

Overview of State Ward Process: New Adoption Provisions for Children Under the Guardianship of the Commissioner

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State wards, or children "under guardianship of the Commissioner of the Minnesota Department of Human Services," are children whose parents' parental rights have been terminated by the court. State wards live in foster care, an institutional group home, or a residential treatment center until either adoption or termination of court jurisdiction. The state stands in loco parentis, or "in place of parents," for the child through the state's social service agencies. The Minnesota Department of Human Services (DHS) goal is to find permanent homes, preferably through adoption, for all children under state guardianship. As of September 1, 2011, there were 823 Minnesota children under guardianship of the Commissioner of the Minnesota Department of Human Services, hereinafter "Commissioner".¹

On August 1, 2012, Minnesota updated and consolidated many sections of its Juvenile Code regarding adoption of state wards. The primary changes are to Chapters 259, 260, and 260C. All procedures for judicial review and finalization of adoption for state wards are now governed under Minn. Stat. §§ 260C.601 - 635. Many of the responsibilities of the Commissioner have been narrowed in these new statutory changes regarding state wards. All duties, obligations, and consents not specifically reserved to the Commissioner are now delegated to the responsible social services agency.² Agency decisions regarding state wards, however, are subject to judicial review and these new legislative changes will allow you to ensure your client's best interests are being met through the court's exercise of its expanded authority.

New Adoption Provisions for State Wards

Adoption-related provisions for children under guardianship of the Commissioner have been moved from Minn. Stat. § 259 to Minn. Stat. § 260C. Moving these statutory sections into the child protection chapter of the Juvenile Code supports the underlying policy of adoption as a permanency path for children who cannot return home. Though the sections regarding the adoption of state wards are new to Chapter 260C,³ the content is largely a restatement and clarification of existing law. The goal of these additions to Chapter 260C is to establish requirements for court review and the procedures for finalization of adoptions in the best interests of state wards.⁴ Adoption provisions for children not under guardianship of the Commissioner are governed by Chapter 259.⁵

New additions to adoption provisions for children under guardianship of the Commissioner include:

¹ Adoption: Finding Families for Minnesota's Waiting Children, Minnesota Department of Human Services (October 2011), <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-4746-ENG>.

² Minn. Stat. §260C.615, subd.2 (anticipated 2012).

³ Minn. Stat. §§ 260C.601 – 635 (anticipated 2012).

⁴ Minn. Stat. § 260C.601, subd. 1 (a)(anticipated 2012).

⁵ Id. § 260C.601, subd. 1 (b)(anticipated 2012).

The Commissioner is no longer required to consent to the adoption of a state ward.⁶

Adoptive placements are now under the exclusive authority of the responsible agency. When making adoptive placements of children who are wards of the state, the Commissioner is no longer required to consent to the adoption. The Commissioner does continue as a signatory to an adoption placement agreement (APA), which is the written adoption agreement between the agency, the Commissioner, and the adoptive parent. The responsible social services agency must notify the court, and all parties entitled to notice, including counsel for the youth, whenever there is an adoption placement agreement in place or if the agreement is terminated during the adoption process.⁷ The agency may also file an adoption petition on behalf of the adopting parent.⁸

Attorney Tip: It may be difficult for your client to admit his true feelings about adoption. Children may feel uncomfortable about being adopted because of loyalty to their birth parents, regardless of the abuse or neglect they experienced. Discuss the possibility of a contact agreement between your client and his family members.⁹ A contact agreement will enable your client to maintain visitation with siblings, extended family, and even birth parents through letters, phone calls, holiday visits, and/or regularly scheduled visits.¹⁰

The court no longer has the ability to order a state ward into long-term foster care.¹¹

The court's ability to order a child under guardianship of the Commissioner into long-term foster care has been eliminated. The frequency of court reviews may be reduced to at least every six months in the following circumstances: if the court has approved the agency's reasonable efforts to place the child with an adoptive parent for at least 24 months, the child is at least 16 years of age, and the child's guardian ad litem agrees that more than 90 days between court reviews would be in the child's best interests.¹²

The court may make findings and order that placement of siblings together is not in the best interests of one or more of the siblings.¹³

Responsible social services agencies must continue reasonable efforts to place siblings together for adoption.¹⁴ The court, however, now has the final decision as to whether siblings should be separated for adoption. Previously, the Commissioner made this decision. If siblings under guardianship of the Commissioner will not be adopted by the same adoptive family, the social services agency must now

⁶ Minn. Stat. § 260C.613, subd. 1 (a)(anticipated 2012).

⁷ Id. §§ 260C.613, subd. 1 (c)-(d) (anticipated 2012).

⁸ Minn. Stat. § 260C.623, subd. 1 (a) (anticipated 2012).

⁹ Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication, contact, or visitation with or between an adopted minor, adoptive parents, and a birth relative or foster parents. A contact agreement may be ordered by the Court any time before a decree of adoption is granted. Minn. Stat. § 259.58. see also Minn. Stat. § 260C.619 (anticipated 2012).

¹⁰ Minn. Stat. § 259.58 (anticipated 2012).

¹¹ Minn. Stat. § 260C.317, subd. 3(c) is repealed.

¹² Minn. Stat. § 260C.607, subd. 8 (b)(anticipated 2012).

¹³ Minn. Stat. § 260C.613, subd. 3 (anticipated 2012), See also Minn. Stat. § 260C.617(anticipated 2012).

¹⁴ Minn. Stat. § 260.012 (e) (4).

request court approval for the separation.¹⁵ The court may make findings that separating siblings is not in the best interest of one or more of the siblings or that the responsible social services agency has not made reasonable efforts to place the siblings together.¹⁶

Attorney Tip: This new judicial oversight of sibling separation will allow you to argue to the court that the agency has not made reasonable efforts in keeping your client and his/her sibling(s) together, as it is the responsibility of the agency to make every effort to place siblings together for adoption.

For more information and attorney tips on this topic, refer to CLC's July 2012 Practice Point entitled "What Minnesota's New Legislative Changes Mean for Sibling Advocacy." <http://www.clcmn.org/wp-content/uploads/2010/09/July-2012-Practice-Point1.pdf>.

The adopting petitioner must be at least 21 years of age but does not need to be a Minnesota resident.¹⁷

The new age requirement for adoptions is now set at 21, which matches the minimum age required for foster care providers.¹⁸ This age requirement may be waived if the prospective adoptive parent is a family member.¹⁹

The Minnesota residency requirement to file a petition to adopt a state ward has been removed from the law.²⁰ Previously, the petitioner had to be a resident of Minnesota for at least one year prior to filing.

Timelines

After the child comes under guardianship of the Commissioner, there will be a court review of the reasonable efforts to finalize an adoption every 90 days.²¹ During this review, the agency's reasonable efforts to finalize an adoption and the child's current out-of-home placement are assessed to ensure the child is receiving all services and supports required to meet the child's needs.²² The needs of the child may include education, placement, and visitation and contact with siblings and relatives. A child's needs may also include her medical, mental, and dental health.²³ If the youth is age 16 and older and is in foster care, the court will also review the youth's independent living plan (ILP).²⁴

The court may grant reviews more frequently than 90 days.²⁵ Frequent court reviews of the responsible social services agency's reasonable efforts may be granted if this review would expedite finalizing the adoption.²⁶

¹⁵ Minn. Stat. § 260C.613, subd. 3(anticipated 2012).

¹⁶ Minn. Stat. §260C.617(anticipated 2012).

¹⁷ Minn. Stat. § 260C.623(anticipated 2012).

¹⁸ Minn. Rule 2960.3060, subd. 2 (A).

¹⁹ See Minn. Stat. § 245A.02, subd. 13 for definition of relative.

²⁰ Minn. Stat. § 260C.623, subd. 1(anticipated 2012).

²¹ Minn. Stat. § 260C.607, subd. 1 (a) (anticipated 2012).

²² Id. § 260C.607, subd. 3(anticipated 2012).

²³ Id. § 260C.607, subd. 4 (anticipated 2012).

²⁴ Id.

²⁵ Minn. Stat. § 260C.607, subd. 8 (b)(anticipated 2012).

²⁶ Id.

Reasonable efforts to finalize an adoption must begin no later than the permanency progress review hearing when a child has been in foster care for six months.

New policies effective August 1, 2012 regarding timelines for state wards include:

- i Once the APA is signed by all parties and executed by the Commissioner, an adoption petition must be filed within nine months.²⁷ A petition to adopt a child under guardianship of the Commissioner may not be filed unless the responsible social services agency has made an adoptive placement with the petitioner.²⁸ The agency may file the adoption petition on behalf of the adopting parent.²⁹
- i If a relative or foster parent would like to file a motion requesting that the court order the agency to make an adoptive placement with the moving party, the motion may be filed any time after the court orders a child under guardianship of the Commissioner, but not later than 30 days after receiving notice that an agency made an adoptive placement.³⁰

Attorney Tip: Deliberate and careful planning (such as diligent searches for adoptive homes) for your client must be done early in the process, as court reviews take place less frequently as time passes while the child is under guardianship of the Commissioner. Important planning for your client should not be rushed through to meet early deadlines.

If you feel it would be beneficial to speed up the finalization of your client's adoption, you may ask the court for reviews more frequently than 90 days.

Agency and DHS Requirements

Although none of the reasonable efforts requirements in this section are new policy, they have been grouped together in the updated statute to provide the court with a basis for reviewing agency's efforts to find permanent homes for foster care youth. The responsible social services agency has a duty to act as the Commissioner's agent in making reasonable efforts to finalize the adoption of all children under guardianship of the Commissioner.³¹ The agency must ensure that:

- i The best interests of the child are met in the planning and granting of adoptions.
- i The child is involved in the process of planning for adoption.
- i The diversity of Minnesota's population is recognized and respected during the adoption process, including culture, language, and religion.
- i The court has the timely information it needs to make a decision that is in the best interests of the child in reviewing the agency's plan for adoption.

Minn. Stat. § 260C.601, subd. 2 (anticipated 2012).

These reasonable efforts include using age-appropriate engagement strategies to plan for the adoption with the child and identifying a potential adoptive parent for the child based on the child's needs, such as

²⁷ Minn. Stat. § 260C.623, subd. 2(anticipated 2012).

²⁸ Minn. Stat. § 260C.613, subd. 1(anticipated 2012).

²⁹ Minn. Stat. §260C.623 (anticipated 2012).

³⁰ Minn. Stat. § 260C.607, subd. 6 (anticipated 2012).

³¹ Minn. Stat. § 260C.601, subd. 2(anticipated 2012).

completing a relative search, engaging the child's foster parent and the child's relatives as an adoptive resource, and registering the child on the state adoption exchange.³² The agency must also update or complete any social or medical history, certify the child for adoption assistance, and place siblings together.³³ To finalize the adoption in a timely manner, the agency must work with the adopting parent to file a petition to adopt the child.³⁴

The responsible social services agency must complete a relative search, giving notice to relatives of the need for a foster home for the child.³⁵ If there are no identified prospective adoptive placements for the child, an updated relative search is required.³⁶

A child who is a state ward and is legally available for adoption may not refuse or waive the agency's reasonable efforts to recruit and place a child in an adoptive home.³⁷ The court is also prohibited from relieving an agency of this recruitment duty.³⁸ The age at which the child's consent to the adoption is required remains age fourteen under the new legislation.³⁹

Attorney Tip: Request all documentation of reasonable efforts from the social services agency for your client so you are able to determine if the "reasonable efforts" standard has been met before court hearings. This includes exploring previous relative searches and requesting updated searches as needed.

Request a copy of the adoption recruitment plan for your client. If there is not a recruitment plan, ask when a referral will be made and whether Public/Private Adoption Initiative (PPAI) services are being employed. These services are available at no cost to the court. PPAI's goal is to ensure that children are placed in adoptive homes quickly.

For more information and attorney tips on this topic, refer to CLC's March 2012 Practice Point entitled "Using the Public Private Adoption Initiative and Child-Specific Recruitment to Achieve Successful Adoptive Placements for Children in Foster Care." <http://www.clcmn.org/wp-content/uploads/2009/06/March-2012-Practice-Point.pdf>

Minnesota has enacted significant changes to its juvenile code. Many of these legislative changes seek to ensure that the courts are reviewing the agency's progress in finding permanent homes for children without legal parents. To best represent your clients in need of permanency following a termination of parental rights proceeding, it is critical to ensure that there is a thorough review of the agency's reasonable efforts to find a permanent home for your client and that your client's permanency wishes are brought to the court's attention.

³² Minn. Stat. § 260C.605, subd. 1 (d) (anticipated 2012).

³³ Id.

³⁴ Id.

³⁵ Id. § 260C.605, subd. 1 (d) (3)(anticipated 2012).

³⁶ Id. § 260C.605, subd. 1 (d) (3) (ii)(anticipated 2012).

³⁷ Id. § 260C.605, subd. 2 (b)(anticipated 2012).

³⁸ Id. § 260C.605, subd. 2 (c) (anticipated 2012).

³⁹ Minn. Stat. § 259.24, subd. 3(anticipated 2012).