject to deprivation of liberty be apprised of charges against him or her with sufficient clarity and specificity so that he or she may prepare a defense. Absent exigent circumstances, a request for court action to protect a child must be in writing in the form of a petition.⁸ "Petition," in Child Protection Proceedings, means a verified complaint or other written accusation that a parent has harmed or failed to properly care for a child.⁹ The Juvenile Code requires that "[t]he petition ... shall be verified and may be upon information and belief." The petition means a complaint or other written allegation verified in the manner provided in MCR 2.114(B) that a parent, guardian, non parent adult or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.¹⁰ The court rules establish the requirements of a petition in child protection proceedings:

A petition must contain the following information, if known¹¹:

- (1) the child's name, address, and date of birth;
- (2) the names and addresses of:
 - (a) the child's mother and father¹²,
 - (b) the parent, guardian, legal custodian or person who has custody of the child, if other than a mother or father,
 - (c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and
 - (d) any court with prior continuing jurisdiction

⁷. MCL 722.638(3)

⁸. MCR 3.961(A)

⁹. MCR 3.903(A)(19)

¹⁰. MCL 712A.11(3)

¹¹. MCR 3.961(B); *See also* MCL 712A.11

¹². The Supreme Court held in *In re KH, KL, KL and KJ*, 469 Mich. 621, that if a legal father already exists, then no other man identified as a putative father [pursuant to MCR 3.903(A)(23)] should be identified as a respondent or given notice on a child protective petition.

- (3) the essential facts, which constitute an offense against the child under the Juvenile Code;
- (4) a citation to the section of the Juvenile Code relied upon for jurisdiction;
- (5) the child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe¹³;
- (6) the type of relief requested, including whether temporary or permanent custody is sought.
- (7) information required by MCR 3.206(A)(4), indentifying whether a family division matter involving members of the same family is or was pending.

If the petitioner does not know the requested information, the petition should state that.¹⁴

The petition serves two primary and interrelated functions. First, it is a court document, which should set forth the alleged basis of the court's jurisdiction over a particular child. The petition names the child and the respondents and frames the issues to be addressed by the court. The court may not inquire into matters not alleged in the petition.¹⁵ The Juvenile Code liberally allows for amending petitions. "A petition or other court record may be amended at any stage of the proceedings, as the ends of justice may require."¹⁶ Nonetheless, failure to include a necessary allegation in the petition may preclude introducing certain evidence at trial.

The second principal function of the petition is to communicate to the respondents a notice of the charges 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.¹⁷

¹³. If there is any indication that a child is an Indian child, the petitioner must provide notice to the tribe. *In re IEM*, 233 Mich.App. 438(1999); *In re NEGP*, 245 Mich.App. 126 (2001). If there is any uncertainty as to the tribal affiliation, the petitioner must also notify the Secretary of the Interior. *See* Indian Child Welfare Act, 25 USC 1901 *et seq.*

¹⁴. MCL 712A.11(4); A petition to terminate parental rights did not violate the mother's right to due process even though it did not include her name and did not cite the specific statutory basis for permanent custody since it was amended to include her name and it specified the grounds for neglect. *In re Slis*, 144 Mich.App. 678 (1985)

¹⁵. Evidence to be admitted at trial must be confined to issues formed by the pleadings. 19 Mich L &P Encyc. Pleadings s23

¹⁶. MCL 712A.11(6)

¹⁷. *See In re Hatcher*, 443 Mich. 426 (1993). A petition is a verified complaint or other written accusation filed with the court setting forth charges against a parent, custodian, or child with ample clarity and specificity to reasonably apprise the court of matters under consideration. A petition has two essential functions: to set forth the alleged basis of the court's jurisdiction over a particular child and to communicate to respondents notice of charges against them so that they might evaluate their situation and prepare a response.

5.3. WHO MAY FILE?

The most common practice is for protective services workers to file child protection petitions. Many courts will ask or even require that a referral to protective services occur before a petition is filed with the court. The statute, however, permits "a person" to give information to the court, after which the court may conduct a preliminary inquiry.¹⁸ Thus, any person may give information to the Juvenile Court and, after a preliminary inquiry, the court may authorize filing the petition.¹⁹

Most commonly it is the child protective services specialists of the DHS or the County Prosecuting Attorney or State Attorney General acting on behalf of the DHS that files a child protection petition in Family Court. School authorities often file petitions alleging educational neglect under MCL 712A.2(b).

In addition, the Children's Ombudsman, guardians, custodians and foster parents may file petitions seeking termination of parental rights under very limited circumstances.²⁰ The prosecuting attorney may file to terminate parental rights whether or not he is representing or acting as legal consultant to the Agency or another party.²¹

5.4. LEGAL ASSISTANCE IN DRAFTING PETITION

Although many DHS workers draft petitions themselves, the better practice is to get legal assistance either in the drafting or in a final review before filing the petition with the court. The Juvenile Code and court rules provide several means of getting legal assistance. If the court requests, the County Prosecuting attorney *must* review the petitions for legal sufficiency and appear at any child protective proceedings or any delinquency proceeding.²² Upon request of the Department or an agent under contract with the Department, the prosecuting attorney shall serve as a legal consultant to the Department or its agent at all stages of a child protective proceeding.²³ The Department may also retain legal representation of its choice when the prosecutor does not appear.²⁴ Once a lawyer-guardian ad litem is assigned to the case, he or she may come independently to share the same goals as the DHS, in which case he or she may be willing to assist the DHS worker in drafting a petition.

5.5. AMENDED PETITIONS

18. MCL 712A.11(1)

19. MCR 3.962

20. MCL 712A.19b(1); MCR 3.977(A)(2)

21. MCL 712A.19b(1); MCR 3.977(A)(2)(f)

22. MCL 712A.17(4); MCR 3.914(A)

23. MCL 712A.17(5); MCR 3.914(C)(1)

24. MCL 712A.17(5); MCR 3.914(C)(2)

A petition or other court record may be amended at any stage of the proceedings, as the ends of justice may require.²⁵

Occasionally, new facts relevant to the alleged abuse or neglect come to the attention of the caseworker 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. Prior to adjudication, an amended petition that 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. The petition so modified is also called an amended petition.

Although the language of the statute seems quite liberal in its allowance of amendments to the petition, courts are properly reluctant to approve amendments adding allegations in the later stages of the proceedings if doing so may compromise the rights of one of the parties. 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 or she is convinced that the amendment is important and that it was not omitted in the first petition because of petitioner's negligence. An amendment near the date of trial may require an adjournment of the trial date to provide the respondents sufficient time to prepare. A delay in trial date may cause difficulty complying with time limits.²⁶ 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 the judge. Know your local court practice and the judge's attitude regarding amended petitions.

5.6. SUPPLEMENTAL PETITIONS

²⁵. MCL 712A.11(6)

²⁶. MCR 3.972(A) requires a trial within 63 days after the child is removed from the home unless the trial is postponed on stipulation of the parties; because the process cannot be completed; or because the court finds that the testimony of a presently unavailable witness is needed. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). A hearing on a supplemental petition for termination of parental rights must be held within 42 days of filing the petition. The court may, for good cause shown, extend the period for an additional 21 days. MCR 3.977(G)(1)(b)

A supplemental petition regarding a child already under the court's jurisdiction is required if the DHS becomes aware of additional abuse or neglect and substantiates that abuse or neglect as provided in the child protection law.²⁷ The supplemental petition is drafted in the same format as original petitions except that they are labeled *supplemental petition*, indicating that court already has jurisdiction. Perhaps the most common supplemental petition is one requesting termination of parental rights.

5.7. TECHNIQUES OF DRAFTING; SAMPLE PETITIONS

5.7.1. Generally

Drafting petitions is a skill best developed by practice and experience. Before attempting to draft a petition take a moment to review your case file and identify the important facts of the case. Then take a moment to review the Juvenile Code to identify the potential legal grounds for court jurisdiction, under MCL 712A.2(b) or termination of parental rights if that is the objective, under MCL 712A.19b(3).

If you have a well-drafted petition dealing with a similar fact situation, review it for ideas on organizing the law and allegations in this case. Several examples follow. You may find the following statutory chart (Fig 5.1) helpful in identifying each fact that brings or tends to bring the child within the statutory definition of legal neglect in Michigan. It is generally wise to use as many statutory grounds in the petition as the facts of your case can logically support. To clarify legal grounds, the reader may also wish to *see* the discussions in Chapter 3, **JURISDICTION**, and Chapter 11, **TERMINATION**.

²⁷. MCL 712A.19(1)

Fig. 5.1. STATUTORY CHART: NEGLECT JURISDICTION IN MICHIGAN

(From MCL 712A.2(b)(1)&(2))

Parent or legally-responsible person, when able to do so, neglects or refuses to provide:

Child is:

Child's **home or environment** is unfit by reason of:

1. Proper or necessary support,
2. Education as required by law,
3. Medical or surgical care necessary for child's health,
4. Other care necessary for child's health or morals;

5. Subject to a substantial risk of harm to his or her mental well-being
6. Abandoned by parents guardian or other custodian,
7. Without proper custody or guardianship,

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.

ELEMENT OF LEGAL NEGLECT

(Enter number from above)



	CHILD	FACTS AND DATES	WITNESS(ES)
↓			

* * *

Fig. 5.2 SAMPLE PETITION FORM

STATE OF MICHIGAN JUDICIAL CIRCUIT-FAMILY DIVISION COUNTY	PETITION Supplement	CASE NO.
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ORI MI-	Police agency report no.	CTN	SID	DOB
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1. In the matter of
(name(s), alias(es))
2. The above named minor(s) come(s) within the provisions of MCL 712A.2.
Citations and allegations:
 This petition contains a reportable offense under .
 See attached sheet for further allegations. Member of or eligible for membership in American Indian Tribe or Band, state above.
3. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in Court, Case Number , was assigned to Judge , and remains is no longer pending.
4. I designate this case as a case in which the juvenile is to be tried in the same manner as an adult.
5. The above named minor(s) is/(are) resident(s) of county, and reside(s) in the care and custody of .
6. The names and addresses of the parents, guardians, custodians, or nearest known relative are as follows:

NAME	ADDRESS	HOME PHONE	WORK PHONE
Father Putative <input type="checkbox"/>			
Mother			
Guardian/Custodian/Nearest known relative			

7. I request the court to: **(check either box a, b, or c)**
 a. review the information and make an appropriate decision.
 b. authorize this petition and take temporary custody of the minor(s).
 terminate the mother's parental rights. terminate the father's parental rights.
 c. designate this case as a case in which the juvenile is to be tried in the same manner as an adult.
- I declare that the statements in this petition are true to the best of my information, knowledge, and belief.

Petitioner's signature _____ Date _____ Agency/Address _____
 Print or type name _____ City, state, and zip _____ Telephone no. _____

8. A preliminary inquiry and/or hearing has been conducted and the filing of this petition is is not authorized.

Do not write below this line - For court use only

Date _____ Judge/Referee _____ Bar no. _____

Fig. 5.3. SAMPLE PETITION -- ABANDONMENT

* * *

1. In the matter of ***

2. The above named juvenile comes within the provisions of [MCLA 712A.2(b) and 712A.19b]:

Citations and allegations:

[Recite MCL 712A.2(b)(1)&(2) and MCL 712A.19b(3)(a) here]

ALLEGATIONS

1. Baby Boy Doe is abandoned by his parents.
2. On April 3, 2000, Baby Boy Doe, a newborn was found in a public laundry, unidentified and unattended.
3. Despite widespread publicity and thorough investigation no one has claimed the child to date.
4. Petitioner requests that Baby Boy Doe be placed in the permanent custody of the court, that parental rights of the unknown parents be terminated and that the child be placed for adoption.

* * *

Fig. 5.4. SAMPLE PETITION -- PHYSICAL ABUSE

* * *

1. In the matter of Mary Jones
2. The above named minor comes within the provisions of MCLA 712A.2(b) and MCL 712A.19b:

Citations and allegations:
[Recite MCL 712A.2(b)(1)&(2) here]

Petitioner asks that this court terminate parental rights at the first dispositional hearing as provided in MCR 3.977(E) and pursuant to MCL 712A.19b(3)(b), g, j, k(iii)

[Recite MCL 712A.19b(3)(b)(g)(j)(k(iii) here]

ALLEGATIONS:

1. On January 5, 2000, Mary Jones was examined at General Hospital by Dr. Ruth Pasture and was found to have multiple bruises of the sacrum, linear bruises on the cheek and right back bilateral retinal hemorrhages and blood in her cerebrospinal fluid.
2. Given the nature of the injuries they could not have been self-inflicted or accidentally caused. The mother, Jane Jones, who is the caretaker of the child, could offer no explanation for the injuries.
3. Jane Jones inflicted the injuries upon the child.
4. There is no legal father of the child.
5. Termination of parental rights is in the best interests of the child.

Therefore petitioner asks that parental rights of Jane Jones be terminated and that the child be committed to the Michigan Department of Human Services for purposes of adoption.

* * *

Fig. 5.5. SAMPLE PETITION -- NEGLECT

1. In the matter of Daniel Smith
2. The above named minor comes within the provisions of MCLA 712A.2(b):
Citations and allegations:
[Recite MCL 712A.2(b) here]

ALLEGATIONS:

1. Bill and Marsha Smith failed to send Daniel Smith to school properly and to cooperate with school authorities. Because of his parents' neglect, Daniel was absent from school 25 days and tardy 15 days in the fall semester.
2. Daniel Smith had an ear infection, which was untreated from October to January despite repeated recommendations by petitioner and school personnel that he be taken to a physician.
3. Bill and Marsha Smith often leave Daniel Smith unsupervised. On December 28, 200_, Daniel was found locked outside his home without a coat or other protective clothing.
4. Bill Smith is an admitted chronic alcoholic who is habitually drunk at home.
5. On January 29, 200_, Bill Smith struck Dan Smith on the head at Joe's Bar and Grill in Your Town.
6. Marsha Smith, Daniel's mother, is mentally ill and has been admitted to the Grand Valley Psychiatric Hospital six times since January 199_. Marsha Smith is currently an active outpatient at the Grand Valley Psychiatric Hospital and is unable to care for Daniel Smith.

* * *

Fig. 5.6. SAMPLE PETITION -- RISK TO MENTAL WELL-BEING

* * *

1. In the matter of Louise Short
2. The above named minor comes within the provisions of MCL 712A.2(b):
Citations and allegations:
[Recite MCL 712A.2(b) here]

ALLEGATIONS:

1. Louise Short is subject to a substantial risk of harm to her mental well-being in that her parents cause an environment to exist in the family home and toward her such that her physical stature is stunted and her mental and emotional functioning is seriously disturbed and retarded.
2. Louise's short stature and seriously disturbed and retarded mental and emotional functioning is a result of the stresses and conflicts created by her parents.

* * *

Fig. 5.7. SAMPLE PETITION -- FAILURE TO THRIVE

* * *

1. In the matter of Jacqueline
2. The above named minor comes within the provisions of MCL 712A.2(b):
Citations and allegations:
[Recite MCL 712A.2(b) here]

ALLEGATIONS:

1. Jacqueline was admitted to City Hospital on November 13, **** for failure to thrive with a weight of 13 pounds, 11 ounces and length of 27-1/2 inches (less than the 3rd percentile).
2. Jacqueline 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 improved socialization.
3. On December 29, ****, after seven weeks of hospitalization, Jacqueline weighed 21 pounds and exhibited marked personality change and developmental progress.
4. Jacqueline's failure to thrive condition is a result of her mother's failure to provide proper care.

Fig. 5.8. SAMPLE PETITION, No. 1 -- REQUEST FOR TERMINATION OF PARENTAL RIGHTS

In the Matter of Helen, James and Debbie Low

Parents: Father – Wayne Low; Mother – Sherri Low

[Complete face sheet and add the following allegations]

I. Legal Allegations Concerning Respondent Sherri Low

Petitioner requests that the court terminate the parental rights of Respondent Sherri Low pursuant to MCR 3.977 and under the authority of the following subsections of MCL 712A.19b(3), MSA 27.3178(598.19b):

The Court may terminate the parental rights to a child if the court finds by clear and convincing evidence, one or more of the following:

- (a) The child has been deserted under the following circumstance:
 - (ii) The child's parents have deserted the children for 91 or more days and have not sought custody of the children during that period.
- (b) The child or sibling of the child suffered physical injury or physical or sexual abuse under the following circumstance:
 - (ii) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
- (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds the following:
 - (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
- (g) The parent, without regard to intent, fails to provide proper care or custody for the child, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- (j) There is reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

II. Legal Allegations Concerning Respondent Wayne Low

Petitioner requests that the court terminate the parental rights of Respondent Wayne Low pursuant to MCR 3.977 and under the authority of the following subsections of MCL 712A.19b(3), MSA 27.3178(598.19b):

The Court may terminate the parental rights to a child if the court finds by clear and convincing evidence, one or more of the following:

Fig. 5.8. SAMPLE PETITION, No. 2 -- REQUEST FOR TPR

- (b) The child or sibling of the child suffered physical injury or physical or sexual abuse under the following circumstance:
 - (i) A parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
- (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, the following:
 - (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
- (g) The parent, without regard to intent, fails to provide proper care or custody for the child, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- (j) There is reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.
- (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
 - (ii) Battering, torture, or other severe physical abuse.

III. Factual Allegations Regarding Respondent Sherri Low

Petitioner states the following facts in support of the grounds for termination of Respondent Sherri Low's parental rights to Helen, James, and Debbie Low as alleged in Section I above:

1. Sherri Low is the mother of Helen Low, Debbie Low, and James Low.
2. Sherri Low failed to provide proper care and custody for her children.
3. On 11/10/98, Sherri, Wayne, Helen, Debbie, and James Low resided in Calhoun County, at 121 Pineview Court, in Battle Creek, Michigan. At that time, Sherri and Wayne Low were responsible for the care of their children.
4. On 11/10/98, 121 Pineview Court was found in the following condition:
 - a. Feces were found on the balcony, in the basement where the children play with their toys, smeared on the kitchen floor, on the walls, and in the main floor bathroom on the toilet and sink;
 - b. The floors were found to be covered with loose and ground in dirt, spilled beverages, feces and clothing;
 - c. The children's bedroom had bunk beds with bare mattresses, no pillows or blankets;
 - d. The parent's bedroom was found to contain numerous pornographic magazines, a dildo, and two pet pythons;
 - e. Dirty dishes were found on the kitchen countertops and in the sink;

Fig. 5.8. SAMPLE PETITION, No. 3 -- REQUEST FOR TPR

- f. The dining room contained a covered hot tub. The cover was filthy with dried spilled beverages;
- g. The home had a significant foul odor due to the amount of animal feces on the floor.
5. On 11/10/98, the Low children were found to be quite filthy and wearing only underwear.
6. On 11/10/98, Sherri Low stated to Children's Protective Service worker Paul Kueny that she was currently unable to properly care for her children.
7. Sherri Low was able to, yet failed to prevent injuries to her children caused by Wayne Low's practice of drawing the children's blood with a scalpel and/or needles.
8. On or about April 9, 1999, Sherri Low relocated to Hawaii, where she has remained without returning to Michigan.
9. Sherri Low has failed to comply with her Parent Agency Treatment Plan and Service Agreement, including:
 - a. Sherri Low has not returned to Michigan to work in family counseling with Sandra Burdick;
 - b. Sherri Low has not attended individual counseling with Dr. Haugen for domestic violence counseling;
 - c. Sherri Low has not obtained or maintained employment;
 - d. Sherri Low has not participated in parenting classes;
10. Terminating Sherri Low's parental rights is in the best interest of the children.

IV. Factual Allegations Regarding Respondent Wayne Low

Petitioner states the following facts in support of the grounds for termination of Respondent Wayne Low's parental rights to Helen, James, and Debbie Low as alleged in Section I above:

1. Wayne Low is the father of Helen, James, and Debbie Low;
2. Wayne Low failed to provide for the proper care and custody for his children.
3. On 11/10/98, Sherri, Wayne, Helen, Debbie, and James Low resided in Calhoun County, at 121 Pineview Court, in Battle Creek, Michigan. At that time, Sherri and Wayne Low were responsible for the care of their children.
4. On 11/10/98, 121 Pineview Court was found in the following condition:
 - a. Feces were found on the balcony, in the basement where the children play with their toys, smeared on the kitchen floor, on the walls, and in the main floor bathroom on the toilet and sink;
 - b. The floors were found to be covered with loose and ground in dirt, spilled beverages, feces and clothing;
 - c. The children's bedroom had bunk beds with bare mattresses, no pillows or blankets;

Fig. 5.8. SAMPLE PETITION, No. 3 cont'd -- REQUEST FOR TPR

- d. The parent's bedroom was found to contain numerous pornographic magazines, a dildo, and two pet pythons;
 - e. Dirty dishes were found on the kitchen countertops and in the sink;
 - f. The dining room contained a covered hot tub. The cover was filthy with dried spilled beverages;
 - g. The home had a significant foul odor due to the amount of animal feces on the floor.
5. On 11/10/98, the Low children were found to be quite filthy and wearing only underwear.
 6. Wayne Low has used a scalpel and/or needles to withdraw blood from his minor children.
 7. Wayne Low has sexually abused Helen, James, and Debbie Low;
 8. Visitation by Wayne Low is harmful to Helen, James, and Debbie;
 9. Wayne Low has failed to comply with his Parent Agency Treatment Plan and Service Agreement, including:
 - a. Wayne Low has failed to return to Dr. Metler for complete psychological evaluation disclosing all components of his role in not having the children placed in his care, or complete a new psychological evaluation with Dr. Haugen.
 - b. Wayne Low has not attended weekly outreach counseling with Paul Fatato or shown to benefit from his past attendance.
 10. Helen, James, and Debbie Low are fearful of their father and do not wish to return to his custody.
 11. Terminating Wayne Low's parental rights is in the best interest of the children.

Relief Requested

For all of the above reasons, the Calhoun County Department of Human Services respectfully requests that this Court terminate the parental rights of Sherri Low and Wayne Low in regards to Helen, James, and Debbie Low; that Helen, James, and Debbie Low be made permanent wards of the court; and that the children be committed to the DHS Michigan Children's Institute for adoption planning and placement.