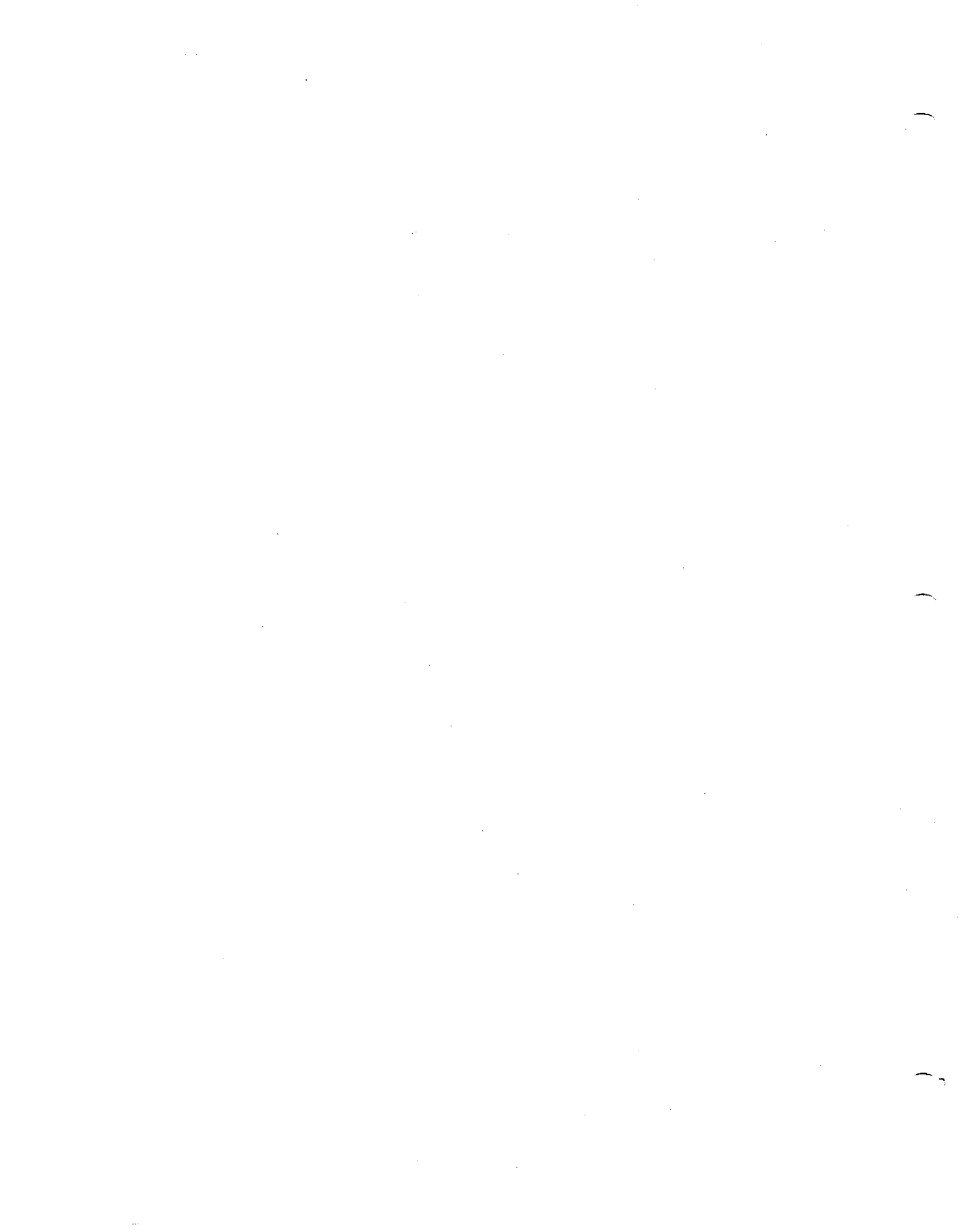


Section Two

Juvenile Law and the Child Protection System in Minnesota



Overview of Child Protection Law in Minnesota and the Juvenile Court Process

NAVIGATE

Children's Law Center of Minnesota
450 Syndicate St. N, Suite 315, St. Paul, MN 55104
Phone (651) 644-4438 Fax (651) 464-4404
www.CLCmn.org

Report of Child Abuse or Neglect

- Reporters are:
 1. Professionals who are mandated reporters
 - mandated reporters include anyone who is a professional or a professional's delegate engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, law enforcement, or employed as a member of the clergy
 2. Voluntary reporters
 - anyone in the community such as neighbors, relatives and friends
- Reporter has “reason to believe” or suspects child is abused or neglected
- Reports are made to the local police department or directly to the child protection agency who cooperate with each other by sharing information and investigating cases - Cross Reporting
 - 1) Law enforcement determines if reported information is a crime
 - 2) County social worker investigates to determine if statutory definitions of maltreatment, physical abuse, sexual abuse or neglect, are met

Child Protection Agency Assessment of a Report

▪ Results of Child Protection (CP) Screening Report:

1. No government action - screened out
 2. Screened in and Assessed
 - Referred for Family Assessment Response (FAR), a voluntary approach which focuses on the safety of the children, not whether the abuse or neglect occurred. The needs of the family are assessed to reduce the chance that abuse or neglect will occur in the future. Help with basic necessities and/or with needed services are provided to best protect the child.
- OR
- Referred for CP Investigation - required for cases of substantial child endangerment. Minn. Stat. § 626.556 subd. 2.
 3. Timing of Assessment/Investigation - Immediately if report is of substantial child endangerment, otherwise within 5 business days. Must be completed within 45 days of the initial report of the abuse or neglect.

Did Maltreatment Occur?

- **What is child abuse or neglect in Minnesota?** According to Minnesota's Department of Human Services:
 1. **Physical abuse** is any physical injury or threat of harm or substantial injury, inflicted by a caregiver upon a child other than by accidental means. Physical abuse does not include reasonable and moderate physical discipline of a child that does not result in an injury.
 2. **Sexual abuse** is the subjection of a child to a criminal sexual act or threatened act by a person responsible for the child's care or by a person who has a significant relationship to the child or is in a position of authority.
 3. **Neglect** (most common) is usually a failure of the child's caregiver to: supply the child with necessary food, clothing, shelter, medical, or mental health care, education or appropriate supervision; protect the child from conditions or actions that endanger the child; take steps to ensure that a child is educated according to the law. Exposing a child to certain drugs during pregnancy and causing emotional harm to a child may also be considered neglect.
 4. **Mental injury**, harm to the child's psychological capacity or emotional stability evidenced by an observable and substantial impairment of the child's functioning, is considered abuse in Minnesota.

Referral for Investigation

- Case enters Child Protection system
 - Child Protection Agency in responsible county must investigate and determine whether:
 1. the child is in immediate danger
 2. maltreatment did occur - did abuse and/or neglect occur?
 3. child protection services are needed - cp services to address the child's immediate safety and reduce the likelihood that future abuse and/or neglect will occur
 4. court involvement is necessary to enforce needed child protection services
 - Typically at this point, there is no court involvement, unless there was a police hold (72 hours) of the child . If there is no police hold, the child can be released to a parent, guardian, custodian or other suitable person.

The Child is in Immediate Danger

- Emergency Protective Care/Protective Custody of the child
 1. A child can only be taken into custody without prior court authorization by the police under a “police hold.” (72 hour hold)
 - A police hold is required when a child is found in circumstances or surroundings which endanger or which the officer reasonably believes will endanger the child’s health or welfare or when the child is a runaway.
 2. The police assume custody of the child and transport the child to a shelter or foster home.
 3. Child Protection assesses whether providing services would eliminate the danger and need for placement.
 4. If Child Protection determines that the child cannot be safely returned home, the case comes before the juvenile court within 72 hours for a Emergency Protective Care Hearing (EPC) pursuant to Minn. Stat. § 260C.178, subd. 1.

Entering the Juvenile Court Process

- A youth enters the juvenile court process in one of two ways. The responsible county files a:
 1. Request for Emergency Protective Care Hearing (EPC) with a Child in Need of Protection or Services (CHIPS) Petition
 - or
 2. Child in Need of Protection or Services (CHIPS) Petition

Emergency Protective Care Hearing (EPC) - Minn. Stat. § 260C.178

- Must occur within 72 business hours of the child's removal from the home
- Parents may request an evidentiary hearing within 8 days to show that the petition has not established a prima facie showing that a juvenile protection matter exists and that the child's health, safety, or welfare would be immediately endangered if the child was released to the parent or custodian.
- After evidence and/or witnesses are presented the court will:
 - Determine if there is a prima facie showing that a child protection matter exists and that the release of the child would immediately endanger the health of welfare of the child
 - If the court determines the child should not return to the parents or guardian, the court will grant the agency emergency protective care of the child.
 - Determine where the child will reside until the next hearing - can be a relative placement
 - Address visitation issues between the child and his/her parents and siblings
 - Establish parent eligibility for appointed legal counsel
 - Inquire of the social services agency as to what efforts have been made to place siblings together in the out-of-home placement
 - Determine if both parents are known to the system
 - Determine if the Indian Child Welfare Act (ICWA) applies
- Court may order the child received mental health treatment for the effects of the alleged abuse.
- Hearing may be combined with Admit/Deny (A/D) hearing on CHIPS petition

CHIPS Petition

- Lists the statutory allegations of abuse and/or neglect against the parent/legal custodian and the “facts” of the case
- Lists the parties of the case and the subject children
- Following the filing of the CHIPS Petition an Admit/Deny hearing is held
- An application for Emergency Protective Care (EPC) contains the CHIPS petition and may be combined with the Admit/Deny hearing
- A/D hearing must be held within 10 days of the EPC hearing

Summary of Statutory CHIPS Definitions

Minn. Stat. § 260C.007, subd. 6

[details omitted]

A child is in need of protection or services because the child is:

- (1) is abandoned or without parent, guardian, or custodian;
- (2)(i) has been a victim of physical or sexual abuse;
(ii) resides with or has resided with a victim of child abuse;
- (iii) resides with or would reside with a perpetrator of domestic child abuse or
- (iv) is a victim of emotional maltreatment;
- (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition;

Summary of Statutory CHIPS Definitions

Minn. Stat. § 260C.007, subd. 6

[details omitted] - continued

- (6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child who entered foster care under a voluntary placement agreement between the parent and the responsible social services agency;
- (7) has been placed for adoption or care in violation of law;
- (8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;
- (9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;
- (10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;
- (11) has engaged in prostitution;

Summary of Statutory CHIPS Definitions

Minn. Stat. § 260C.007, subd. 6

[details omitted] - continued

- (12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;
- (13) is a runaway;
- (14) is a habitual truant;
- (15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding (with certification), an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense;
- (16) has a parent whose parental rights to one or more other children were involuntarily terminated or whose custodial rights to another child have been involuntarily transferred to a relative and there is a case plan prepared by the responsible social services agency documenting a compelling reason why filing the termination of parental rights petition, is not in the best interests of the child; or
- (17) is a sexually exploited youth.

Cases of Expedited Filing of a Termination of Parental Rights (TPR) Petition.

- Agency is not required to pursue reunification and will immediately file a TPR petition pursuant to Minn. Stat. § 260C.503, subd. 2 in the following circumstances:
 - the parent has subjected the child to egregious harm - infliction of substantial bodily harm, felony malicious punishment, or felony child endangerment. Minn. Stat. § 260C.007, subd. 14;
 - a child is a sibling of a child who was subjected to egregious harm;
 - the child is an abandoned infant;
 - the parent has lost parental rights to another child have been terminated involuntarily;
 - the parent has been ordered to involuntarily transfer legal and physical custody of another child to a relative;
 - the parent has committed sexual abuse against the child or another child of the parent;
 - the parent has committed an offense that requires registration as a predatory offender-Murder while committing a sexual conduct, kidnapping, criminal sexual conduct, soliciting a minor to engage in prostitution or sexual conduct and possessing pornographic work involving a minor; or
 - the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances. The Court must make this finding.
- The Admit/Deny hearing on these cases is 10 days from the filing of the petition.

Case Law and Statutory Policy

- Most abused and neglected children can safely remain at home.
- Foster care is temporary.
- Children should not grow up in foster care.
- Children need safety and stability.
- Parents are presumed fit and children belong with their families.
- Most parents want to keep their children safe.
- Families should have interventions that address safety and ongoing risk of abuse and neglect.

Children's Justice Initiative - Minnesota Department of Human Services

Admit/Deny Hearing (A/D)

- Following the filing of the CHIPS petition or expedited TPR petition an Admit/Deny hearing is held. The A/D hearing is the first court appearance unless there was an EPC hearing.
- Placement, visitation and the present status and needs of the child may be addressed.
- ICWA determinations are addressed.
- Parent or guardian's right to be appointed an attorney and notice requirements are addressed.
- The child does not admit or deny the petition unless the only basis for the petition is the child's behavior.
- Parent admits or denies the petition.
- If the parent denies the petition the matter is continued for:
 1. **PRE-TRIAL** (10 days prior to trial)
 - Settlement discussions
 - Confirmation of service on all parties
 - Discussion of discovery issues, pretrial motions and trial issues
 - Exchange of witness and exhibit lists
 - Trial date(s) set
 2. **TRIAL** (60 days from the date of EPC or A/D hearing and must be completed within 90 days of the denial)
 - Court must find that statutory grounds set forth in the petition are proven by clear and convincing evidence or the case is dismissed.

Admission or CHIPS Allegations Proven at Trial

- If the allegations in the petition are admitted or proven after trial:
 1. The Court will adjudicate the child to be a “child in need of protection and/or services” (CHIPS)
 2. The Court orders one the following dispositions for the child:
 - the child remains home under protective supervision of the agency or into the home of a parent who does not otherwise have legal custody of the child.
 - transfers temporary legal custody to the agency with continued placement out of home.
 - orders a trial home visit with temporary legal custody to agency (cannot exceed 6 months
OR
 3. The Court can set a date for a dispositional hearing (within 10 days of CHIPS adjudication).
 4. Dates may be set for a Review hearing (every 90 days), a Permanent Progress Review (6 months after child is removed from the home) and a Permanency Date (12 months after the child is removed from the home).

Minn. Stat. § 260C.201, subd. 1 (2012).

Dispositional Hearing

- Evidence can be offered at informal dispositional hearing
- Court must make written findings:
 1. Explaining how the disposition serves the best interests and safety of the child
 2. Whether or not the agency made reasonable efforts to prevent the need for the child's removal and to reunify the family after removal or, in the alternative, whether reasonable efforts were made to finalize a permanency plan in the event reunification is not required.
 3. Considering many factors (including agency's reasonable efforts in identifying, locating and assessing any noncustodial (nonresident) parent, in finding and engaging relatives, in placing siblings together or providing for their visitation with each other, in identifying foster care placement which can serve as a legally permanent home for the child) when determining appropriateness of and ordering an out-of-home placement of the child and state what alternative dispositions or services were considered by the Court and why the alternatives were inappropriate
 4. Addressing the mental health needs of the child, if needed
 5. Order the case plan filed with the court within 30 days of the filing of the CHIPS petition

Minn. Stat s 260C.201, subd. 2 (2012).

Relative/Kinship Searches

- The agency is required to:
 1. Notify relatives of the need for the child's out-of-home care
 2. Conduct a reasonable and comprehensive relative search for a child removed from home, without delay so that relatives are given first consideration for placement
 3. Search for 6 months or until a fit and willing relative is identified
 4. Contact both maternal and paternal relatives, regardless of whether paternity is adjudicated
 5. Reconsider a relative as a placement resource for any subsequent placements, even if the relative previously declined
 6. If the agency's efforts are found to be insufficient, the Court shall order the agency to continue to appropriately engage relatives who responded to the notice under § 260C.221 in placement and case planning decisions
 7. Review of agency efforts regarding relative search should occur no later than 3 months after the child enters foster care.
 8. Bring a parent's request not to contact or consider a specific relative for permanent placement to the court's attention if this request is due to safety reasons (e.g. domestic violence)
 9. The agency shall not contact that specific relative when the juvenile court finds that contacting the specific relative would endanger the parent, guardian, child, sibling, or any family member.
 10. Document relative search efforts
- Minn. Stat. § § 260C.221, 260.201, Subd. 10(b) (2012).

Case Plan

- Any plan for the delivery of services to a child and parent/legal guardian or the child alone when reunification is not required
 1. out-of-home placement plan - for child ordered into placement
 2. protective services case plan - for a child who remains at home under the protective supervision of the social services agency
- Usual goal is reunification - case plan describes the problems or conditions that led to CHIPS finding and/or out of home placement and the changes the parent must make for the child to safely return or remain home
- The child and parent may take part in the formulation of the case plan.
- The agency shall report its efforts to engage both parents in out-of-home placement plan.
- Parents are to sign the case plan.
- The plan is to address efforts to ensure the child's educational stability in care, educational records of the child, efforts to ensure oversight and continuity of the child's health care services and health records of the child
- Social services must file a copy of the case plan with the court and copy all the parties including the child's attorney.
- The Court must adopt an approved case plan and incorporate it in the Court's order.
- The Court may not order a parent to comply with the provisions of the plan until the child is adjudicated a child in need of protection or services (CHIPS)

In-Court 90 Day Review Hearings

- Held every 90 days following adjudication until jurisdiction is dismissed
- Court must/may:
 1. Determine whether continued legal custody with the agency or protective supervision is in the child's best interests.
 2. Review the placement of the child.
 3. Determine if social service agency is making efforts to find non-custodial or nonresident parent if both parents are not involved
 4. Monitor progress on case plan and reunification efforts
 - Are services appropriate for the parents and the child?
 - Is social services supporting the parent to succeed and making "reasonable efforts" to implement the case plan?
 - Is the case plan relevant to the safety and best interest of the child?
 5. Reaffirm or amend case plan to reflect changes or needed services
 6. Address visitation and sibling placement together
 7. Address if the child can return home and if there is a concurrent plan for the child in case the child can't return home
 8. Ensure the parent understands the timeline to permanency
 9. Address whether ongoing relative search and engagement is being pursued by the agency and document that found relatives have received notice pursuant to § 260C.212 subd. 5. The Court must order to continue relative search and engagement if the agency fails in these efforts.
 10. Determine if the social service agency is making required efforts to try to place the child with a relative or with a foster parent who is committed to being the legally permanent home for the child if reunification efforts fail

Minn. Stat. § 260C.201, subd. 2, 260C.212 (2012).

Permanency Progress Review

The Court shall conduct a permanency progress hearing no later than six months after a child's out of home placement to review:

- 1. The progress of the case, the parent's progress on the case plan or out-of-home placement plan, whichever is applicable;
- 2. The agency's reasonable, or in the case of an Indian child, active efforts for reunification and its provision of services;
- 3. The agency's reasonable efforts to finalize the permanent plan for the child under § 260.012, paragraph (e), and to make a placement as required under § 260C.212, subd.2, in a home that will commit to being the legally permanent family for the child in the event the child cannot return home according to the timelines in this section; and
- 4. In the case of an Indian child, active efforts to prevent the breakup of the Indian family and to make a placement according to the placement preferences under the Indian Child Welfare Act (ICWA).
- If the Court determines that the parent has not complied with the out of home placement plan or is not maintaining regular contact with the child, the Court may order the social service agency:
 - to develop a plan for permanent placement away from the parent;
 - to consider, identify, recruit, and support one or more permanency resources from the child's relatives and foster parent to be the legally permanent home and make a referrals under the Interstate Compact on Placement of Children (ICPC) for homes studies of these relatives; and
 - to file a permanency petition.
- If a permanency petition is ordered, petition shall be filed within 30 days and trial held within 60 days.

Permanent Placement Determination Hearing (PPD)

- The Court must hold this hearing 12 months from the date of the court-ordered, out-of-home placement
- If sufficient progress is made on the case plan the agency may recommend and the Court may order the child be reunified with the parent (often tested by a trial home visit - child returns home while the agency still has legal custody of the child)
- If the child is not home by month 11, the county is to file a permanency petition to be served on all parties
- Notice requirements are the same as in CHIPS trials
- The parent must admit or deny the permanency petition
- Trial on the permanency petition must occur within 60 days after the Admit/Deny hearing
- Agency must prove the statutory grounds of the petition by clear and convincing evidence and find that reasonable or active efforts to rehabilitate the parent and reunite the child have failed
- The Court must determine by an individualized assessment that the relief sought by the permanent petition is in the child's best interests

Permanency Petitions

If a child is not to be returned home, the agency must file one of following petitions:

1. Termination of Parental Rights (TPR). Statutory Requirements listed in Minn. Stat. § 260C.301 (2012).
2. Transfer of Legal and Physical Custody Petition (TLC). Petition must name a proposed fit and willing relative. Minn. Stat. § 260C.515, subd. 4 (2012).
3. Permanent Custody to the Agency (PCTA). This is the least preferred option in Minnesota and can be ordered only for youth who are not state wards. The Court must adopt the agency's compelling reasons as to why a TLC or a TPR is not in the child's best interests and
 - The child must be 12 years old, or the sibling of a child who is 12 and the siblings have a significant positive relationship and are ordered into the same home;
 - The agency has made reasonable efforts to locate and place the child with an adoptive family or fit and willing relative but these efforts have not proven successful; and
 - The parent will continue to have visitation or contact with the child and remain involved in planning for the child. Minn. Stat. § 260C.515, subd. 5 (2012).
4. Temporary legal custody to the agency for a specified period of time. This is available if the sole basis for the CHIPS adjudication is the child's behavior, it is in the child's best interests, the court approves the agency's compelling reasons that neither a TLC or TPR is in the child's best interests and the order specifies that the child continue in care no longer than one year.
Minn. Stat. § 260C.515, subd. 6 (2012).

At the Conclusion of a Permanency Trial

The Court shall issue its order within 15 days of close of proceedings finding:

1. The petition is denied and child is returned to the care of the parent or guardian from whom the child was removed or
2. A permanent disposition is made.

Permanency Determinations

- **Consents to Adopt.** Guardianship to the Commissioner through a Consent to Adopt involves a parent's voluntary consent for adoption by an identified prospective adoptive parent. Minn. Stat. § 260C.515, subd. 3 (2012).
 1. In-Court review hearings conducted at least every 90 days for the purpose of reviewing progress towards adoption.
 2. Agency must pursue adoptive placement in another home if the adoption is not finalized within 6 months of the execution of the consent UNLESS the Court finds the failure to finalize is not due to either the action or failure to act by the prospective adoptive parent.
 - **Termination of Parental Rights (TPR)** Minn. Stat. § 260C.601-260C.635 (2012).
 1. Guardianship and legal and physical custody of the minor child is be transferred to the Commissioner of Human Services and child becomes a State Ward.
 2. The Court retains jurisdiction over the matter until the child is adopted, is 18 years of age, or continues in or re-enters care until age 21.
 3. The county agency acts as the Commissioner's agent and is charged with ensuring the best interest of the child is met in planning and granting adoptions, the diversity and cultural needs of those affected by adoption are recognized, the Court receives timely information and the child is appropriately involved in planning for adoption.
 4. Parent loses all rights and has no standing to appear at further proceedings
 5. In-Court review hearings conducted at least every 90 days for the purpose of reviewing progress towards adoption. The Court review shall include :
 - the agency's reasonable efforts to finalize an adoption for the child
 - the child's current out-of-home placement plan required to ensure the child is receiving all services and supports required to meet the child's needs as they relate to the child's:
 - (i) placement;
 - (ii) visitation and contact with siblings;
 - (iii) visitation and contact with relatives;
 - (iv) medical, mental, and dental health; and
 - (v) education
- the agency's planning for a youth's independent living if the youth is age 16 and older.

Permanency Determinations

- **Transfer of Permanent Legal and Physical Custody (TLC) to a relative**

Subsequent reviews and modifications conducted in juvenile court
Minn.Stat. § 260C.519 (2012).

- **Permanent Custody to the Agency (PCTA)**

In-court review hearings held at least every 12 months to consider whether PCTA continues to be the best permanent plan for the child, the agency is assisting the child to build family and community connections, and the agency is appropriately planning with the child for the development of independent living skills.

At the annual hearings, the Court must review the child's out of home placement plan and the reasonable efforts of the agency:

- to identify and attempt to finalize a legally permanent home for the child;
- to support continued placement of the child in the identified home, if one has been identified;
- to ensure appropriate services are provided to address the physical health, mental health and educational needs of the child during the period of care;
- to ensure appropriate services are provided to maintain relationships with appropriate family members and the child's community; and
- to plan for the child's independence upon the child leaving foster care

Minn.Stat. § 260C.521 (2012).

Change in Placement

- There is a limitation on multiple placements
Minn. Stat. § 260C.212, subd. 3 (2012)
- If a child is removed within one year of a permanent placement disposition, the child must be returned to the facility immediately preceding the placement and a disruption proceeding, to determine where the child should be placed, shall be held within 10 days of the child's removal Minn. Stat. § 260C.521, subd. 4 (2012)
- Attorneys for children can make a motion for a change in placement on behalf of the child at any point while the child is in foster care
- Counsel for the parties, including the child, should receive notice of any change in a child's placement.

Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act

- Child protection matters involving an Indian child are governed by these statutes
- The agency is required to inquire whether a child in care is eligible for membership in a recognized Indian tribe
- ICWA cases require additional notice requirements and different procedures that govern jurisdiction determinations
- Timelines of a case and standards used are different in ICWA cases - “active efforts” findings are required instead of “reasonable efforts”
- Placement preferences must follow ICWA standards or those standards of a particular tribe.

Foster Care - Ages 18-21

- Youth age 16 or older in out-of-home care must have an "Independent Living Plan"
- For those youth to be discharged from foster care at 18 or older, the agency must assist in developing a transition plan 90-days prior to expected date of discharge for the youth.
- Notice of foster care benefits - The agency must advise any child in foster care of the availability of continued foster care, ages 18-21, benefits 6 months prior to the child's 18th birthday and file a copy of the notice with the court.
- Youth ages 18-21 years old may remain in foster care subject to certain eligibility requirements. The youth must be:
 - (1) completing secondary education or a program leading to an equivalent credential;
 - (2) enrolled in an institution that provides postsecondary or vocational education;
 - (3) participating in a program or activity designed to promote or remove barriers to employment;
 - (4) employed for at least 80 hours per month; or
 - (5) incapable of doing any of the activities described in clauses (1) to (4) due to a medical condition.

Minn. Stat. § 260C.451 (2012).

Foster Care – Ages 18-21

- Agency must send written notice of termination of foster care benefits when a child between 18 and 21 ceases to meet the eligibility requirements and child's right to have a court review the agency's determination within 15 days of receiving notice
- Benefits include payment for foster care placements which include supervised independent living settings and continued services related to the youth's independent living plan
- Court jurisdiction extends over foster youth who continue in care until age 21
- Court must conduct annual in-court review hearings
- State wards can return to foster care anytime between the ages of 18-21
- Non-state wards may be able to return to foster care under the following conditions:
 - (1) the youth was in foster care for the six consecutive months prior to his/her 18th birthday and was not discharged home, adopted, or subject to TLC to a relative; or
 - (2) was discharged from foster care while on runaway status after age 15.
- The responsible social services agency shall develop a specific plan related to that individual's vocational, educational, social, or maturational needs and, to the extent funds are available, provide foster care as required to implement the plan. The agency shall enter into a voluntary placement agreement with the individual if the plan includes foster care.
- Minn. Stat. § 260C.451 (2012).

Conclusion

Questions and Answers

NAVIGATE



Legal Advocacy for Foster Care Youth

Children's Law Center of Minnesota

450 Syndicate St. N, Suite 315, St. Paul, MN 55104

Phone (651) 644-4438 Fax (651) 464-4404

www.CLCmn.org

Children's Law Center:
Representing Youth in Foster Care

Players in the System

Who are the players?

- Social Worker
- County Attorney
- Guardian ad Litem
- Parents' Attorney
- Child's Attorney
- Tribal Representative
- Judge

County Social Worker

- Gatekeeper of much of the information you need to know:
 - Whereabouts and contact information for child/family/kin
 - Social history of family and its involvement with child protection
 - Educational, physical and mental health status
 - Services being provided
 - Day-to-day issues arising with case
- Attorney's access to information in social services file
 - **Minn. Stat. 260C.171** – governs entitlement of child's attorney to all information in social services file which forms the basis of decisions/recommendations made by the agency to the court

County Social Worker continued...

- Responsibilities of social worker:
 - Investigation / Assessment
 - Investigate reports of abuse/neglect
 - Determine whether child is in immediate danger of abuse
 - Documentation of case for court proceedings
 - Assess family ability to respond to services and remedy problems
 - Recommend action (e.g., in-home services, referral to police, CHIPS petition)
 - Case Planning and Management
 - Case planning for parents (CHIPS cases), permanency, and adoption
 - Submit case plan and regular report to court
 - Identify child and family needs, and make referrals to service providers
 - E.g., residential treatment, public health services, counseling
 - Monitor case plan progress

County Social Worker *continued...*

- Arrangements for Placement and Visitations
 - Find and select foster homes and adoptive placements
 - Arrange for sibling and/or parent visitations
 - Make arrangements for independent living facility placements
- Provide Treatment and Services
 - Provide crisis intervention services, such as housing, food, clothing, and financial assistance
 - Make referrals for individual and family counseling
 - Make referrals to medical, dental and mental health treatment services
 - Provide services to prevent placement or facilitate reunification
 - Arrange for transportation as necessary to access any and all services
- Court Reports / Testifying / Preparation of Witnesses
 - Work with county attorney to gather and develop evidence
 - Provide testimony about case as needed

County Attorney

- Represents the county social services agency (not the individual worker)
- Responsible for advancing the public interest in the welfare of the child Minn. Stat. § 260C.163, subd. 4
- Works with agency to develop facts in support of recommendations and petitions
- Drafts CHIPS petitions and Permanency petitions (PCTA, TPR, Transfer of Custody)
- Acts as procedural/legal resource for court, county and other parties

County Attorney continued...

Logistics:

- **Ramsey County** – county attorneys rotate hearing to hearing
 - If you need to consult with county attorney and do not know if a particular county attorney is assigned to the case, call Ann Ploetz, Lead Asst. Cty Atty for Child Protection, at 651-266-3149, or her assistant Laura Dauer, 651-266-3132.
- **Hennepin County** – one attorney assigned to all cases on specific calendar
 - State Wards: Asst. Cty Atty Nancy Jones, 612-348-8371
 - Permanent Custody to Agency: Asst. Cty Atty Greg Gibson, 612-348-8181
 - 18-21 year olds (not ICWA): Asst. Cty. Atty Coleen Brady, 612-348-2011
 - ICWA Permanent Custody to Agency: Asst. Cty Atty Jamie Cork, 612-348-9248

Guardian ad Litem

Guardian ad Litem (GAL) = a person appointed by the court to advocate for child's best interests in juvenile or family court proceedings

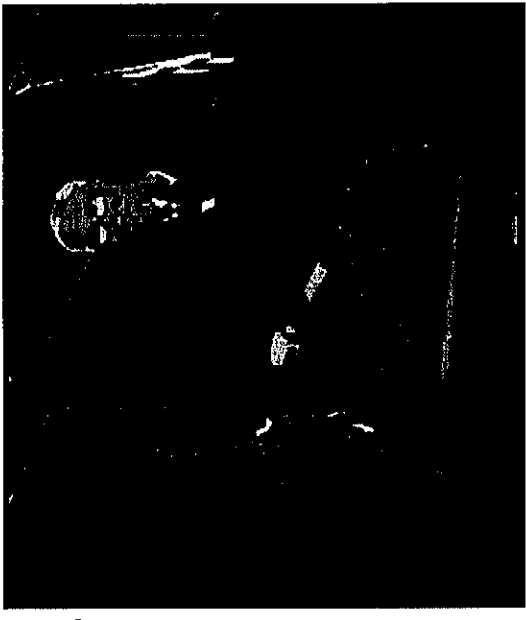
- appointed and remains on case for duration of case

Minnesota GAL Program – governed by a new GAL Board; under Judicial Branch, but functions independently

GALs are either volunteers or full-time employees; intensive training required

GAL is a party to the juvenile protection matter.

- Has rights to notice, representation, and due process
- Able to bring motions and to make arguments for or against petitions
- May be represented by own counsel



Guardian ad Litem *continued...*

- **Primary role:** Objective source who aids the court in focusing on what is in the best interests of the child
- **Specific GAL responsibilities:**
 - Meets with and gets to know the child and family
 - Gathers information – consults with other professionals (teachers, therapists, etc.) as necessary
 - Good source of information for child's attorney!
 - Identifies needs of child, and advocates for necessary services
 - Identifies concerns, then searches for solutions
 - Evaluates if case plan adequately addresses the concerns or if it needs changes to be more effective

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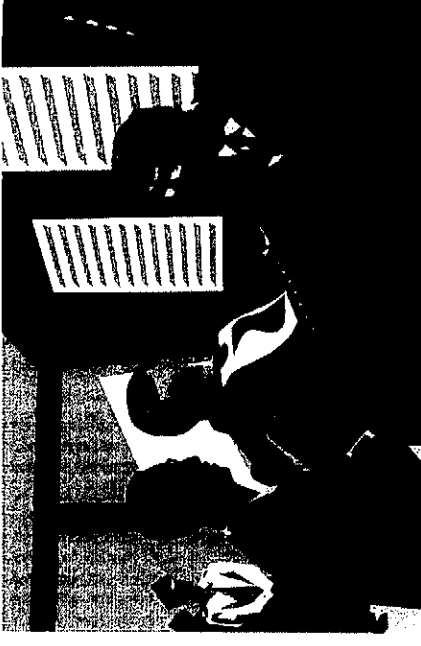
Guardian ad Litem *continued...*

- Makes Best Interests assessment
 - Considers child's wishes, but is guided by GAL's own assessment
 - Best Interest factors: Minn. Stat. § 260C.212, subd. 2
- Collaborates with attorneys for the child and parents, and with the case worker and county attorney
 - GAL is a potential ally!
- Provides report and recommendations to court before every hearing; attends every hearing

Things to remember:

- GAL has no control over the person/property of the child
- GAL does not provide placement or direct services
- GAL shall not also act as the child's attorney
 - Minn. Stat. § 260C.163, subd. 3(d)
- **Governing law:**
 - Minn. Stat. § 260C.163, subd. 5; Minn. R. Juv. Prot. P. 26

Parent's Attorney



Parents or legal custodians have the right to effective assistance of counsel. If cannot afford it, entitled to court-appointed counsel.

- Minn. R. Juv. Prot. P. 25, subd. 2

Traditionally handled by public defender's office, but no longer (unless individual county decides differently).

Why? - budget cuts

- public defenders not legally mandated to provide representation.

Current handling:

In Ramsey – panel of private attorneys

In Hennepin – public defenders still representing parents and kids (potential for conflict)

Child's lawyer typically has limited involvement with parent's attorneys, but may collaborate if child strongly desires reunification.

Parent's Attorney continued...

- Parents are parties to the case (except post-TPR proceedings); have rights to:
 - Notice of all hearings, attend all hearings, conduct discovery, bring motions, subpoena witnesses, present evidence, participate in settlement discussions, take a position on all petitions and motions, appeal decisions
- Parent's attorney advocates for the parent/legal custodian in court:
 - Explains law/options/problems in parent's case – provides frank counsel behind the scenes
 - Defends against allegations of abuse/neglect; protects legal rights
 - Advocates for appropriate and workable case plans
 - Advocates for services to parents that are a good fit, and ensures that parents have support and access to services for best likelihood of success.
 - Ensures that visitations are being done, if appropriate
 - Presents parent's legal position to court

Child's Attorney

Children are considered “participants,” but are entitled to intervene as a party. Minn. R. Juv. Prot. P. 22.01, 23.01.

- In Hennepin and Ramsey, children are made a party automatically upon appointment of CLC as attorney for the child.

Every child has the right to effective assistance of counsel in connection with a juvenile protection matter.

Minn. R. Juv. Prot. P. 25.02; Minn. Stat. § 260C.163, subd. 3

Court must appoint counsel to child aged 10 and older who desires

counsel, but is financially unable to retain counsel. Court may appoint counsel for child under age 10 if determined to be appropriate.

Minn. R. Juv. Prot. P. 25.02;

Minn. Stat. § 260C.163, subd. 3



Child's Attorney *continued...*

- In Minnesota, the attorney for the child represents the child's express wishes
 - Different from GAL, which advocates for best interest
 - Ensures that the child's independent voice is heard
- Governing standards of practice
 - ABA Standards of Practice for Lawyers Who Represent Children
 - Section 6 of CLC training manual
 - Attorneys owe same duties and obligations to child clients as they do to adult clients
 - Expectations of CLC volunteer attorneys, and "Steps to Representation" checklist
 - Section 1 of CLC training manual
- CLC attorneys represent "the whole child" (including education, health, dental, mental health, and other concerns/issues)

Child's Attorney *continued...*

General responsibilities

- Obtain copies of all pleadings and reports
- Investigate facts, engage in discovery, file motions, and participate in settlement negotiations
- Attend all pretrial proceedings, trials, and review hearings
- Argue child's position in court
- Monitor case handling for compliance with statutory requirements and timelines, and advocate for changes in case plan when necessary
- Establish rapport with child, to effectively counsel child:
 - Counsel child about rights and options in a developmentally appropriate manner
 - Advise child about the lawyer's role and the court system
 - Counsel child on what to expect at each stage of case
 - Discuss child's wishes, including consequences of actions and likelihood of agreement by the court, and counsel child on options available
- Identify appropriate family and professional resources for the child

Tribal Representative

- The Tribal representative will be an important player in any ICWA case.

What is ICWA?

- The Indian Child Welfare Act (25 U.S.C. § 1901 et seq) (ICWA) –
 - Enacted in 1978 as part of the government's recognition of the authority of Indian tribes to govern their members and territory, the need to protect the best interests of Indian children, and the need to promote the stability and security of Indian tribes and families.
 - Established standards governing the removal of Indian children from their families and placement in foster or adoptive homes.

Tribal Representative *continued...*

- Child protection matters involving an Indian child are governed by:
 - ICWA (25 U.S.C. § 1901 et seq)
 - Minnesota Indian Family Preservation Act (MIFPA) (Minn. Stat. § 260.751-260.835)
 - Minnesota Tribal/State Indian Child Welfare Agreement of 2007 (TSA)
- Jurisdiction:
 - Tribal courts generally have jurisdiction over child protection matters where the Indian child resides on tribal land or a reservation, otherwise the matter initially comes into juvenile child protection court.
 - Juvenile court is bound to follow ICWA on a case involving an Indian child

Tribal Representative continued...

- “Indian child” defined as:
 - A child who is a member of an Indian tribe, or is eligible for membership in an Indian tribe. (Minn. Stat. § 260.755, subd. 8)
 - Local social services agency must determine *immediately* whether a child is an Indian child, and the identity of the child’s tribe.
- Ramifications for failure to follow ICWA are significant
 - Includes dismissal of petition and return of child to home, and invalidation of an adoption
- ICWA provisions include:
 - Notice requirements to Indian parents/custodian and Indian tribes
 - Procedures that govern determination of jurisdiction in either tribal court or state court (e.g., whether a matter originating in state court should be referred back to tribal court)

Tribal Representative continued...

- ICWA provisions continued...
 - Requirements that must be met before removal from the home and before termination of parental rights:
 - Must show a likelihood of serious physical or emotional harm
 - By clear and convincing evidence
 - Supported by expert testimony
 - After active efforts have been shown to be unsuccessful
 - **Non-ICWA cases only require reasonable efforts
 - and
 - Standards of the Indian community were applied
- Agency must follow placement preferences according to particular tribe's or ICWA standards
 - E.g., - for foster care, preference is extended family first, then foster home licensed by the tribe, then an Indian home licensed by the state...

Tribal Representative *continued...*

- Tribal Representative
 - Primary functions:
 - Looks at the child's needs in light of membership in the tribe
 - Considers unique options such as “customary adoptions” in tribal court
 - Takes into consideration the realities within the community
 - Customary adoption includes specific contract agreement with the parent after a TPR with liberal visitation rights
 - Often acts as an ICWA child welfare worker
 - Trained in social worker concepts; able to do similar functions (find and refer to services, culturally-specific resources)

Tribal Representative *continued...*

- Primary functions, *continued*:
 - Helps locate and advocates for placements that preserve contact with the tribe, cultural opportunities
 - Works in coordination with county case worker
 - Makes arguments in court representing the tribe's position as to child's best interests
 - Goal: to ensure child is able to maintain contact with their culture so they can reap the benefits of their culture
 - Ensures court has all necessary information relative to the tribe and options available
 - » Permanency resources
 - » Options and preferences from the tribe
 - » Complete kinship information
 - » Benefits available to tribal members

Judge

Responsible for ensuring that a safe, stable, permanent home is secured for each abused or neglected child before the court.

Judge should take an active role in decision-making and oversight.

General Responsibilities:

- Provide oversight on case progress; evaluates appropriateness and reasonableness of services provided
 - Issue orders approving continuation of or changes to individual case plans
 - Review and approve visitation plans
 - Consider evolving circumstances and needs of child and family
- Review county social services agency's compliance with "reasonable efforts" requirements




Judge continued...

General Responsibilities, *continued*:

- Ensure compliance with permanency timelines
- Make initial decision on whether to remove child, and make findings about continued out-of-home placement and appropriateness of placement
- Make rulings on CHIPs, TRP, and PCA petitions
Health, safety and best interests of child are paramount consideration.
 - Minn. Stat. § 260C.001, subd. 2(a)
- Preside over all trial proceedings and motion hearings
- Conduct timely review hearings
- Oversee adoption proceedings.

Conclusion

Questions and Answers



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LEGAL ADVOCACY FOR
FOSTER CARE YOUTH

CONTACT

NAVIGATE

“Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.”

Margaret Mead

