

December 2006

Youth and the Law
A Guide for Legislators

This publication describes Minnesota laws and court cases that establish rights, responsibilities, and protections for youth. It deals with economic protection, education, families, health and social services, unlawful acts by and against youth, and juveniles in court.

Youth and the Law is a cooperative project by legislative analysts in the Research Department of the Minnesota House of Representatives. Topical questions should be addressed to the analyst who covers that particular subject.

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Introduction

Youth and the Law describes Minnesota statutes and cases that establish rights, responsibilities, and protections for young people different from those applicable to adults. The purpose of the guidebook is to give legislators an overview of all laws affecting young people in order to have a reference aid on current state policies toward youth. The guidebook also should prove useful for evaluating any proposals for changing these policies.

This is basically a state guide. Federal statutes and cases are included only in a few areas where they dictate state policy or where state policy has been closely linked with federal law for some other reason. **Youth and the Law** does not attempt to cover federal statutes, cases, or programs in general.

Legal distinctions are generally made between adults, who are statutorily defined as persons age 18 and over, and minors, who are statutorily defined as persons under age 18. **Youth and the Law** uses the terms “minor” and “child” synonymously. Exceptions occur if the text clearly indicates that “child” means a minor of a particular age or means an individual of any age in relation to his or her parents.

Youth and the Law is divided into two parts: Part 1, **The Laws**, consists of substantive laws organized by subject categories. Part 2, **The Courts**, explains the courts and procedures that deal with youths. A glossary of terms used throughout both parts 1 and 2 is provided at the beginning of the guidebook. There is also an index at the end of the publication.

Unless otherwise noted, all citations are to Minnesota Statutes as amended through August 1, 2006, or Minnesota Rules, as of August 1, 2006.

Glossary

AGE OF MAJORITY	Eighteen years of age. (Minn. Stat. § 645.451, subd. 5)
CHIPS	An acronym for a category of juvenile court jurisdiction. "CHIPS" means Child in Need of Protection or Services.
CIVIL ACTION	A lawsuit to establish or redress certain rights. It can be based on a statutory right or a legal rule developed in court cases. It can involve seeking payment of money (damages) or compelling someone to act or refrain from an action (injunction). It involves no possible criminal punishment, such as imprisonment, criminal fine, or developing a record of a criminal conviction. Civil action examples: personal injury, breach of contract, marriage dissolution.
CONTRACT	An agreement between two or more persons that creates a legal obligation to do or not to do a particular thing, such as to perform a service or to buy or sell goods or real estate.
CRIME	Conduct prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.
DELINQUENT	A minor ten years old or older who has committed an act that would be a crime if committed by an adult, except for certain misdemeanors classified as juvenile petty offenses.
FELONY	A crime punishable by a sentence of more than one year imprisonment in a state prison. Fines for felony offenses are equal to or greater than \$3,000, depending on the offense.
GROSS MISDEMEANOR	A crime punishable by a sentence of imprisonment for more than 90 days but not more than one year, and/or up to a \$3,000 fine.
JUVENILE	A person who is younger than 18 years old.
JUVENILE PETTY OFFENDER	A minor who has committed a juvenile alcohol offense, a juvenile controlled substance offense, a tobacco offense, or a violation of a local ordinance prohibiting conduct by a minor that would be lawful if committed by an adult, except for certain designated misdemeanors and other offenses.
LEGAL OR FULL AGE	Eighteen years of age or older. (Minn. Stat. § 645.451, subd. 6)
MISDEMEANOR	A crime punishable by a sentence of up to 90 days imprisonment and/or up to a \$1,000 fine.
PETTY MISDEMEANOR	An offense that is not a crime, which carries no possibility of imprisonment, but for which a fine of up to \$300 may be imposed.
STATUS OFFENSE	Conduct that is unlawful for children, but lawful for adults (e.g., smoking tobacco).
STATUTE OF LIMITATIONS	A deadline set by statute for beginning a particular kind of lawsuit or criminal prosecution.
TORT	The area of law that involves (1) the breach of a duty to another person, (2) imposed by law, (3) when the person is injured by the breach. It is sometimes defined as the law of legal wrongs committed by private individuals against each other, not based on contracts. Examples include personal injury and defamation.

Part 1: The Laws

Minnesota law makes many distinctions between the rights and responsibilities of adults and young persons. Part 1 describes the major statutory and case law that differentiates between youths and adults. These provisions are divided into the areas of economic regulations, education, family relations, health and social services, motor vehicles, and criminal law. There is a miscellaneous section for other age provisions.

Usually, legal distinctions are drawn at the age of majority, which is statutorily defined as 18 years. Persons under age 18 are minors. They are deemed less able than adults to take responsibility for themselves or to carry out obligations to others. Similarly, they are considered more in need of protection both from their own inexperienced judgments and from the actions of others.

Minnesota law makes some distinctions between adults and youth at points other than 18 years. For example, a few rights are withheld and a few protections are extended until ages 19 or 21 in the belief that 18-year-olds are not ready to be entirely on their own in particular areas. On the other hand, not all minors are treated identically under the law. In some instances, younger children are considered in need of greater protection or unable to carry out the greater responsibilities of older children. As a result, certain statutes treat minors under such ages as 16, 14, or 10 differently from minors over those ages.

Economic Protection

Minors' economic rights and activities are heavily regulated by statute because it is believed that minors are much less able than adults to support themselves, to make decisions about managing property, or to bargain as equals in employment and other business situations.

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Child Support

All Parents

If a parent consents to have a child reside with an individual or entity other than the parent, or if the child does so by court order, the parent can be required to pay support for the child. **Minn. Stat. § 256.87, subd. 5**

A parent who is financially able to support a child but fails to do so may have his or her parental rights terminated by the juvenile court. **Minn. Stat. § 260C.301, subd. 1(b)(3)**

Divorced Parents

The court may order either or both parents to pay child support. A parent may also be required to provide health insurance or pay medical or child care expenses for a child. Child means an individual: (1) under age 18; (2) under age 20 who is still attending secondary school; or (3) who, because of his or her physical or mental condition, cannot support himself or herself. **Minn. Stat. §§ 518A.26, subd. 5; 518A.40; 518A.41; 518A.44**

Support Guidelines

Statutory guidelines and other specified factors affect the amount of parental support that courts will award to children of divorced parents, unless the parents each have separate counsel and reach their own support agreement. **Minn. Stat. § 518A.35; 518A.43**

Unmarried Parents

If an individual admits she or he is a child's parent or if parentage is established in a court action, the individual is legally obligated to support the child and will be ordered to pay the amount indicated in the statutory guidelines. **Minn. Stat. § 257.67, subd. 1**

Enforcement

If a court orders a parent to pay child support, including health insurance or medical or child care costs, legal mechanisms can be used to enforce the order in Minnesota or against a parent who moves to another state. **Minn. Stat. §§ 256.87; 257.67; 548.091; ch. 518; ch. 518A; ch. 518C**

Stepparents

When a divorced parent seeks a change in court-ordered child support, the income of both parents' new spouses, if any, will not be considered in raising or lowering the support amount. **Minn. Stat. §§ 518A.29(f); 518A.39, subd. 2(d)(1)**

For further information, see *Minnesota's Child Support Laws*, House Research Department, November 2006.

Property Rights

Control of a Minor's Earnings or Property

A parent or guardian may claim a minor's wages by notifying the minor's employer. Otherwise, the minor has control of his or her own wages. **Minn. Stat. § 181.01**

A minor may control his or her own savings account. **Minn. Stat. § 48.30**

Minor's Contracts

A minor may make a contract but may choose not to complete it, unless it involves the purchase of necessities, like food or shelter. *Miller v. Smith*, 2 N.W. 942 (Minn. 1879).

Wills

A minor may not make a will. **Minn. Stat. § 524.2-501**

Inheritance from Parents

If there is no will, an adopted individual has a legal right to a share of the adopted parents' estate but not to the birth parents' estate, unless the individual was adopted by a stepparent. **Minn. Stat. § 524.2-114**

If a person does not make a will, his or her children share the estate with the surviving spouse, if that spouse was married to the children's other parent. If no spouse survives, the children share the estate among themselves. **Minn. Stat. §§ 524.2-102; 524.2-103**

If parents were not married to each other and did not leave wills, the children inherit from either parent. Parentage may be established under the Parentage Act. **Minn. Stat. § 524.2-114**

A parent who makes a will may intentionally disinherit a child. If it seems the child was omitted from the will by error or because of being born after the parent's death, the child is entitled to inherit something. **Minn. Stat. §§ 524.2-108; 524.2-302**

Uniform Transfers to Minors Act

Any kind of property (money, real estate, stocks, etc.) may be transferred to a custodian for a minor's benefit. This kind of custodianship lasts until the beneficiary turns 21 (or 18, in some cases). **Minn. Stat. §§ 527.21 to 527.44**

Employment

Age Discrimination in Employment

The prohibition against unfair employment practices based on a person's age applies to persons over the age of majority. The law permits different treatment in privileges, benefits, services, or facilities for employees under age 21. **Minn. Stat. §§ 363A.03, subd. 2; 363A.20, subd. 9**

Child Labor Standards

The Minnesota Child Labor Standards Act restricts the age, days and hours, and occupations of working minors. **Minn. Stat. §§ 181A.01 to 181A.12.** Employment of minors also is governed by federal law which may differ from the Minnesota law described here.

Age Restrictions. No minor under the age of 14 may be employed, except (1) a minor may be an actor, performer, or model; (2) those 11 and older may be newspaper carriers; (3) those between the ages of 11 and 14 may be employed as a youth athletic program referee, umpire, or official for an age bracket younger than the minor's own age; and (4) those 12 and older may work in agricultural operations. **Minn. Stat. §§ 181A.04, subd. 1; 181A.07, subs. 1, 2, 3, 4a**

Day and Hour Restrictions. On school days during school hours, no minor under 16 years may be employed except with a valid employment certificate. **Minn. Stat. §§ 181A.04, subd. 2; 181A.05**

No minor under 16 may work any day before 7:00 a.m. or after 9:00 p.m. except as a newspaper carrier. **Minn. Stat. §§ 181A.04, subd. 3; 181A.07, subd. 3**

No one may employ a minor under 16 more than 40 hours per week or more than eight hours in any 24-hour period, except for minors working in agricultural operations with their parents' or guardian's permission. **Minn. Stat. §§ 181A.04, subd. 4; 181A.07, subd. 1**

No one may employ a high school student under age 18 after 11:00 p.m. on a school night or before 5:00 a.m. on a school day. With written permission of a parent or guardian, a student may work one half hour later or begin one half hour earlier. **Minn. Stat. § 181A.04, subd. 6**

Occupation Restrictions. All minors may be excluded from employment in any occupation that the Commissioner of Labor and Industry finds by rule hazardous to their well-being. **Minn. Stat. § 181A.04, subd. 5.** The commissioner also has the power to exempt an individual minor from this restriction. **Minn. Stat. § 181A.07, subd. 5**

Child Labor Exemptions. Minors employed to do home chores or babysitting, or employed by their parents are exempt from the above child labor restrictions. **Minn. Stat. § 181A.07, subd. 4**

Also exempt are minors at least 11 years of age and less than 14 years of age if they are employed as a youth athletic program referee, umpire, or official for an age bracket less than the minor's own age. **Minn. Stat. § 181A.07, subd. 4a**

The Commissioner of Labor and Industry may grant exemptions from these restrictions if the commissioner finds that the exemption is in the minor's best interests. **Minn. Stat. § 181A.07, subd. 5**

Federal law provides that minors under age 16, working in particularly hazardous agricultural work for their parents, are exempt only if they work on a farm owned or operated by the parent. **29 U.S.C. § 213(c)(2); Minn. Stat. § 181A.11**

Minimum Wage

During the first 90 consecutive days of employment, an employer must pay an employee under 20 years of age a wage of at least \$4.90 per hour. **Minn. Stat. § 177.24, subd. 1(c)**

The minimum wage does not apply to persons under the age of 18 who are (1) doing certain agricultural work; or (2) employed part-time by a municipality as part of a recreational program. The minimum wage also does not apply to any person engaged in babysitting as a sole practitioner. **Minn. Stat. § 177.23, subd. 7 (3), (4), (12), (14)**

Unemployment Insurance Benefits

Like adults, a minor may be covered by unemployment insurance if the minor satisfies the statutory requirements regarding eligibility. **Minn. Stat. § 268.035, subd. 12.** However, minors in the following employment areas are not eligible for unemployment compensation: (1) agricultural labor performed by a child under 16 for an employer not covered by federal unemployment tax law; (2) service performed by a child under 18 in the employ of a parent; (3) work performed by a student for an academic or vocational program; (4) work performed at a school or university by a student enrolled there; (5) work performed for academic credit; and (6) newspaper delivery by anyone under 18. **Minn. Stat. § 268.035, subs. 11 (6), 20 (18), (20), (21), (22), (31)**

Workers' Compensation

The workers' compensation system compensates injured minors as well as adult employees. **Minn. Stat. § 176.091.** A minor with a workers' compensation covered injury with permanent total disability receives the maximum permanent total disability benefit available, regardless of wage. This rate is currently \$750 per week. **Minn. Stat. § 176.101, subs. 1(b)(1), 4, 6(b)**

A guardian or conservator shall be appointed to represent the interests of a minor who has a covered workers' compensation injury or who is eligible for survivor benefits. **Minn. Stat. § 176.092**

Educational Rights and Responsibilities

The state of Minnesota is required by its constitution to provide a free public education to all children in the state. This section provides an overview of some of the rights and responsibilities of students attending elementary and secondary schools.

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Compulsory Attendance; Attendance Options

Age of Attendance; Compulsory Attendance

Every child between the ages of seven and 16 must attend school. **Minn. Stat. § 120A.22, subd. 5.** Local school districts determine the amount of time that children must attend school. A student who is 16 or 17 must attend school unless the student formally withdraws from school. **Minn. Stat. § 120A.22, subd. 8.** A minor parent or an 18- or 19-year-old parent who has not completed high school must attend school in order to remain eligible for the Minnesota Family Investment Program (MFIP). **Minn. Stat. § 256J.54, subd. 5**

A child must receive developmental screening before enrolling in kindergarten or first grade in a public school. **Minn. Stat. § 121A.17**

A child must be immunized before enrolling in school unless an exception applies. **Minn. Stat. § 121A.15**

A school-age child may be exempted from mandatory attendance requirements under certain circumstances. **Minn. Stat. § 120A.22, subd. 12**

Undocumented children who are not legal residents of the United States are entitled to attend public school through grade 12. *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982).

Truancy

A child subject to compulsory instruction requirements is considered a “**continuing truant**” if the child is in elementary school and absent three school days without a valid excuse or if the child is in middle, junior high, or high school and absent three or more class periods on three school days without a valid excuse. **Minn. Stat. § 260A.02**

School officials must notify a child’s parent that the child is a continuing truant. **Minn. Stat. § 260A.03**

A child under age 16 is considered a “**habitual truant**” if the child is in elementary school and absent seven school days without a lawful excuse or if the child is in middle, junior high, or high school and absent one or more class periods on seven school days without a lawful excuse. A child who is 16 or 17 is considered a habitual truant if the child is absent one or more class periods on seven school days without a lawful excuse and has not formally withdrawn from school. **Minn. Stat. § 260C.007, subd. 19**

**Instruction
Requirements**

Instruction must occur either in a public school, a nonpublic school, a church or religious organization, or a homeschool. **Minn. Stat. § 120A.22, subd. 4**

Instruction is required in specific subject areas and must be provided by a person who meets the specific requirements for instructors. **Minn. Stat. §§ 120A.22, subds. 9, 10; 122A.24**

The performance of every child not enrolled in a public school must be assessed each year. All persons in charge of providing instruction to a child must document that the child received instruction as required by law. This reporting requirement does not apply to a child receiving instruction from an accredited or state-recognized nonpublic school, person, or other institution. **Minn. Stat. § 120A.24, subds. 1-3**

Depending on their qualifications as instructors, parents instructing their children in a homeschool may be required to provide additional assessment and documentation of their children's instruction. **Minn. Stat. §§ 120A.22, subd. 11(b); 120A.24, subd. 1(4)**. See *The Operation of Homeschools in Minnesota*, House Research Department, November 2005.

Penalty

It is a misdemeanor for a person responsible for instruction in an unaccredited nonpublic school, home, or other institution to fail to comply with compulsory instruction requirements. **Minn. Stat. § 120A.26**

It is a petty misdemeanor for a person who is legally responsible for a school-age child, to fail or refuse to provide instruction for that child. **Minn. Stat. § 120A.34**

**Residency
Requirements**

School-age children who reside within a district operating public schools may attend those schools without charge. **Minn. Stat. § 120A.20, subd. 1**

The district of residence for a homeless school-age student is the district in which the homeless shelter or other program, center, or facility helping the homeless student's family is located. **Minn. Stat. § 120A.20, subd. 2**

The district of residence of a school-age student whose divorced or legally separated parents share joint physical custody and reside in different school districts is designated by the student's parents. **Minn. Stat. § 127A.47, subd. 3**

**Immunization
Requirements**

No child may enroll or remain enrolled in any elementary or secondary school or child care facility unless an immunization statement is submitted to the school or facility. **Minn. Stat. § 121A.15, subd. 1.** A child need not be immunized if immunization conflicts with a parent’s conscientiously held beliefs. **Minn. Stat. § 121A.15, subd. 3(d)**

School Conferences

An employer must give an employee up to 16 hours leave during a 12-month period to attend school conferences or school-related activities involving the employee’s child if the conferences or school-related activities cannot be scheduled during nonwork hours. **Minn. Stat. § 181.9412**

**Enrollment Options
 (“Open Enrollment”)**

Students in kindergarten through grade 12 have the option of attending a school or program in a nonresident district. A district may limit nonresident enrollment to the lesser of 1 percent of the district’s total enrollment at each grade level or the number of district residents at that grade level enrolled in a nonresident district. A school board must adopt specific standards for accepting and rejecting timely applications; the standards may not include a student’s previous academic achievement, athletic or other extracurricular ability, disabling conditions, English proficiency, previous disciplinary proceedings, or district of residence. A district may terminate the enrollment of a nonresident student at the end of the school year if the student is a habitual truant and other conditions are met. A district also may terminate the enrollment of a nonresident student over 16 who is absent without lawful excuse for one or more periods on 15 school days and has not withdrawn from school. A district may refuse to enroll a student expelled for possessing a dangerous weapon, possessing or using an illegal drug, or selling or soliciting the sale of a controlled substance at school or a school function, or committing a third-degree assault. **Minn. Stat. § 124D.03**

**Postsecondary
Enrollment Options
(PSEO)**

Public, nonpublic, and homeschooled students in the 11th or 12th grade seeking rigorous academic pursuits or a wider variety of academic options may apply to enroll in a course or program provided by a postsecondary institution. Students may receive secondary or postsecondary credit for successfully completing a PSEO course or program. **Minn. Stat. § 124D.09**

**Advanced Placement,
International
Baccalaureate, and
College-level Exam
Programs**

Students are eligible to receive Minnesota college credit for earning a satisfactory score on a College-level Exam Program (CLEP) exam, a score of 3 or higher on an Advanced Placement (AP) exam, or a score of 4 or higher on an International Baccalaureate (IB) exam. **Minn. Stat. § 120B.13; 120B.131**

- Graduation Incentives Program** Eligible students who have experienced or are experiencing difficulty in the traditional education system may enroll in alternative programs or area learning centers. **Minn. Stat. § 124D.68**
- Area Learning Centers** Students eligible to participate in the graduation incentives program or receive special education services may attend an area learning center (ALC) to receive instruction leading to a high school diploma. **Minn. Stat. §§ 123A.05 to 123A.09**
- Adult Basic Education** Students over age 16 who are not enrolled in school may enroll in a day or evening adult basic education (ABE) program to earn a high school diploma or equivalency certificate. **Minn. Stat. § 124D.52**
- Online Learning** K-12 public school students and some K-12 nonpublic students may take various online courses for credit. The courses must be rigorous, aligned with state academic standards, equivalent to other courses, and must provide student to teacher communication. **Minn. Stat. § 124D.095.** See *2003 Online Learning Option Act*, House Research Department, November 2003.
- Shared Time Programs** Students may fulfill compulsory attendance requirements by attending public school programs for part of the regular school day and nonpublic school programs to otherwise fulfill the attendance requirements. **Minn. Stat. §§ 126C.01, subd. 8; 126C.19**
- Charter Schools** Students may attend charter schools, which are educationally innovative public schools independently operated by teachers, parents, and community members. **Minn. Stat. §§ 124D.10; 124D.11** See *Charter Schools*, House Research Department, November 2005.
- Single-sex Education** Modified federal Title IX regulations allow public and private coeducational elementary and secondary schools to offer more single-sex classes and extracurricular activities and school districts to provide single-sex schools if enrollment is voluntary and other conditions are met. Vocational schools that receive federal funds may not offer single-sex programs. **Title IX of the Education Amendments of 1972**

State Graduation, Statewide Testing, and Statutory K-12 Curriculum Requirements

K-12 Academic Standards

Public school students entering the ninth grade in the 2004-2005 school year or later must complete four language arts credits, three math credits, three science credits, three and one-half social studies credits, one arts credit, and at least seven elective course credits in order to graduate. Districts decide whether students meet course credit requirements by successfully completing an academic year of study or by demonstrating mastery of the applicable subject matters. **Minn. Stat. § 120B.024.** See *Minnesota's K-12 Academic Standards and Assessments*, House Research Department, August 2006.

Statewide Testing Requirements

Federal law requires that public school students in grades 3 through 8 and in high school take annual statewide Minnesota Comprehensive Assessments (MCA-II) in reading and math. Schools and districts must use the annual test data to demonstrate that all students are making adequate progress toward performing proficiently in English and math by the 2013-2014 school year. Students also must take statewide science assessments once in each grade span 3 through 5, 6 through 9, and 10 through 12, beginning in the 2007-2008 school year. **Title I, No Child Left Behind Act of 2001, P.L. 107-110**

Basic Skills Tests

Public school students must receive a passing score on state basic skills tests (BSTs) in reading, mathematics, and written composition in order to receive a high school diploma. **Minn. Stat. § 120B.02.** Math test items must allow students to demonstrate computational skills without using a calculator. **Laws 2001, 1st spec. sess., ch. 6, art. 2, § 67.** Students entering grade 8 in the 2005-2006 school year or later do not take the BSTs and instead must take the MCA-II/GRAD (graduation-required assessments for diploma): written composition in grade 9; reading in grade 10; and math in grade 11. The Commissioner of Education must make available to parents, upon request, a copy of their students' actual answer sheet to test questions. **Minn. Stat. § 120B.30, subd. 4**

Required Areas of Instruction

School districts must provide students with instruction in basic communication skills including reading, writing, literature and fine arts, mathematics, and science; social studies, including history, geography, and government; and health and physical education. **Minn. Stat. § 120A.22, subd. 9**

Health-related Education

School districts must develop and implement a program to prevent and reduce the risk of sexually transmitted infections and diseases. Adolescents are the target of this program. **Minn. Stat. § 121A.23, subd. 1**

Review of Instructional Materials

School districts must adopt a procedure for parents and adult students to review instructional materials provided to students. School personnel must make reasonable arrangements for alternative instruction if a parent or adult student objects to the content of the materials. Parents and adult students may provide alternative instruction if the school board fails to satisfy their concerns, but may not receive payment for their costs. School personnel may evaluate the quality of a student's work, but are prohibited from penalizing the student merely because the student arranges alternative instruction. **Minn. Stat. § 120B.20**

Discipline; Bus Privileges; Tobacco Use; Medications

Corporal Punishment; Reasonable Force

A teacher, principal, school employee, school bus driver, or district agent may use reasonable force to discipline a student. **Minn. Stat. § 121A.582**

A school official may not use corporal punishment to discipline a child. **Minn. Stat. § 121A.58**. A school official who uses reasonable force within the exercise of lawful authority to discipline a child has a defense against a criminal prosecution and civil liability for the disciplinary act. **Minn. Stat. §§ 121A.582; 609.06, subd. 1, cl. (6); 123B.25, para. (C)**

Dismissal Generally

Dismissals from public school are generally governed by the Pupil Fair Dismissal Act of 1974. **Minn. Stat. §§ 121A.40 to 121A.56**. The compulsory attendance law does not apply to regular education students during a dismissal. **Minn. Stat. § 121A.52**

Grounds for dismissal are the willful violation of reasonable, clearly defined school board regulations, significant disruption of the education process, or endangering persons or property. **Minn. Stat. § 121A.45, subd. 2**. A public school student is entitled to due process and equal protection guarantees when facing dismissal proceedings. Possible outcomes of a dismissal proceeding include exclusion, expulsion, or suspension. **Minn. Stat. § 121A.42**. A school

must attempt to provide a student subject to dismissal with an alternative education program, except where the student creates an immediate and substantial danger to himself or herself or to surrounding persons or property. **Minn. Stat. § 121A.45, subd. 1.** A school's discipline policy must address students' inappropriate behavior, recognize the school's continuing responsibility to educate a student it dismisses, and help prepare the student for readmission. **Minn. Stat. § 121A.55**

Suspension

Before being suspended for one to five days, a student generally is entitled to notice and a meeting with an administrator who will inform the student of the grounds for suspension. **Minn. Stat. §§ 121A.41, subd. 10; 121A.46.** Generally, a student can be suspended from school for a period of no more than ten school days, and a suspension action may include a readmission plan. If the student poses a serious danger, he or she can be suspended for up to 15 days, provided the school implements an alternative education program for any suspension over five days. **Minn. Stat. §§ 121A.41, subd. 10; 121A.46, subd. 4**

The U.S. Supreme Court declared that suspending a student from a public school requires procedural due process, including written notice of the charges, an explanation of the evidence the authorities have, and an opportunity for the student to present his or her side of the story. These requirements do not include the right to counsel, a right to confront and cross-examine witnesses, or a right to call the student's own witnesses. *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975).

Expulsion and Exclusion

If a student is subject to expulsion (prohibiting an enrolled student from attending school for up to 12 months from the date of expulsion) or exclusion (preventing a student from enrolling in school during that school year), he or she is entitled to notice from the administration and to information about attendance rights, including the right to a formal hearing and appeal. **Minn. Stat. §§ 121A.41, subs. 4, 5; 121A.47; 121A.49; 121A.50.** The school must notify the student of his or her right of reinstatement within ten days of the end of the dismissal period. **Minn. Stat. § 121A.54**

Firearms in School

A school board must expel for one year any student who brings a firearm to school. The board may modify this expulsion requirement on a case-by-case basis. **Minn. Stat. § 121A.44.** A school official must refer to the criminal justice or juvenile delinquency system any pupil who brings a firearm to school unlawfully. **Minn. Stat. §§ 121A.05; 609.66, subd. 1d**

Admission or Readmission	A school board must prepare and enforce an admission or readmission plan for any pupil who is excluded or expelled from school and may prepare such a plan for a student who is suspended. The readmission plan must not obligate a parent to provide Ritalin or other similar medication to a child as a condition of readmission unless a health or safety emergency applies. Minn. Stat. §§ 125A.091, subd. 5; 260A.01(b)
Removal from Class or School	If a student willfully engages in disruptive, dangerous, or unsanctioned conduct, a school official may prohibit that student from attending a class or activity for up to five class periods. This is not considered a dismissal under the Pupil Fair Dismissal Act. Minn. Stat. §§ 121A.41, subd. 2; 121A.60; 121A.61. School officials must meet with the parent of a student who has been removed from school more than ten times in one school year to determine the student's need for assessment or other services or whether the student should be assessed for a mental health disorder. Minn. Stat. § 121A.45, subd. 3
Discipline Off School Grounds	A school district may impose reasonable discipline on a student for misconduct on a bus, in a school parking lot, on a field trip, or at an extracurricular activity if the misconduct adversely affects the educational process. <i>Nicholas B.</i> , 587 N.E.2d 211 (Mass. 1992)
Extracurricular Activities	Students generally have no claim of entitlement to participate in extracurricular activities. <i>Brown v. Wells</i> , 181 N.W.2d 708 (Minn. 1970).
Revocation of Bus Riding Privileges	A district may revoke the bus riding privileges of any student who violates the district's school bus safety or student conduct policy. This is not considered an exclusion, expulsion, or suspension under the Pupil Fair Dismissal Act. Minn. Stat. § 121A.59
Tobacco Products Prohibited	No one may smoke or use any other tobacco product in a public school. The prohibition extends to all school facilities that a district owns, rents, or leases and all district vehicles. Minn. Stat. § 144.4165
Asthma Inhalers	An asthmatic student may possess and use an asthma inhaler in school after demonstrating that the student can do so safely. Minn. Stat. § 121A.221
EpiPens	A student who is prescribed nonsyringe injectors of epinephrine for severe allergic reactions may possess or have immediate access to an EpiPen during the school day. Minn. Stat. § 121A.2205
Nonprescription Pain Relievers	A secondary student may possess and use nonprescription pain relievers in school with a parent's written permission. Minn. Stat. § 121A.222

Disabled Children

Individuals with Disabilities Education Act (IDEA); Section 504 of the Rehabilitation Act of 1973

A child may be eligible for special education services under the federal IDEA, which relies upon procedural safeguards to ensure appropriate educational services, or under Section 504, a federal law that bars discrimination on the basis of disability in federally funded programs. IDEA provides federal funding to states and school districts for expenses incurred in providing special education and related services to those disabled children covered by the act. To be eligible for this funding, states must provide a “free appropriate public education” (FAPE) for all children with certain disabilities. Section 504 of the Rehabilitation Act is a broader, less prescriptive civil rights statute that covers some disabled children not served under IDEA. The U.S. Supreme Court let stand a federal appeals court decision holding that federal law requires school districts to provide educational services to all children regardless of the severity of their handicap. *Timothy W. v. Rochester, New Hampshire Sch. Dist.*, 875 F.2d 954 (1st Cir. 1989), cert. denied, 493 U.S. 983, 110 S. Ct. 519 (1989).

Availability of Services and Procedural Requirements under State Law

Each school district must provide appropriate nondiscriminatory instruction and services for disabled children from birth until the disabled child is 21 or completes secondary school, whichever comes first. **Minn. Stat. §§ 125A.02; 125A.03.** Students with disabilities who complete secondary school or its equivalent must be granted a diploma. **Minn. Stat. § 125A.04**

State law guarantees procedural safeguards and parental participation in the assessment and educational placement of disabled children. To receive such services, a child must be found (1) eligible for special education services according to statewide eligibility criteria, and (2) in need of such services. A lack of instruction in reading or mathematics or limited English proficiency is not a disability. **34 C.F.R. § 300.7(c)(10)(ii).** If school district personnel find that a child meets the eligibility criteria and is in need of special education services, a team that includes the child’s parents and appropriately trained school personnel will, after a comprehensive evaluation, develop an Individualized Education Plan (IEP) that contains, among other things, annual educational goals for the child. The child’s IEP team may authorize certain Medical Assistance services for the child. **Minn. Stat. §§ 125A.03; 125A.08; 125A.091; 256B.0625, subd. 26; 34 C.F.R. § 300.342(a)**

Alternative Dispute Resolution

Parents are encouraged to use alternative dispute resolution processes to resolve disputes related to educating a disabled child. **Minn. Stat. § 125A.091, subd. 6**

**Participation in
Statewide Assessments**

Children with disabilities must be included in state- and district-wide assessment programs, with appropriate accommodations where necessary. Accommodations may include variations in the setting, timing, response, and scheduling that take into account a child's disabilities. **34 C.F.R. § 300.138**

Inclusion

Children with disabilities must be educated in the least restrictive environment (LRE) to the maximum extent appropriate. School districts bear the burden of showing that a disabled child should not participate in the regular education program. Criteria for determining whether the regular classroom is the LRE include the potential benefits to the child, potential disruption to the classroom, and the cost of aids and services. **34 C.F.R. § 300.550**

**Suspension, Exclusion,
and Expulsion**

When a child with an IEP is suspended from school for misbehavior that is unrelated to the pupil's disabilities, the district must provide the child with special education and related services. A district must begin reviewing a child's IEP and the relationship between the child's disability and behavior and determine the appropriateness of the child's education plan before expelling or excluding the child. **Minn. Stat. § 121A.43**

IDEA prohibits school districts from cutting off services to any child with a disability for disciplinary reasons. This requirement applies to children with disabilities excluded from school for more than ten days. A suspension of fewer than ten days is a removal from the current placement rather than a change of placement. **34 C.F.R. § 300.121(d)**

The district must review the child's IEP after five days of suspension, at the parents' request, or within ten days if the child is cumulatively suspended for ten or more days. *Honig v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988); **Minn. Stat. § 121A.43**

**Firearms or Illegal
Drugs in School;
Alternative
Placements**

A district may unilaterally place a disabled child in an alternative setting for up to 45 days if the child carries a weapon to school or a school function or uses, possesses, sells, or solicits illegal drugs at school or a school function. Also, a court may order a change of placement. **Minn. Stat. §§ 121A.43; 121A.44; 34 C.F.R. § 300.520(a)(2)(b)**

**Children Not Yet
Eligible for Special
Education**

In certain circumstances, children who are in the regular education program and have not been determined to need special education may still be covered by IDEA procedural protections relating to suspensions and expulsions. **34 C.F.R. § 300.527**

Education Records

A district may not limit the frequency with which a disabled child's parent or guardian inspects the child's education records. A district may charge a fee for reproducing the education records

unless the fee impairs the ability of the parent or guardian to inspect or review the records. **Minn. Stat. § 13.32, subd. 10**

Level of Service

IDEA requires only that children benefit from an education, not that they receive the best possible instruction. *E.S. v. Indep. Sch. Dist. No. 196*, 135 F.3d. 566 (8th Cir., 1998).

Related Services

A district must provide children with related services, which encompass supportive services that “may be required to assist a child with a disability to benefit from special education.” Services provided by a physician (other than for diagnostic and evaluation purposes) are subject to the medical services exclusion, but services that can be provided by a nurse or qualified layperson are not. *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66, 119 S. Ct. 992 (1999); *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 104 S. Ct. 3371 (1984). A school district may be obligated to pay for a residential treatment setting as a related service in order to ensure that an emotionally disturbed child receives the educational benefit to which the child is entitled under IDEA. *Wayzata Indep. Sch. Dist. No. 284 v. A.C.* 258 F.3d 769 (8th Cir. 2001).

Sympathomimetic Medications

A parent, after consulting with professional providers, may agree or disagree to provide a child with sympathomimetic drugs (Ritalin or other similar drugs) unless a health or safety emergency applies. **Minn. Stat. § 125A.091, subd. 5(b)**

Transfer of Parental Rights at Age of Majority

By federal law, when a student reaches age 18, the procedural rights for special education transfer to the student. **34 C.F.R. § 300.517**

Participation in Athletics

State Discrimination Law; Opportunity to Use Ice Arenas

All educational institutions must provide equal opportunity for both sexes to participate in athletic programs. Depending upon the grade level, past circumstances, extent of interest, and the particular sport, sports programs may offer single-sex teams in some cases. **Minn. Stat. § 121A.04**. Any school district that operates and maintains an ice arena must offer equal sports opportunities for male and female students to use the ice arena. **Minn. Stat. § 126C.45**

Federal Discrimination Law

Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted interscholastic athletic programs for male and female students, specifies what educational institutions must do in order not to face a cut-off of federal funds. Factors the government will consider in determining whether equal athletic opportunities are available for members of both sexes

include whether: the kinds of sports and levels of competition accommodate the interests and abilities of both sexes; equipment and supplies are provided; game and practice time schedules are comparable; coaching and academic tutoring are available; and locker rooms and other facilities are provided. **Discrimination Based on Sex or Blindness, 20 U.S.C. § 1681.** Third-party school employees, including students' athletic coaches, who report gender discrimination on students' behalf, may have a private right of action under Title IX. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 125 S. Ct. 1497 (2005).

Equal Protection Clause

Female athletes alleging sex discrimination in athletic programs have argued that the Equal Protection Clause of the 14th Amendment to the federal Constitution prohibits rules barring them from male athletic teams or treating female teams differently from male teams. While courts generally agree that the Equal Protection Clause requires permitting females to try out for male teams in contact and noncontact sports, they are unwilling to find a right for females to participate on male teams when there is a separate female team available. See, *Brendan v. Indep. Sch. Dist.* 742, 477 F.2d 1292 (8th Cir. 1973); *Leffel v. Wisconsin Interscholastic Athletic Ass'n.*, 444 F. Supp. 1117 (E.D. Wisc. 1978); *O'Connor v. Bd. of Educ., Dist. #23*, 645 F.2d 578 (7th Cir., 1981), cert. denied, 454 U.S. 1084, 102 S. Ct. 641 (1981).

Right to Participate

The right to participate in extracurricular activities is not a constitutionally protected property interest and is not of equal importance with the right to an education. Without a protected property interest, there are generally no due process requirements in dismissing a student from a team; however, some courts have said that the minimal due process standards in *Goss v. Lopez* must be met. *Palmer v. Merluzzi*, 868 F.2d 90 (3d Cir. 1989). Athletic programs not offered for credit are not included in the statutory protections under the Pupil Fair Dismissal Act. **Minn. Stat. § 121A.56, subd. 2;** *Dorn v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, Case No. C6-87-1186, Minn. 10th Judicial District (March 10, 1988).

Minnesota State High School League (MSHSL) Activities

Any student in grade seven to 12 who wishes to participate in a high school league-sponsored activity must be under 20 years old, attend school regularly, and be fully enrolled in the school according to Minnesota Department of Education criteria. Homeschools need not become MSHSL members to participate in MSHSL events. **MSHSL Bylaws**

A high school athletic association is a public institution because most of its members are from public schools and can be sued for civil rights violations, including violating the free speech rights of school officials and coaches by prohibiting them from contacting prospective student athletes. *Brentwood Academy v. Tennessee Secondary Athletic Ass'n.*, 531 U.S. 288 (2001), cert. denied, 535 U.S. 971, 121 S. Ct. 924 (2002).

Homeschool Students School districts must provide resident homeschool students with an equal opportunity to participate in the extracurricular activities of the district. **Minn. Stat. § 123B.49, subd. 4.** All students participating in extracurricular activities must meet the same eligibility criteria. **MSHSL Bylaws**

Public School Fee Law

Prohibited Fees Public school education is free to all eligible students. School boards may not charge fees for necessary goods and services such as instructional materials and supplies, required library books, required school activities, lockers, graduation caps and gowns, and bus fees to students who live more than two miles from school. A school board may require payment of transportation costs for which state aid is not authorized if guidelines are established to guarantee that no one is denied an education based upon this cost alone. A board may charge fees for books a student loses or destroys. **Minn. Stat. §§ 123B.35; 123B.36; 123B.37.** See *Minnesota's Public School Fee Law*, House Research Department, June 2004.

Authorized Fees School districts may require students to pay for certain school-related costs specified in statute, such as fees for school uniforms, extracurricular activities, security deposits, personal athletic equipment, supplementary field trips, musical instruments, driver education, and personal stationery supplies. School districts must charge the same admission fees for extracurricular activities to public school students and students attending a homeschool with five or fewer students. School districts must hold a public hearing before imposing a fee that is not authorized or prohibited by statute. **Minn. Stat. §§ 123B.36; 123B.38**

The U.S. Supreme Court ruled against a poor family's equal protection challenge to a North Dakota law allowing some school districts to charge a busing fee while providing students in other districts with free transportation. *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 108 S. Ct. 2481 (1988).

Withholding Grades or Diploma A school district may not withhold the grades or diploma of a student who fails to pay student fees. **Minn. Stat. § 123B.37, subd. 2**

Access to Student Records

Limit on Disclosure Schools must obtain written permission from a parent or a student over 18 before disclosing information in education records unless a statutory exception applies. **20 U.S.C. 1232g (b)(1) and (2); Minn. Stat. § 13.32, subd. 3.** See *Federal and State Laws Governing Access to Student Records*, House Research Department, November 2000.

Right to Inspect and Review School districts annually must publish and distribute or post the procedures by which individuals may access a student's records. Parents and students have the right to inspect and review education records within ten working days. Schools are not required to provide copies of materials in education records unless parents or students cannot inspect the records personally. Schools may charge a fee for providing copies of education records and remote access to data. **34 C.F.R. § 99.10(a); Minn. Stat. §§ 13.03; 13.04; 13.32, subd. 1**

Right to Request That a School Correct Records Parents and students have the right to request that a school correct education records they believe to be inaccurate or misleading. If a school refuses to change the records, parents and students have the right to a formal hearing. If the school still refuses to correct the records after the hearing, the parent or student may place written comments about the contested information in the records. **20 U.S.C. 1232g (a)(2)**

Access by Parents to Student Records A minor student may request that a school deny the student's parents access to educational data about the student. If a school official reasonably concludes that disclosing the information to the parent or guardian could lead to physical or emotional harm to the minor, the official may withhold the data. **Minn. Stat. §§ 13.32, subd. 2; 13.02, subd. 8.** Education data include the health services of a school nurse working in a public school setting. If the data concern certain medical, dental, mental, or other health services, the school official may release the data if failing to inform the parent would seriously jeopardize the minor's health. **Minn. Stat. §§ 144.341 to 144.347.** Under state rule, which reflects federal law, school officials must not deny parents access to a student's education records unless the student is a full-time college student or is 18 years old. **Minn. Rules, part 1205.0500, subp. 4**

- Student Transfers** School districts must forward a transfer student's educational records within ten business days to the school district in which the student is enrolling. The district transmitting the records must include any information about the student using or possessing a dangerous weapon. **Minn. Stat. § 120A.22, subd. 7**
- Directory Information** Directory information such as a student's name, address, and telephone number is public information that generally would not be considered harmful or an invasion of privacy if disclosed. Schools must tell parents and students that they have the right to refuse to let the school designate information about the student as directory information. **Minn. Stat. § 13.32, subd. 5**
- Juvenile Justice System** School districts may disclose private educational data to appropriate juvenile justice authorities if: (1) the data concern the ability of the juvenile justice system to effectively serve the student before adjudication and the authorities' written request for the data certifies that the data will not be disclosed without the parent's written consent except as authorized by law; or (2) the information about the behavior of the student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals. The district must keep the request and a record of the release in the student's file. **Minn. Stat. § 13.32, subd. 3(i), (1)**
- Military Recruiters** Secondary schools must release to military recruiting officers the names, addresses, and home telephone numbers of 11th and 12th grade students within 60 days of receiving a request for the information unless parents or students refuse to consent to release the information. **Minn. Stat. § 13.32, subd. 5a**

Law Enforcement and Court Records on Students

- Court Disposition Order** Principals receive the court disposition order on any public or private elementary or secondary school student who is adjudicated delinquent for (1) an act committed on school property, or (2) an act that would be one of a list of specified felonies if committed by an adult.
- The order must be kept in the student's record, may not be released outside the school district other than to another school district to which the student is transferring, and must be destroyed when the juvenile graduates or at the end of the school year after she or he turns 23, whichever is earlier. The school may obtain additional information from the probation officer with parental consent. **Minn. Stat. §§ 121A.75; 260B.171**

Law Enforcement Records

A law enforcement agency may notify the principal or chief administrative officer of a juvenile's school if there is probable cause to believe the juvenile has committed an offense, the victim is a student or staff member of the school, and notice is reasonably necessary to protect the victim. Notice is not given if it would jeopardize an investigation.

Data from this notice must be destroyed when the juvenile graduates or reaches the age of 23, whichever is earlier. In a county where the county attorney operates a diversion program, a law enforcement agency or county attorney may provide information on participants or juveniles being considered as participants, to school officials and to public or private social service agencies participating in the program. **Minn. Stat. § 260B.171**

Rights of Nonpublic School Students

Educational Materials and Student Support Services

School districts must provide all students not attending public schools, including those in homeschools, with textbooks, individualized instructional or cooperative learning materials, and standardized tests. All material must be secular in nature and cannot be used for religious instruction or worship. A district must provide the same health services to students of nonpublic schools as it provides to public school students. Public secondary schools must offer nonpublic secondary students guidance and counseling services. Allotments for nonpublic school costs must not exceed average expenditures for the same public school services. **Minn. Stat. §§ 123B.40 to 123B.48**

Public school teachers may provide Title I instructional services to eligible nonpublic school students on nonpublic school premises when the program contains adequate safeguards to prevent violating the First Amendment ban on establishing a state religion. *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997 (1997). Secular instruction that is part of a publicly funded program must supplement a religious school's regular education services.

A school district may provide an interpreter to a deaf student attending a parochial school without violating First Amendment limits on government support for religion. *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 113 S. Ct. 2462 (1993). The U.S. Supreme Court did not say whether the Individuals with Disabilities Education Act (IDEA) requires public schools to pay for such assistance.

Nonpublic schools may use federal funds for computer equipment and other instructional materials. *Mitchell v. Helms*, 530 U.S. 793, 120 S. Ct. 2530 (2000) (petition for rehearing denied).

**Unilateral Placement
of Children with
Disabilities**

IDEA does not require public schools to pay for special education services at nonpublic schools where parents voluntarily place the student at the nonpublic school and timely appropriate services are available to the student at the public schools. Unilateral placement occurs when a parent places a student in a nonpublic school without the consent of an IEP team. Unilaterally placed nonpublic school students are not individually entitled to publicly funded special education services. **34 C.F.R. § 300.454**. A school district may provide special instruction and services to a unilaterally placed child with disabilities at the nonpublic school building, a public school, or other neutral site. A school district must provide instruction in core curriculum at a public school site. **Minn. Stat. § 126C.19, subd. 4(b)**

**Separate School
District**

Having the state create a separate school district to serve a religious enclave is tantamount to allocating political power on a religious criterion and violates the Establishment Clause of the First Amendment. *Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Louis Grumet*, 512 U.S. 687, 114 S. Ct. 2481 (1994). However, opening a school primarily attended by religious students and granting parents' request to forego using technology in the classroom is permitted where the school is open to all students, the curriculum is the same curriculum used in other schools, the district ordinarily grants parents' requests for an accommodation, and the decision to open the school is based on financial concerns. *Stark v. Indep. Sch. Dist. No. 640*, 123 F.3d 1068 (8th Cir. 1997), cert. denied 523 U.S. 1094, 118 S. Ct. 1560 (1998).

Transportation

School districts are required to provide "equal transportation" for nonpublic school students within the district's boundaries to the same extent they are required to provide transportation for public school students. A district may provide transportation to a nonpublic school located in another district, but the nonpublic school must pay the cost of the transportation. **Minn. Stat. §§ 123B.84; 123B.86**

**Education Tax
Deduction and Credit**

A taxpayer may deduct up to \$1,625 for the costs of tuition, textbooks, transportation, and other education expenses, for each qualifying child in kindergarten to grade six and \$2,500 for each qualifying child in grades seven to 12. The costs of religious books and materials and the expenses of participating in extracurricular activities at nonpublic schools may not be deducted. **Minn. Stat. § 290.01, subd. 19b(3)**

If the family's income is under \$33,500, a taxpayer may claim a credit of \$1,000 per qualifying child and \$2,000 per family for 75 percent of all education expenses allowed under the deduction except nonpublic school tuition. No credit is allowed if a family's income is greater than \$37,500. **Minn. Stat. § 290.0674**

See House Research Department information briefs *Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota*, September 2006, and *Minnesota's Public School Fee Law and Education Tax Credit and Deduction*, January 2003.

Extracurricular Activities

School districts must charge public school students and homeschool students the same admission fees for extracurricular activities. **Minn. Stat. §§ 123B.36, subd. 1(b)(2); 123B.49, subd. 4**

Sexual Harassment

Sexual Harassment in Schools Prohibited

Educational sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that: (1) is a term or condition of receiving education, (2) is used as a factor in decisions affecting a person's education, or (3) has the purpose or effect of substantially interfering with a person's education. Educational sexual harassment can occur when school district employees, independent contractors, visitors to the school, or volunteers sexually harass students or when students sexually harass other students. Sexual harassment is prohibited by state and federal law. **Minn. Stat. §§ 363A.03, subd. 43; 363A.13, subd. 1; Title IX of the Education Amendments of 1972**

Sexual Harassment and Violence Policies

Each school board must adopt a written sexual, religious, and racial harassment and violence policy. Each school must develop a process for discussing the policy with students and school employees. **Minn. Stat. § 121A.03**. With certain exceptions, elementary and secondary schools may not assign students to separate classrooms or activities, or prevent them from enrolling in courses of their choice, on the basis of sex.

Victims' Remedies

Under the U.S. Supreme Court decision in *Franklin v. Gwinnet County Pub. Sch.*, 503 U.S. 60, 112 S. Ct. 1028 (1992), private individuals have the right to file lawsuits under Title IX of the Education Amendments of 1972 claiming they have been victims of sex discrimination in school (sexual harassment is a form of sex discrimination). Courts are allowed to award monetary damages as a remedy.

A student may not recover money damages for teacher-student sexual harassment unless a school district official with authority to institute corrective measures has actual notice of, and is deliberately indifferent to, the teacher's misconduct. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 118, S. Ct. 1989 (1998).

Student-on-Student Harassment

A student may recover money for student-on-student harassment if: (1) school officials are deliberately indifferent to sexual harassment; (2) school officials have actual knowledge of the student-on-student harassment; and (3) the harassment is so severe, pervasive, and objectively offensive that it denies the harassed student access to educational opportunities or benefits provided by the school. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 119 S. Ct. 1661 (1999).

Violence in Schools

Possession of Dangerous Weapons on School Property

It is unlawful for any person to possess, store, keep, use, or brandish a dangerous weapon, a replica firearm, or a BB gun on elementary, middle, or secondary school property or on a school bus while students are being transported. The offense is punishable by either gross misdemeanor or felony penalties depending on the type of weapon and activity involved and whether the person is knowingly on school property. The law exempts certain activities from its scope, such as firearm safety courses and the possession of a weapon with the permission of the school principal. **Minn. Stat. § 609.66, subd. 1d.** See *Schools and Firearms*, House Research Department, November 2003.

Reports of Dangerous Weapon Incidents on School Property

The Commissioner of Education, in consultation with others, must develop a standardized form for schools to report dangerous weapon incidents occurring on school property, the area surrounding school property, and in school buses while students are being transported. The form must include certain specified information about the incident, the offender and victim involved in the incident, the cost of the incident to the school and the victim, and the school's response to the incident. Schools annually must submit an electronic report of dangerous weapon incidents to the commissioner and, in turn, the commissioner must compile and forward the information annually to the legislature and interested government agencies. **Minn. Stat. § 121A.06**

**Use of Force Against
School Officials**

It is a gross misdemeanor to assault and inflict demonstrable bodily harm on a school official while the official is performing official duties. A similar assault against a nonschool official would be a misdemeanor-level offense. "School official" means a teacher, administrator, or other employee of a public or private school. **Minn. Stat. § 609.2231, subd. 5**

**Violence Prevention
Education Programs**

Minnesota law encourages all school districts to integrate a violence prevention program into their existing K-12 curricula. The law also directs the Commissioner of Education to assist school districts, on request, in developing and implementing such programs. A grant program is available to help school districts pay for developing, implementing, and continuing these programs, to the extent funds are available. The amount of the grant award cannot exceed \$3 per actual pupil unit. **Minn. Stat. §§ 120B.22; 120B.23**

**Notice of Violent
Students**

Teachers must be notified and school board and teacher representatives must discuss the need for intervention services and staff training before placing violent students in classrooms. **Minn. Stat. § 121A.64.** A probation officer must notify the school principal if a student/juvenile is adjudicated delinquent for acts committed on school property or acts that would be criminal acts if committed by an adult. **Minn. Stat. § 260B.171, subd. 3**

First Amendment Rights

Freedom of Speech

Students retain their First Amendment right to freedom of speech in school if their speech does not result in "material disruption" of the education process. The test for determining the degree of disruption is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509; 89 S. Ct. 733 (1969).

School officials may discipline students for offensively lewd or indecent speech. The U.S. Supreme Court ruled that a student's speech containing "explicit sexual metaphors" is not protected by the First Amendment. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159 (1986).

School officials have the right to impose reasonable restrictions on student speech in school-sponsored student papers as long as their action is reasonably related to an educational purpose. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988). The U.S. Supreme Court declined to review the application of

Hazelwood to a student council election in which school officials disqualified a student from the election for making “discourteous” and “rude” remarks about the assistant principal during a speech at a school-sponsored assembly. *Poling v. Murphy*, 872 F.2d 757 (6th Cir. 1989), cert. denied, 493 U.S. 1021, 110 S. Ct. 723 (1990). School officials disqualified a student from serving as junior class president after he handed out condoms bearing his election slogan “Adam Henerey, the Safe Choice” on election morning. *Henerey v. City of St. Charles*, 200 F.3d 1128 (8th Cir. 1999).

Federal court of appeals circuits disagree about whether school officials can require students to get permission from the principal before distributing noneducation materials. *Muller v. Jefferson Lighthouse Sch.*, 98 F.3d 1530 (7th Cir. 1996), cert. denied 520 U.S. 1156 (1997) (upheld prior approval requirement); *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988) (policy violates First Amendment).

Student Dress Code

A restrictive dress code abridging students’ free speech rights may be justified if facts reasonably lead school officials to forecast substantial disruption of or material interference with school activities. *Jeglin v. San Jacinto Unified Sch. Dist.*, 827 F. Supp. 1459 (C.D. Cal. 1993). A dress code that is viewpoint-neutral and intended to ensure student safety and school order is within a school’s educational mandate and permissible under the First Amendment. *Long v. Bd. of Educ.*, 121 F.Supp.2d 621 (W.D.Ky. 2000).

Internet Access and Use

To regulate students’ access to and use of the Internet, school districts must show that they have the authority to regulate students’ Internet use and that district actions satisfy constitutional standards for free speech. See *Tinker*, 393 U.S. 503 (1969); *Fraser* 478 U.S. 675 (1986); *Hazelwood*, 484 U.S. 260 (1988). In effecting a student Internet use policy, school officials should consider, among other things, who owns the computer, the content of the message, and whether the message affects the educational process or the school climate.

Public schools that receive federal technology aid must adopt Internet safety policies that include using filters to protect children against obscene, pornographic or harmful material. **Children’s Internet Protection Act (CIPA) P.L. 106-554 (2000)**

Hate Speech

In *Wisconsin v. Mitchell*, 508 U.S. 476, 113 S.Ct. 2194 (1993), the U.S. Supreme Court upheld a state statute prescribing higher penalties for crimes motivated by racial or other bias. Arguably, this ruling provides a legal framework for districts to impose more severe discipline for improper behavior motivated by bias.

Prayer in the Schools

The U.S. Supreme Court declared that a district-sanctioned recitation of a nondenominational prayer at the beginning of each school day violated the First Amendment prohibition against establishment of religion. *Engel v. Vitale*, 370 U.S. 421, 82 S. Ct. 1261 (1962). The Court ruled that a law authorizing a short period for “voluntary or silent prayer” is also unconstitutional, but indicated that allowing a moment of silence probably would not violate the U.S. Constitution. *Wallace v. Jaffree*, 472 U.S. 38, 105 S. Ct. 2479 (1985). The Court held that an invocation and a benediction at public school graduation ceremonies violate the Establishment Clause. *Lee v. Weisman*, 505 U.S. 577, 112 S. Ct. 2649 (1992). Lower courts have permitted a student-led graduation prayer where students decide on the type of graduation speech without faculty participation or review. *Adler v. Duval County School Board* 250 F.3d 1330 (11th Cir. 2001), cert. denied 534 U.S. 1065, 112 S.Ct. 2649 (2001). Student-led, student-initiated prayers at school-sponsored athletic events are prohibited. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 120 S. Ct. 2266 (2000).

A moment of silence may be observed in school. **Minn. Stat. § 121A.10**

Religious Observances

The Eighth Circuit Court of Appeals held that it is not a violation of the First Amendment’s ban on establishing a state religion for a school to observe holidays that have both a religious and a secular basis. The court found permissible those programs containing music, art, literature, and drama having religious themes, and the temporary display of religious symbols associated with religious holidays. *Florey v. Sioux Falls Sch. Dist. 49-5*, 619 F.2d 1311 (8th Cir. 1980), cert. denied, 449 U.S. 987, 101 S. Ct 409 (1980). See *Government Displays of Religious Symbols*, House Research Department, October 2005.

A district must make reasonable efforts to accommodate a student who wishes to be absent from school for a religious observance. **Minn. Stat. § 120A.35**

Release Time

In *Zorach v. Clauson*, 343 U.S. 306, 72 S. Ct. 679 (1952), the U.S. Supreme Court upheld a “release-time” program in which public school students were allowed to leave school for religious purposes. The court found that no religious instruction occurred on school property, no public funds were expended to support the program, and students had parental permission to attend the program.

At a parent’s request, a student may be released from school for up to three hours per week for purposes of receiving religious instruction. **Minn. Stat. § 120A.22, subd. 12, para. (3)**

Science Course Requirements

The U.S. Supreme Court held that a statute forbidding the teaching of evolution unless “creation science” is also taught violated the constitutional ban on state establishment of religion. *Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573 (1987).

Equal Access to School Facilities for Religious and other Purposes

The Equal Access Act forbids secondary schools receiving federal funds from barring student religious groups from meeting at school if the school has a general policy of allowing student meetings. 20 U.S.C. § 4071. The U.S. Supreme Court ruled that a school district that allows “noncurriculum-related” student groups access to school facilities must give access on equal terms to all student groups, regardless of the religious or other content of members’ speech. *Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 110 S.Ct. 2356 (1990); *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 121 S.Ct. 2093 (2001) (district must provide space for after-school Bible club for elementary students). A California federal district court ruled that a school district, with a limited open forum, could not prevent student members of the Gay-Straight Alliance from meeting on school premises after school hours to discuss homophobia and related topics. *Colin v. Orange Unified School District*, 83 F.Supp.2d 1135 (C.D.Cal. 2000).

Exemption from Compulsory Attendance

The U.S. Supreme Court ruled that certain pupils may be exempt from the state compulsory attendance law if they can show that the law imposes an unnecessary burden on the right to free exercise of religion under the First Amendment. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526 (1972).

Fourth Amendment Rights

Search and Seizure

A government official, including a public school employee, who peeks, pokes, or pries into a place or item shielded from public view, including a locker, desk, purse, knapsack, backpack, briefcase, folder, book, or article of clothing, is conducting a search. The U.S. Supreme Court ruled that the Fourth Amendment of the U.S. Constitution protects students against unreasonable searches and seizures, but permits school officials to search students if there are “reasonable grounds” for suspecting that a student has violated the law or school rules. For a search to be constitutional, it must be “justified at its inception” and there must be reasonable grounds for suspecting “the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985); *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

The scope of the search must be “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the material of the infraction.” In adult criminal search and seizure cases, courts use a more stringent standard that requires a warrant based on “probable cause” before a search can be done. *New Jersey v. T.L.O.* To the extent that school officials act like agents of the police, the higher standard of probable cause may apply.

Locker Searches

The *New Jersey v. T.L.O.* decision did not address whether students have a legitimate expectation of privacy in their lockers. Under state law, school lockers belong to the school district, and school authorities may inspect the inside of the lockers. School authorities may search students’ personal possessions in a school locker only if the school authorities have a reasonable suspicion that the search will uncover evidence of a violation of law or school rules. **Minn. Stat. § 121A.72.** Searches of student cars are subject to the same reasonable suspicion standard. *State v. Slattery*, 787 P.2d 932 (Wash. Ct. App.) (1990).

Drug Testing

A drug test is considered a “search” under the Fourth Amendment. In 1988, a federal court upheld a school district’s drug testing program requiring random urinalysis for high school athletes and cheerleaders on the grounds that (1) the right to participate in extracurricular activities was not constitutionally guaranteed, and (2) school officials’ interest in a drug-free athletic program outweighed students’ privacy interest. *Schail v. Tippecanoe County Sch. Corp.*, 864 F.2d 1309 (7th Cir. 1988).

In 1995, the U.S. Supreme Court declared that drug use impairs children for whom the state has a special responsibility, and drug use by student-athletes is dangerous because of the high risk of immediate physical harm to the drug user or those with whom the athlete is playing. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386 (1995). Schools may test students, including cheerleaders, who participate in extracurricular activities in order to prevent, deter, and detect drug use. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559 (2002). A policy requiring all students to submit to urinalysis likely would be ruled unconstitutional.

Scans, Bag Searches, and Electronic Surveillance

School officials’ use of metal detectors constitutes a search and is permissible if the search is justified at its inception and the scope of the search is reasonable. *In re F.B.*, 658 A.2d 1378 (Pa. Super. Ct. 1995), aff’d 726 A.2d 361 (Pa. 1999), cert. denied, 528 U.S. 1060 (1999). Electronic surveillance using a video camera, audio recording, wiretapping, or computer monitoring may constitute a

search. Students' greater expectation of privacy in a locker room or restroom may affect where a school district may place such a device.

School districts may conduct video or audio surveillance on school buses if students are given appropriate notice. **Minn. Stat. § 121A.585**

Fourteenth Amendment Rights

School Desegregation/ Integration

Racial segregation or other race-based discrimination in public schools and other educational institutions denies minority students the "equal protection" of the laws and is prohibited under the 14th Amendment. *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S. Ct. 686 (1954). **Minn. Stat. § 363A.13**

Civil Rights; English Language Learners

Title VI of the 1964 Civil Rights Act bars discrimination based on race, sex, national origin, or disability by educational institutions that receive federal funds for academic, athletic, or extracurricular activities. The U.S. Supreme Court has not yet ruled on whether elementary and secondary schools may impose admissions restrictions to maintain or achieve racial balance.

The civil rights of students who speak limited English may be violated because of a lack of trained teachers or problems in determining students' language abilities. **U.S. Commission on Civil Rights (1/21/98 report)**. School officials should consider whether programs for English language learners are based on a sound educational philosophy, whether there are sufficient resources to ensure programs can be properly implemented, and whether the programs actually enable students to overcome language barriers that impede their educational progress. **Equal Educational Opportunities Act, 20 U.S.C. § 1701, et seq. (1974)**. Title VI of the Civil Rights Act also requires that English language learners be included in school and district assessment programs unless an educational or psychometric reason justifies excluding the students.

As a result of a lawsuit settlement, the Education Testing Service will stop flagging the results of students who receive special accommodations such as more time on certain tests, including the Test of English as a Foreign Language.

Family Relations

With a few exceptions noted in this section and elsewhere in the guidebook, the statutes do not regulate relations between married parents and their children who live together. Statutes exist primarily to deal with needs that arise when a new family is being created—for example, by marriage or adoption—or when a family is changing form—for example, due to events like divorce, death, or a minor’s marriage. For provisions regulating circumstances arising from neglect or abuse of children by family members see **Unlawful Acts against Youths**, [page 77](#) in this part and the **Juvenile Court**, [page 101](#) in Part 2.

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All Families

Child's Residence Parents choose the residence of an unmarried child under age 18. A child who leaves that residence without permission is considered a runaway and can be taken into custody. **Minn. Stat. §§ 260C.007, subd. 28; 260C.175**

Child's Surname Neither parent has a superior right to choose a child's surname, but once a name is chosen the court will be very unwilling to change it if one parent objects. *Application of Saxton*, 309 N.W.2d 298 (Minn. 1981), cert. denied, *Saxton v. Dennis*, 455 U.S. 1034, 102 S. Ct. 1737 (divorced mother not allowed to change children's last name to hyphenation of her name and father's name).

Housing Discrimination Against Families with Children The Human Rights Act prohibits (1) refusal to rent or sell real estate to persons with children, and (2) any unlawful restrictions against children in a real estate sale or rental advertisement. Various exceptions exist for owner-occupied, cooperative, and elderly housing units. **Minn. Stat. §§ 363A.09; 363A.21, subd. 2**

Emancipation of a Minor "Emancipation" means that a minor has the same legal rights and obligations as an 18-year-old adult. It can also be "partial, conditional ... or limited as to time or purpose." *Sonnenberg v. County of Hennepin*, 99 N.W.2d 444, 447-448 (Minn. 1959).

A minor can be emancipated by a legal marriage or by parental consent. *Lundstrom v. Mample* 285 N.W. 83 (Minn. 1939) (marriage); *In re Fiihr* 184 N.W.2d 22 (Minn. 1971) (parental consent or act). For a child age 16 or older who is the subject of a "child in need of protection" petition, the juvenile court may authorize an independent living situation for the child that is the equivalent of emancipation. **Minn. Stat. § 260C.201, subd. 1(a)(5)**

Minnesota Statutes do not provide grounds or a procedure for emancipation, but the statutes reflect an assumption that minors may be emancipated. Examples include the following:

- an emancipated minor may forego immunization because of religious belief (**Minn. Stat. § 121A.15, subd. 3(d)**)
- an emancipated minor is allowed to own a passenger auto or truck (**Minn. Stat. § 168.101, subd. 1**)
- a legally emancipated minor is eligible for General Assistance (**Minn. Stat. § 256D.05, subd. 1(a)(10)**)
- an existing guardianship may be discharged upon a showing that the child is emancipated (**Minn. Stat. § 260C.328**)

Emancipation could be expected to occur (1) by reaching the age of 18, (2) by lawful marriage, or (3) by court order. The statutory references above do not indicate which, if any, of these is assumed to be the basis for emancipation.

Marriage by a Minor

A 16-year-old may marry with parental consent. Anyone may marry at age 18. **Minn. Stat. § 517.02**

Custody Consent Decree

A parent may transfer temporary or permanent legal and physical custody of a child to another person by a consent decree. The parent must pay support. **Minn. Stat. § 257C.07**

De Facto or Third Party Custody

If a child has resided with an individual for at least a year if age three or older, or six months if under age three, and a parent during that time has lacked consistent participation in the child's life, the individual may bring a custody proceeding. **Minn. Stat. §§ 257C.01 to 257C.06**

Visitation

If an unmarried minor lives with (1) a grandparent or great-grandparent for at least 12 months, or (2) an individual other than a foster parent for at least two years, the grandparent, great-grandparent, or other individual may obtain a visitation order if statutory requirements are met. **Minn. Stat. § 257C.08**

Standby or Temporary Custodian

A parent who has legal and physical custody of a minor child may designate another adult as a standby or temporary custodian to care for the child upon the occurrence of a specified triggering event (such as the incapacity or death of the parent) if statutory requirements are met. **Minn. Stat. ch. 257B**

Effect of Certain Convictions

An individual convicted of specified crimes faces a higher standard for gaining legal custody or parenting time with a child. An individual who exercises custody or parenting time with a child and resides with someone convicted of any of those crimes must so notify the child's other parent, the county social services agency, and the court that granted custody or parenting time. **Minn. Stat. §§ 257.026; 518.179**

Divorced Parents

Child Custody

After an annulment, dissolution, or legal separation, the court must order either sole or joint legal and physical custody of minor children. In deciding custody, the court must consider the child's best interests and not prefer one parent over the other on the basis of the parent's sex. There is a presumption that joint legal custody is in the child's best interests. If the child is old enough the judge may ask her or his custody preference. **Minn. Stat. § 518.17**

Changing Child's Residence

The child resides with the parent who has physical custody. If a parent has parenting time rights, the parent with whom the child resides may move the child out of state only with a court order or the other parent's consent. The court must apply a specified best interest test to a request to move a child out of state. The burden of proof is on the parent requesting a move, unless there is a history of domestic abuse. **Minn. Stat. § 518.175, subd. 3**

Parenting Time

In dissolution or legal separation proceedings, on request of either parent, the court must grant parenting time rights in the child's best interests. There is a presumption that a parent gets at least 25 percent of the time with the child. The court may restrict parenting time or deny it entirely if it would endanger or impair the child. A parent's failure to pay support because of inability to do so is not sufficient cause to deny parenting time. If one parent wrongfully denies the other's parenting time rights, various remedies are available. The court may also refer a parenting time dispute to a parenting time expeditor or mediation. **Minn. Stat. §§ 518.175; 518.1751; 518.612; 518.619**

Parenting Plans

Upon the request of both parents or a court's own motion, a parenting plan must be created in lieu of a traditional custody and parenting time order, unless the court finds that the plan is not in the child's best interests. A parenting plan must include (1) a schedule for the time each parent spends with the child; (2) a designation of decision-making responsibilities; and (3) a method to resolve disputes. A plan may also include other issues and matters that the parents agree to regarding the child. **Minn. Stat. § 518.1705**

Other Parental Rights

Notice must be given to both parents of various rights they retain after divorce, especially that they have the right to (1) obtain certain education, health, and religious records of the child, and (2) attend school conferences, unless a court waives the notice to protect the parent's or child's welfare. **Minn. Stat. §§ 120A.22, subd. 1a; 518.17, subd. 3**

Grandparent's Visitation Rights

In all dissolution, separation, custody, annulment, and parentage proceedings, the child's grandparent or great-grandparent may ask the court for reasonable visitation rights to an unmarried minor child. The rights may be granted if they (1) are in the child's best interests and (2) do not interfere with the parent and child relationship. Visitation rights end if the child is adopted by someone other than a stepparent or grandparent. **Minn. Stat. § 257C.08**

Deceased Parents

Appointing a Guardian for an Orphan

The parent of an unmarried minor may appoint a guardian by will, by designating a standby guardian under chapter 257B, or by a signed writing executed like a health care directive under chapter 145C. A minor 14 years or older or an adult interested in the minor's welfare may object to the choice. **Minn. Stat. §§ 524.5-202; 524.5-203**

If parents do not name a guardian by will, the court may put the child under the guardianship of the Commissioner of Human Services, a licensed child-placing agency, or an individual willing and able to take responsibility. **Minn. Stat. § 260C.325, subd. 3**

Guardianship ends when the child dies, is adopted, legally marries, or turns 18. **Minn. Stat. § 524.5-210**

Grandparent's Visitation Rights

If a parent dies while a child is a minor, a grandparent or great-grandparent may obtain a court order for visitation if visitation would not interfere with the parent and child relationship. Rights end if the child marries or is adopted by anyone other than a stepparent or grandparent. **Minn. Stat. § 257C.08**

Unmarried Parents

Child Custody and Visitation

The mother has sole custody until paternity is established, either by the father's legally effective admission or by court action. If paternity is established, the father may petition the court for custody or parenting time. If the child is old enough, the court may ask his or her custody preference. **Minn. Stat. § 257.541**

Establishing Parentage

The child, parent, or welfare agency may bring an action to establish the child's parentage. The parties may be required to have blood or genetic tests. An action to determine the existence of the father and child relationship for a child who has no legally presumed father is not barred until one year after the child reaches the age of majority. **Minn. Stat. § 257.51 to 257.74**

An alternative to legal action: A man is legally presumed to be the biological father of the child if he and the child's mother acknowledge his paternity in a writing signed by both of them and filed with the state registrar of vital statistics. **Minn. Stat. § 257.75**

Adoption

Required Consents

An individual age 14 or older may be adopted only if she or he consents. **Minn. Stat. § 259.24, subd. 3**

If an unmarried parent under age 18 wants to place a child for adoption, he or she must be offered consultation with an attorney, clergy, or physician before consenting to the adoption. The consent of the minor's parents or guardian, if any, also is required. If the minor has no parent or guardian to give consent, the Commissioner of Human Services may do so. **Minn. Stat. § 259.24, subd. 2**

Order of Preference

Child-placing agencies and courts involved in adoption or foster placement proceedings must consider placing a child according to the following order of preference: (1) relatives or (2) an important friend with whom the child has resided or had significant contact. **Minn. Stat. §§ 259.57, subd. 2; 259.77; 260C.212, subd. 2**

Communication or Contact Agreements

At the time of an adoption, the birth parents and adoptive parents may make a legal agreement that while the child is growing up they will share information or have contact. **Minn. Stat. § 259.58**

Adoptee's Access to Original Birth Certificate

An adopted person age 19 or older may request the information on his or her original birth certificate. The Commissioner of Human Services must try to notify each parent identified on the certificate of the request. If the birth parents agree, the information is disclosed.

If the commissioner cannot notify a birth parent and if the parent has not filed a consent to disclosure, the information may be disclosed as follows:

- If the person was adopted before August 1, 1977, he or she may petition a court for disclosure, which will be granted if the court determines that it is more beneficial than nondisclosure.
- If the person was adopted on or after August 1, 1977, the information must be released.

If a parent has filed an unrevoked affidavit of nondisclosure, the information shall not be disclosed until the affidavit is revoked.

If a birth parent dies without revoking a nondisclosure request, the adopted person may petition the court for disclosure. The petition will be granted if the court determines that disclosure would be more beneficial than nondisclosure. **Minn. Stat. § 259.89**

**Adoptee's Access to
Other Information**

Adopted persons age 19 and older may ask an adoption agency to help determine whether a biological parent or adult sibling wants to have contact or share information. The agency also will transmit nonidentifying health information relevant to any genetically related parties to an adoption. A reimbursement fee may be charged for these services. **Minn. Stat. § 259.83**

Adoption Assistance

See "Adoption Assistance Program" on page 58.

Health and Social Services

Minors' access to health care services is dependent upon the parents or guardians, who are expected to act in the best interest of the child. Exceptions are made for older children who are financially independent, who have married or who have borne children themselves, and for certain specific health services. Minors' access to social services is specifically authorized by a number of state laws that require counties to provide day care subsidies for currently eligible children, and child welfare and protective services for children at risk.

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Health Programs and Access to Health Services

Medical Assistance

Medical Assistance (MA), Minnesota's Medicaid program, is a joint federal/state program providing certain health care services to low-income adults and children who meet the eligibility requirements. MA has higher income limits for children, and persons under age 21 do not need to meet MA asset standards.

To qualify for MA, infants up to age two can have family incomes up to 280 percent of the federal poverty guidelines. Children two through 18 years of age are eligible for MA if family income does not exceed 150 percent of the federal poverty guidelines. **Minn. Stat. § 256B.057**

For certain children with disabilities, special eligibility criteria exist. First, under the "TEFRA" (Tax Equity and Fiscal Responsibility Act of 1982) option a child under age 19 who is disabled and who requires the level of care provided in a hospital, nursing facility, or intermediate care facility, is eligible for MA without regard to parental income if it is cost-effective for the child to remain at home. In addition, retroactive to July 1, 1997, children with disabilities who lost eligibility for the Supplemental Security Income (SSI) program due to federal changes in childhood disability criteria are eligible for MA. **Minn. Stat. § 256B.055, subds. 7a, 12**

MinnesotaCare

The MinnesotaCare program provides subsidized health coverage to children and families not eligible for MA if the family income does not exceed plan income limits, set at 275 percent of the federal poverty guidelines, and the family meets other eligibility requirements. Special eligibility requirements and premiums apply to children from families with incomes that do not exceed 150 percent of the federal poverty guidelines. **Minn. Stat. §§ 256L.01 to 256L.18**

State Children's Health Insurance Program

The federal Balanced Budget Act of 1997 established the State Children's Health Insurance Program (SCHIP). SCHIP provides federal funding, at an enhanced matching rate (65 percent for Minnesota), for state initiatives to expand insurance coverage for children. SCHIP dollars are being used to pay for the cost of raising the MA income limit for children under age two from 275 percent to 280 percent of the federal poverty guidelines. SCHIP dollars are also being used to pay for health care services provided to MinnesotaCare enrollees who are parents and relative caretakers with family incomes between 100 percent and 200 percent of the federal poverty guidelines, and for prenatal care and labor and

delivery services provided to pregnant women who are uninsured and ineligible for Medical Assistance with federal funding due to immigration status. **Minn. Stat. § 256B.057, subd. 8; Laws 1998, ch. 407, art. 5, §§ 45 to 46**

The WIC Program

The Women, Infants, and Children (WIC) program, administered by the Department of Health through local public and private nonprofit health or human service agencies, provides supplemental foods, nutrition education, and health assessments and referrals to low-income women, infants, and children up to age five. To be eligible for food and services, a person must have a family income at or below 185 percent of the federal poverty guidelines or receive cash assistance, Food Stamps, or MA; be at nutritional risk; and meet other eligibility requirements. Enrollment in WIC is limited by available funding. **Minn. Stat. §§ 145.891 to 145.897**

Insurance

Minors' rights to private health insurance benefits usually depend upon the purchase of family coverage by a parent or guardian, or in some cases by a grandparent. Family coverage usually insures unmarried children under age 19, unmarried full-time college students under age 25, and handicapped dependent children of any age. Insurers are required to cover adopted children, children placed for adoption, and children who do not reside with the health plan participant on the same basis as they cover other children. Coverage for newborns must be available from the moment of birth. Checkups, immunizations, and certain other preventive services are required to be covered without deductibles, copayments, or coinsurance up to age 6; immunizations are required to be covered on that basis up to age 18. **Minn. Stat. §§ 62A.03; 62A.301; 62L.02, subd. 11; 62A.14; 62A.141; 62A.151; 62A.042; 62C.14, subd. 14; 62A.047; 62A.048; 62A.27; 62A.302**

Fetal Alcohol Syndrome Prevention and Intervention

The Health Department, in cooperation with the other relevant agencies, coordinates several initiatives designed to prevent future alcohol-related birth defects and treat children with fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE). These programs include developing professional training materials, providing grants to community organizations for prevention and intervention activities, and conducting a statewide public information and media campaign. **Minn. Stat. § 145.9266**

Home Visiting Programs

Family Home Visiting is one of the programs funded through local public health grants that the Health Department distributes to community health boards. (The legislature established the local public health grant program in 2003 by consolidating funding from eight existing grants provided to community health boards.) The Family Home Visiting program provides preventive and early intervention services to families with incomes at or below 200 percent of the federal poverty guidelines and to other families with specified risk factors. **Minn. Stat. § 145A.17**

A school district with an early childhood family education program (ECFE) may offer a home visiting program to prevent child abuse and neglect. ECFE programs are funded through state aid and local property taxes. A trained home visitor assesses the family's risk factors and addresses parenting skills, child development, stress management, identification and use of community support, and other parenting issues. An additional tax levy is available for participating districts to provide home visiting services. **Minn. Stat. §§ 124D.13; 124D.135**

Lead Poisoning Prevention

Minnesota's Lead Poisoning Prevention Act addresses a potentially serious health hazard affecting children, caused by exposure to lead from soil, dust, water, or paint. The act does not require testing of children for elevated blood lead levels. Many children, however, are tested voluntarily for lead as part of routine well-child care. The act requires facilities performing blood lead analyses to report findings of high blood lead levels in children to the Department of Health. Using this information, the Health Department operates a lead surveillance system to identify trends and populations at risk and to ensure that services are provided to affected individuals. The act details how to prevent elevated blood lead levels in children, ways to mitigate the health effects on children with elevated blood lead levels, and standards for lead hazard reduction activities. **Minn. Stat. §§ 144.9501 to 144.9509**

Mental Health Services

Under the Children's Mental Health Act, county social service agencies must plan for and coordinate the development and delivery of local children's mental health services. Counties coordinate a variety of mental health services for children under age 18, including education and prevention services, early identification and intervention services, screening, case management and family community support services, emergency services, inpatient and outpatient treatment services, day treatment services, residential treatment services, and therapeutic support of foster care. Counties may apply for state grant funds to help them carry out some of their duties. **Minn. Stat. §§ 245.487 to 245.4887**

Tobacco Use Prevention

The Commissioner of Health administers tobacco use prevention and other public health activities aimed at youth, using general fund dollars. Prior to July 1, 2003, these initiatives were funded out of the Tobacco Use Prevention and Local Public Health Endowment Fund. The principal of this fund was transferred to the general fund on July 1, 2003. **Minn. Stat. § 144.396; Laws 2003, 1st spec. sess., ch. 14, art. 13C, § 3, subd. 2**

Consent for Health Services

Abortion

A minor seeking an abortion in Minnesota must either notify both parents of the intended abortion and wait 48 hours, or seek judicial approval for the procedure. A court may authorize an abortion if it finds either (1) that the pregnant minor is mature and capable of giving informed consent, or (2) that authorizing the abortion without notification would be in her best interests.

An expedited confidential appeal is available to any minor for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. **Minn. Stat. § 144.343**

Note: Subdivision 2 of the above statute, which required a physician to notify both parents of an unemancipated minor at least 48 hours before the minor could receive an abortion and which did not include a judicial bypass provision, was declared unconstitutional by the U.S. Supreme Court on June 25, 1990. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926 (1990). The remainder of the statute now operates as described above. (See *Parental Notification of Abortion*, House Research Department, September 1990.)

Anatomical Gifts

Any person who is at least age 18 or any minor, with the written consent of a parent or legal guardian, may donate or refuse to donate all or any part of his or her body for medical purposes after death. **Minn. Stat. § 525.9211**

Blood Donations

Any person age 17 or older may donate blood in a voluntary noncompensatory blood program without obtaining parental consent. **Minn. Stat. § 145.41**

Emergency Treatment

Medical, dental, mental, and other health services may be provided to a minor without the consent of a parent or legal guardian when, in a professional's judgment, treatment should be given without delay. **Minn. Stat. § 144.344**

Financial Responsibility	A minor who gives legally effective consent for health services is financially responsible for the health services rendered. Minn. Stat. § 144.347
Hepatitis B Vaccination	A minor may give effective consent for a hepatitis B vaccination. Minn. Stat. § 144.3441
Living Apart from Parents and Financially Independent	Any minor (1) who is living apart from his or her parents or legal guardian, with or without consent to do so and regardless of the duration of the separate residence, and (2) who is financially independent, regardless of the source or extent of his or her income, may give effective consent for medical, dental, mental, or other health services for himself or herself. Minn. Stat. § 144.341
Marriage or Giving Birth	Any minor who has been married or has borne a child may give effective consent for personal medical, mental, dental, or other health services, and for services for the minor's child. Minn. Stat. § 144.342
Parental Information and Access to Health Records	A professional may inform a minor's parent or legal guardian of any medical treatment given to or needed by the minor where, in the professional's judgment, failure to inform the parent or guardian would seriously jeopardize the minor's health. For purposes of access to health records of a minor, the term "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian. Except in cases where the minor: has received treatment related to pregnancy, venereal disease, or alcohol or drug abuse; has received emergency treatment or a hepatitis B vaccination; is living apart from his or her parents and is financially independent; or has been married or has given birth, the parent, guardian, or other person may access the minor's health records. Minn. Stat. §§ 144.335; 144.346
Pregnancy, Venereal Disease, Alcohol or Drug Abuse	Any minor may give effective consent for medical, mental, or other health services to determine the presence of or to treat pregnancy, venereal disease, and alcohol and other drug abuse. Minn. Stat. § 144.343, subd. 1
Representation to Persons Rendering Service	If a minor represents that he or she is able to give effective consent for health services but in fact is not able to do so, his or her consent is effective if relied upon in good faith by the person rendering the health service. Minn. Stat. § 144.345

**Voluntary
Institutional
Treatment**

Any person 16 years of age or older may consent to hospitalization for observation or treatment of mental illness, chemical dependency, or mental retardation and may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care. For chemical dependency or mental illness treatment, a 16- or 17-year-old who refuses to consent to admission as a patient may be admitted with the consent of a parent or guardian, provided there is reasonable evidence that the proposed patient is chemically dependent or has a mental illness, and is suitable for treatment. Any person under age 16 may be admitted as a patient with the consent of a parent or guardian, so long as there is some independent review of the placement in accordance with *Parham v. J.R.*, 442 U.S. 584, 99 S. Ct. 2493 (1979). **Minn. Stat. §§ 253B.03, subd. 6(d); 253B.04, subd. 1**

Social Services

**Adoption Assistance
Program**

Using a combination of state and federal monies, the Department of Human Services makes adoption subsidies available to eligible families desiring to adopt a “special needs” child. Prospective adoptive parents of a child with special needs must, if adoption assistance is desired, negotiate an adoption assistance agreement before the adoption is finalized. An adoption assistance agreement may provide the family with monthly financial assistance, assistance with one-time or periodic supplemental maintenance expenses, MA eligibility for the child, or some combination of these. Adoption assistance agreements are reevaluated at least annually and are revised as appropriate. **Minn. Stat. § 259.67; Minn. Rules, parts 9560.0071 to 9560.0102**

**Child Abuse
Prevention Trust
Fund**

Private and public organizations at the local level may develop and offer services and education programs designed to help prevent child abuse before it occurs. Many such offerings are financed through grants obtained from the state Child Abuse Prevention Trust Fund. Money from this source is also used to fund a child abuse hotline for professionals. The trust fund, which is administered by the Department of Human Services, is supported primarily by a surcharge on birth certificate filings. It is also supported by federal, state, and private contributions. The trust fund will eventually have a balance of \$20 million. **Minn. Stat. §§ 256E.20 to 256E.26**

Maltreatment of Minors Act

State law requires certain professionals to report information if they know or have reason to believe a child is being abused or neglected, or has been abused or neglected within the preceding three years. The term “abuse” includes sexual abuse, physical abuse, threatened abuse, and mental injury. Reports are made to local welfare, state agency, or law enforcement personnel. A failure to report is prosecuted by the county attorney.

Local county welfare agencies are required to investigate all reports, unless the report alleges neglect or abuse in a child care, residential, or medical facility licensed by the Department of Health or the Department of Human Services, or in a school. Reports of abuse or neglect in a facility licensed by the Department of Human Services or Department of Health are investigated by those agencies. Reports of abuse or neglect in a school are investigated by the Department of Education.

The act sets out special procedures that local welfare, state, and law enforcement agencies must follow in regard to conducting a family assessment or an investigation to determine if abuse or neglect has occurred. Welfare agencies must also provide protective services where necessary. “Protective services” can range from maintaining the child at home while providing services to the family to removing the child from the home and placing him or her in an out-of-home foster care placement. **Minn. Stat. § 626.556.** See *Overview of the Maltreatment of Minors Act*, House Research Department, September 2006.

Child Care Assistance

Counties provide child care subsidies on a sliding fee scale to eligible low-income families through the Basic Sliding Fee child care program, and to families receiving assistance under the Minnesota Family Investment Program (MFIP) and the transition year child care programs. Participating families may choose any legal child care provider to care for children under the age of 13 (see page 64). The amount of a family’s sliding fee, or copayment, depends upon the family’s total income, the size of the family, and the child care provider’s rate. The minimum required copayment is \$10.00 for families with incomes between 75 percent and 100 percent of the federal poverty level. The copayment amount increases as a family’s income increases. Counties use a variety of federal, state, and county funds to pay for these child care assistance programs. **Minn. Stat. §§ 119B.011 to 119B.16**

Child Welfare

Counties are required to provide child welfare services to assure protection and financial assistance for children confronted with social, physical, or emotional problems requiring assistance.

Counties must make child welfare services available as required by law, by the Commissioner of Human Services, or by the courts. **Minn. Stat. § 393.07.** Child welfare services are primarily funded through county property tax revenues. Counties also receive federal and state funds through the Children and Community Services Act. **Minn. Stat. §§ 256M.01 to 256M.90**

**Children and
Community Services
Act**

The Children and Community Services Act consolidates various state and federal social services grants to counties into a single consolidated grant that counties must use to address the needs of children, adolescents, and adults. It specifies how children and community services grants will be allocated to the counties, and the various duties of the Commissioner of Human Services and the counties with regard to the administration of the consolidated grant. This act replaced the Community Social Services Act and gives counties greater flexibility in administering the children and community services grants. **Minn. Stat. §§ 256M.01 to 256M.90**

**County of Financial
Responsibility**

Under the state's unitary residence and financial responsibility statute for public assistance and social services, the county of financial responsibility for a minor is generally the county in which her or his parents reside. **Minn. Stat. § 256G.02, subd. 4**

**Out-of-Home
Placement Plans,
Reviews, and
Permanency Plans**

Social service agencies must prepare an out-of-home placement plan within 30 days after a child enters an out-of-home placement. Agencies are also required to conduct administrative reviews of out-of-home placements no later than 180 days after initial placement and at least every six months thereafter to monitor and update the out-of-home placement plan. As an alternative to the administrative review, the social service agency may seek court review, where applicable, in order to assure that children have been appropriately placed and that their out-of-home placement plans are being implemented. **Minn. Stat. § 260C.212**

Social service agencies must file pleadings with the juvenile court to establish the basis for the permanent placement determination of a child in an out-of-home placement. The court must conduct a hearing to determine the child's permanent status. Generally, this hearing must occur no later than 12 months after the child has entered the out-of-home placement. For a child under age eight, the hearing must occur no later than six months after the child's placement. **Minn. Stat. § 260C.201, subds. 11, 11a.** (See the Juvenile Court section, beginning on page 101, for a general discussion of the role of the juvenile courts.)

Medical Neglect

State law defines withholding medically indicated treatment from a disabled infant with a life-threatening condition as a form of neglect that must be reported under the Maltreatment of Minors Act. It also specifies what types of treatment are medically indicated, and lists circumstances in which the infant's treatment can be limited. **Minn. Stat. § 260C.007, subd. 6**

If a local welfare agency receives a report of medical neglect, the agency must consult the hospital and parents and, if necessary, obtain a court order for an independent medical examination and to prevent the withholding of the indicated treatment from the infant. **Minn. Stat. § 626.556, subd. 10c**

Public Assistance

A child's eligibility for MFIP and the other major publicly funded assistance programs is generally tied to his or her family's eligibility for the program. However, a child with disabilities who meets certain income and asset criteria may be eligible in his or her own right for MA or MinnesotaCare. (See page 53)

For a full description of the special eligibility requirements and benefits of the major public programs providing assistance to families, see *Minnesota Family Assistance*, House Research Department, June 2006.

Relative Custody Assistance

If a court order establishes the legal and physical custody of a "special needs" child with a relative, the local agency must determine whether the relative is eligible for a monthly cash grant, called a "relative custody assistance payment," to assist the relative in caring for the child. The amount of the relative custody assistance payment varies with the relative's income. If the relative's income is above 300 percent of the federal poverty guidelines, no assistance is paid. The relative custody assistance program is state funded and is not an entitlement. **Minn. Stat. § 257.85**

Social Services Plan for Minor Mother and Child

Counties are required to determine whether, after the birth of her child, a minor mother has a plan to care for herself and her child. If one is needed, the county must work with the minor mother to develop the plan, and the county must provide case management services as needed. **Minn. Stat. § 257.33, subd. 2**

Early Childhood Programs

Early Childhood Family Education

School districts provide early childhood family education (ECFE) programs for children from birth to the start of kindergarten and their families; if funds are insufficient the program should focus on children from birth to age three. ECFE activities are designed to improve parents' skills and the health, development, and learning readiness of children. State aid and local property tax levies fund these programs. If a local school board establishes an ECFE program, all resident families with pre-kindergarten children are eligible to participate. State law requires substantial parental involvement in all ECFE activities. The purpose of the parent involvement and education component is to prevent child abuse and neglect. ECFE funds may not be used for traditional child care, nursery, or preschool programs. Many ECFE programs include a home visiting component for at-risk or isolated families (see page 55). All Minnesota school districts may offer ECFE programs. **Minn. Stat. §§ 124D.13; 124D.135**

Head Start

Head Start is a federally funded program that provides an array of services, including pre-school education, parenting classes, jobs programs, nutrition and health-related services, and other assistance to pre-school children and their families with annual incomes of \$18,000 or less. Federal health and human services regulations require that the families of at least 90 percent of students enrolled in a Head Start program have incomes at or below the federal poverty guidelines (\$19,350 for a family of four in 2005) or receive welfare assistance. Local grantees must reserve 10 percent of program slots for children with disabilities. The program was established in 1964 to help break the cycle of poverty by offering disadvantaged children the social and educational services available to more affluent families and by involving the entire family and the local community in the children's development.

The federal Department of Health and Human Services currently administers \$6.898 billion in funds that flow directly to local grantees (cities, school districts, public and private agencies, community organizations, and individuals) who in 2005 served 907,000 low-income children. In Minnesota, 34 local Head Start grantees serve about 10,332 children with the help of 41,000 parents and volunteers.

The 1998 Head Start amendments mandated that grantees coordinate the Head Start program with other community child care providers and preschool programs to increase the availability of

full-day, full-year child care services. A child in a typical Head Start program attends four half-day center-based programs per week. All Head Start programs must meet federal performance standards, and all center-based programs must meet Minnesota Department of Human Service rules for licensed child care centers. **Minn. Stat. §§ 119A.50 to 119A.53; 45 C.F.R. parts 1301-1311**

Early Childhood Developmental Screening

A school district must provide early childhood developmental screening for children ages three and one-half to four years old. The screening may be done by either the school district, a public or private health organization, or individual health care provider. A public school must receive proof of screening within 30 days of enrolling a child in kindergarten or the child may not continue to attend school. An exception to the screening requirement is made for children whose parents provide the school with a signed statement that screening is precluded by conscientiously held beliefs. A record of the screening must be sent to the parent or guardian of each participating child, and the school district must keep a duplicate copy. All data collected in the screening process are private data. Data on an identifiable child may only be disclosed with parental consent.

The mandatory components of preschool screening include developmental assessments, hearing and vision screening, immunization review and referral, measures of height and weight, assessment of risk factors that could influence learning, a parent interview, and referrals for identified needs. A school board may offer additional components, including nutritional, physical and dental assessments. Mandatory screening components must be consistent with standards established by the Commissioner of Health. Parents must be notified of any condition that requires diagnosis and treatment, and the school district must ensure appropriate follow-up. **Minn. Stat. § 121A.17**

Part C – Infants and Toddlers with Disabilities

Federal funds are used for services for eligible young children with disabilities from birth to age two and their families. A child with a hearing impairment, visual disability, speech impairment, or other disability is eligible for services. An individualized family service plan (IFSP) sets out the necessary interagency services for an eligible child. The interagency early childhood intervention project is an effort of the Minnesota Departments of Education, Health, and Human Services, funded by a federal grant through Part C (formerly known as Part H) of the Individuals with Disabilities Education Act. An initial evaluation and assessment determines a child's eligibility and developmental needs. An individualized service plan is developed to meet the eligible child's needs and

skills. Core intervention services are free to participants. Core services include identification and referral, screening, evaluation, assessment, service coordination, and age-appropriate special instruction and services. **Minn. Stat. §§ 125A.26-125A.48**

A child under age three who is involved in a substantiated case of child abuse or neglect is eligible for referral to early intervention services funded under Part C of IDEA. **P.L. 105-17, IDEA (Part C)**

School Readiness

The School Readiness program is a voluntary program offered by school districts for children ages three and one-half to school enrollment age. Districts may serve children under age three and one-half if it is more effective. Children must undergo a developmental screening before participating in the program. Participation is voluntary and services are free or available for a nominal fee. Priority is given to children who are developmentally disadvantaged or have risk factors that could impede their learning.

The program includes developmental and learning components, health-referral services, nutrition, parental involvement, and outreach. Services may be site- or home-based. State law requires coordination with social service providers and other agencies. This program is funded with state aid; participant fees may be used to supplement the program. **Minn. Stat. §§ 124D.15; 124D.16**

Kindergarten Readiness Assessment

The education commissioner may implement an assessment to determine children's readiness for kindergarten. **Minn. Stat. § 124D.162**

Health and Safety Regulation of Child Care Settings

License Required

To protect the health, safety, and welfare of children in child care settings, the state Human Services Licensing Act prohibits an individual, corporation, or other organization from providing child care services without a state license. The licensing process ensures that child care services meet certain minimum standards. Operating a child care program without a license is a misdemeanor. **Minn. Stat. §§ 245A.03; 245A.04; Minn. Rules, parts 9502.0315 to 9502.0445 (family day care) and 9503.0005 to 9503.0170 (child care centers)**

Permitted Exceptions to Licensure Requirement

The licensing act specifies certain exceptions to the general requirement that child care providers must be licensed. Under these exceptions, some types of child care are considered to be legal nonlicensed care and may be provided without a license. **Minn. Stat. § 245A.03, subd. 2**

Mandated Reporters

All licensed child care providers are mandated reporters under the state's Maltreatment of Minors Act. (See also page 59) **Minn. Stat. § 626.556, subd. 3**

Right of Access

The licensing act requires that the Commissioner of Human Services, or the commissioner's designated representative, be given access to a licensed child care program whenever the program is in operation. Child care centers must also permit parents of enrolled children to visit the center at any time during the center's hours of operation. **Minn. Stat. § 245A.04, subd. 5; Minn. Rules, part 9503.0095**

Motor Vehicles

Minnesota laws stipulate different provisions for operating motor vehicles for people under 18. Special provisions for youth involve operating cars, motorized bicycles and scooters, motorcycles, snowmobiles, and personal watercraft.

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Driver's License Permit

Minnesota has a graduated system of licensing drivers. A minor who is at least 15 years old and is enrolled in a driver's education program can receive an instruction permit once certain conditions have been met, including parental approval and completion of the classroom portion of the program as well as passing a vision test and a test of knowledge of traffic laws. The instruction permit is valid for two years and authorizes the holder to drive when accompanied by a driver's education instructor, parent, guardian, or other licensed driver over the age of 21.

The permit holder is subject to stricter passenger seat belt requirements than licensed drivers and may not use a cellular telephone while the vehicle is motion, except when calling for emergency assistance about a crime or if someone's life is in danger.

If a minor is convicted of a moving violation or of certain violations related to alcohol, his or her permit can be revoked. If a minor has ever been convicted of driving while impaired, violated the open bottle law, refused to take a chemical test for intoxication, or had a crash-related moving violation, he or she won't be issued a permit. **Minn. Stat. §§ 171.05, subds. 2, 2b**

Provisional Driver's License

When the minor is at least 16 years old, has held an instruction permit for at least six months, and has finished a driver's education program, the minor can apply for a provisional license. The application must be approved by a parent or guardian, who must certify that the minor has completed at least 30 hours of supervised driving while holding the permit, including at least ten hours of driving at night. With the provisional license, the minor may drive the same as a holder of a standard license except that: (1) passenger seat belt requirements are somewhat stricter in vehicles driven by provisional licensees; and (2) the minor may not use a telephone while the vehicle is in motion, except when calling for emergency assistance about a crime or if someone's life is in danger.

If the minor has ever been convicted of driving while impaired, violated the open bottle law, refused to take a chemical test for intoxication, or had a crash-related moving violation, he or she won't be issued a provisional license. **Minn. Stat. § 171.055**

When the minor has had the provisional license for 12 months without incurring any moving violations in connection with a crash or more than one violation not related to a crash; has not been convicted of driving while impaired, an open bottle violation, refusal to take a chemical test for intoxication, or a crash-related

moving violation; and when the minor has parental approval and has completed at least ten additional hours of driving under the supervision of a licensed driver over age 21, the minor can receive a standard under-21 driver's license. **Minn. Stat. §§ 171.04, subd. 1; 171.055**

A minor who is at least 15 years old, and otherwise qualified to hold a driver's license, may get a restricted license for farm work or personal or family medical reasons. **Minn. Stat. §§ 171.041; 171.042**

Motorized Bicycle Permits

A youth who is at least 15 years old may obtain a motorized bicycle instruction permit upon completion of a safety course and the written portion of an exam or a motorized bicycle operator's permit upon passage of an exam. **Minn. Stat. § 171.02, subd. 3**

Motorized Foot Scooters

Motorized foot scooters may be operated by minors at least 12 years old who wear a helmet. The operator has roughly the same rights and responsibilities as a bicyclist. The motorized foot scooter may not be operated on the sidewalk, but it can be used on a bicycle lane or path unless (1) the pathway is reserved for nonmotorized use, or (2) operation is restricted by a local government. **Minn. Stat. § 169.225**

Two-Wheeled Vehicle Instruction Permit

A minor over the age of 16 may obtain a two-wheeled vehicle instruction permit if the person holds a driver's license, is taking a two-wheeled vehicle safety course, passes a written test, and pays the permit fee. A permit holder faces some operation restrictions, including not carrying passengers and not driving at night. The permit allows operation of motorcycles as well as motor scooters. **Minn. Stat. § 169.974, subd. 2**

Two-Wheeled Vehicle License Endorsement

To obtain a two-wheeled vehicle endorsement on the driver's license, a person under age 18 must have an instruction permit, pass a written exam, pass a road test, and complete a safety course. The license endorsement allows operation of motorcycles as well as motor scooters. **Minn. Stat. § 169.974, subd. 2**

Mandatory Use of Protective Headgear

Persons under the age of 18 must wear protective headgear while operating or riding a motorcycle or motorized foot scooter on public roadways. Violation of this statute is a petty misdemeanor. **Minn. Stat. § 169.225; 169.974**

Snowmobile Operation

No person under the age of 18 may operate or ride a snowmobile without wearing a helmet. Various other requirements and restrictions concerning a snowmobile qualification indicator, adult accompaniment, and permitted places of operation apply to minors of specified ages. **Minn. Stat. § 84.872**

**Personal Watercraft
Operation**

Minors under age 13 are not permitted to operate personal watercraft, regardless of horsepower, except in an emergency.

Minn. Stat. § 86B.313, subd. 2. A minor who is at least 13 but less than 18 years old may not operate a personal watercraft without an operator's permit unless someone at least 21 years old is on board the craft. If the minor is 13 years old, the minor must also be visually supervised by someone at least 21 years old, in addition to obtaining a permit. **Minn. Stat. § 86B.313, subd. 3.** In order to obtain a permit, a minor must pass an educational course and a test. **Minn. Stat. § 86B.101, subd. 2**

Unlawful Acts by Youths

Minnesota law prohibits young people from performing certain activities that adults are allowed to do and imposes penalties for such conduct. Minnesota law also requires young people to do certain things in order to protect their welfare. The rationale behind these laws is that, due to the harmful nature of the activity and the immature judgment of young people, it is necessary to place stricter controls on youths than adults.

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Purchase and Consumption of Alcoholic Beverages
(Misdemeanor; Gross Misdemeanor)

No person under 21 years of age may purchase alcoholic beverages or possess or consume alcoholic beverages at a place other than his or her parent's home. This prohibition does not apply if the underage person's activity is undertaken for training, education, or research purposes and is supervised by a responsible person who is over the age of 21. Increased penalties apply to underage purchasers who misrepresent that their age is 21 or older if they have been convicted previously of such an offense. For purposes of these provisions, a person is not 21 years of age until 8:00 a.m. on the day of the person's 21st birthday. **Minn. Stat. §§ 340A.503; 340A.702; 340A.703**

Driving after Consuming Alcoholic Beverages
(Misdemeanor; driver's license suspension)

No person under 21 years of age may drive or operate a motor vehicle while consuming or after having consumed alcoholic beverages while there is physical evidence of the consumption in the person's body. In addition to criminal penalties, an underage person may lose his or her driver's license for between 30 and 180 days. **Minn. Stat. § 169A.33**

Use or Purchase of Tobacco or Tobacco-related Devices
(Petty Misdemeanor; Misdemeanor)

No minor may possess, use, purchase, or attempt to purchase tobacco or tobacco-related devices such as cigarette papers or pipes. Repeat violations are subject to increased penalties. A violation of this prohibition is punishable by a number of juvenile court dispositions, including probation, fine, and loss of driver's license or driving privileges. **Minn. Stat. §§ 609.685; 260B.235; 171.171**

Possession of a Pistol or Assault Weapon
(Felony)

No minor may possess a pistol or semiautomatic military-style assault weapon unless the minor (1) is in the actual presence or under the direct supervision of a parent or guardian; (2) is possessing it for military drill purposes; (3) is using it in an approved and supervised target practice range; or (4) has completed a state-approved marksmanship and safety course. **Minn. Stat. § 624.713**

Possession of a Firearm
(Misdemeanor)

No child under 16 years of age may possess a firearm unless he or she is (1) accompanied by a parent or guardian; (2) on the parent or guardian's residential property; (3) participating in an organized target shooting or firearms safety program; or (4) is 14 or 15 and has obtained a firearms safety certificate from the Department of Natural Resources. **Minn. Stat. § 97B.021**

Possession of an Assault Weapon in a Public Place
(Felony)

A person under the age of 21 who illegally carries a semiautomatic military-style assault weapon in a public place is subject to increased criminal penalties. **Minn. Stat. § 624.7181**

**Possession or Use of
Tear Gas**

(Misdemeanor)

No person under the age of 16 may use or possess tear gas except by written permission of a parent or guardian. **Minn. Stat. § 624.731**

**Possession or Use of
Electronic
Incapacitation Device**

(Gross Misdemeanor)

No person under the age of 18 may use or possess an electronic incapacitation device (“stun gun”). **Minn. Stat. § 624.731**

Curfew Ordinances

Although there are no statewide curfew restrictions for minors, state law authorizes local governments to enact local curfew ordinances and specifically authorizes county boards to adopt countywide curfews applicable to all unmarried minors. Any countywide curfew ordinance adopted in the seven-county metropolitan area must contain an earlier curfew for children under age 12 than for older children. **Minn. Stat. § 145A.05, subd. 7a**

Gambling

*(Misdemeanor; Petty
Misdemeanor)*

A person under age 18 may not: (1) buy a lottery ticket; (2) make a bet or cash a winning ticket at a racetrack; or (3) participate in lawful gambling (except for certain bingo games). Violation of the lawful gambling and pari-mutuel betting prohibitions is a misdemeanor. Violation of the lottery ticket prohibition is a petty misdemeanor. **Minn. Stat. §§ 240.25, subd. 8; 240.26; 349A.12; 349.2127, subd. 8**

Violent Video Games

(Civil penalty)

A person under age 17 may not knowingly rent or purchase a restricted video game. A restricted video game means a game rated AO (adults only) or M (mature). Violation of this provision results in a civil penalty of \$25. **Minn. Stat. § 325L.07**

Note: On July 31, 2006, the federal district court prohibited the implementation and enforcement of this statute based on its finding that the statute violates the First and Fourteenth amendments of the Constitution. *Entm’t Software Ass’n v. Hatch*, No. 06-CV-2268 (D. Minn. July 31, 2006).

**Driving While Talking
on Cell Phone**

(Petty Misdemeanor)

A person under the age of 18 who has an instruction permit or provisional license may not drive a vehicle while talking on a cellular or wireless telephone. **Minn. Stat. §§ 171.05; 171.055**

Unlawful Acts Against Youths

There are a number of Minnesota laws that make it a crime or a petty misdemeanor to commit certain acts with or upon children. These criminal laws are designed to protect young people in a variety of situations where, due to youth and immaturity, children are considered particularly vulnerable to physical or emotional harm.

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Pornography Laws

Child Pornography
(*Felony*)

It is a crime to employ, use, or permit a minor to pose or model for a sexual performance, or to disseminate or distribute for profit pictures or works depicting minors in a sexual performance. **Minn. Stat. § 617.246**

(*Felony*)

It is a crime to disseminate or possess photographic representations of sexual conduct involving a minor. **Minn. Stat. § 617.247**

**Dissemination of
Pornographic Works
to Minors**
(*Gross Misdemeanor*)

No person may knowingly sell or rent to a minor pornographic pictures or films containing material harmful to minors or show or admit minors, whether or not for monetary consideration, to see such films or other presentations in a place of public accommodation.

(*Misdemeanor*)

The display of pornographic materials containing material harmful to minors is forbidden unless minors are physically segregated from the display or an opaque cover blocks from view those materials that may be harmful to minors. **Minn. Stat. §§ 617.293 to 617.294**

Sexual Abuse Laws

**Criminal Sexual
Conduct**
(*Felony*)

It is a crime for any person who is more than 36 months older than the victim to engage in sexual conduct with a minor who is under 13 years of age. It is also a crime to engage in sexual contact with: a minor between the ages of 13 and 18 who is a certain number of years younger than the actor and/or under the actor's authority and control; or a minor who is under 18 and with whom the actor has a "significant relationship" as defined by law.

It is a crime for an adult to engage in sexual conduct with a minor when that person has a significant relationship to the minor, or is the minor's guardian. "Significant relationship" includes relationships by blood, marriage, and adoption but excludes relationships more distant than first cousins. **Minn. Stat. §§ 609.341 to 609.345**

(*Gross Misdemeanor;*
Felony)

It is a gross misdemeanor for a person to (1) engage in nonconsensual sexual contact with a minor; or (2) knowingly engage in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16. Repeated violations of the conduct described in clause (2) are subject to felony penalties. **Minn. Stat. § 609.3451.** See also *Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws*, House Research Department, September 2003.

Interference with Privacy (<i>Gross Misdemeanor</i>)	A person who surreptitiously interferes with the privacy of a minor under the age of 18 (i.e., commits a “peeping tom” offense) is subject to increased penalties. Minn. Stat. § 609.746
Indecent Exposure (<i>Gross Misdemeanor</i>)	It is a gross misdemeanor for a person to willfully and lewdly expose his or her body, to procure another to expose private parts, or to engage in any other open or gross lewdness or lascivious behavior, in the presence of a minor under the age of 16. Minn. Stat. § 617.23
Prostitution (<i>Felony; Gross Misdemeanor</i>)	It is a crime for any person to solicit, induce, promote, or receive profit from the practice of prostitution by a minor. It is also a crime to engage in prostitution or hire an individual to engage in prostitution with a minor, with the penalty varying depending on the age of the minor. It is also a gross misdemeanor for a nonrelative to permit a minor to reside with him or her without parental consent when the nonrelative knows or has reason to know that the minor is engaging in prostitution. Minn. Stat. §§ 609.321 to 609.324
Prostitution Crimes Committed in School and Park Zones (<i>Felony; Gross Misdemeanor</i>)	A person who commits certain prostitution offenses on or near a public park or school property (excluding postsecondary schools) or at a school bus stop while students are waiting for the bus is subject to increased penalties. Minn. Stat. § 609.3242
Sexual Solicitation (<i>Felony</i>)	It is a crime for an adult to solicit (i.e., command, entreat, or attempt to persuade by telephone, letter, or computerized or other electronic means) a child under the age of 16 or reasonably believed to be under age 16 to engage in sexual conduct. Mistake as to age is not a defense to this crime. Minn. Stat. § 609.352
Human Trafficking (<i>Felony</i>)	A person who knowingly engages in a trafficking crime involving an individual who is under 18 is subject to increased penalties. Minn. Stat. §§ 609.282; 609.283; 609.321, subd. 7a

Physical and Emotional Abuse Laws

Death Caused by Child Abuse (<i>Felony; Life Imprisonment</i>)	A person who causes the death of a child while committing or attempting to commit child abuse is guilty of first-degree murder if (1) there is a past pattern of child abuse, and (2) death occurs under circumstances manifesting an extreme indifference to human life. Minn. Stat. § 609.185 (5)
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**Death Caused by
Malicious Punishment
of a Child**
(*Felony*)

A person who causes the death of a child while committing or attempting to commit malicious punishment of a child is guilty of first-degree manslaughter. **Minn. Stat. § 609.20 (5)**

**Death Caused by
Neglect or
Endangerment of a
Child**
(*Felony*)

A person who causes the death of a child while committing or attempting to commit neglect or endangerment of a child is guilty of second-degree manslaughter. **Minn. Stat. § 609.205 (5)**

Malicious Punishment
(*Gross Misdemeanor*)

No parent, guardian, or caretaker may, through an intentional act or series of acts against a minor, use unreasonable force or cruel discipline against the minor.

(*Felony*)

The offense becomes a felony if substantial or great bodily harm results from the person's actions or if the offender has been convicted of this crime previously within the past five years. **Minn. Stat. § 609.377**

**Assault; Past Pattern
of Abuse**
(*Felony*)

A person who assaults a minor and causes any amount of bodily harm is guilty of a felony if the person has engaged in a past pattern of child abuse against that minor. **Minn. Stat. § 609.223, subd. 2**

**Assault or Malicious
Punishment of Child
under the Age of Four**
(*Felony*)

A person who commits an assault or malicious punishment crime against a child under the age of four is guilty of a felony if the act causes any physical harm to the child's head, eyes, or neck, or causes multiple bruises to any other part of the child's body. **Minn. Stat. §§ 609.223, subd. 3; 609.377**

**Neglect or
Endangerment**
(*Gross Misdemeanor;*
Felony)

A parent, guardian, or caretaker may not (1) willfully deprive a minor child of necessary food, clothing, shelter, or health care when reasonably able to provide these necessities, if the deprivation substantially harms or is likely to substantially harm the child's physical, mental, or emotional health; (2) knowingly permit the continuing physical or sexual abuse of the child; (3) endanger a child's health by intentionally causing or permitting the child to be placed in a dangerous situation or to be present where illegal drugs are possessed, sold, or manufactured; or (4) endanger a child under the age of 14 by intentionally or recklessly allowing the child to have access to a loaded firearm. The acts are punishable as gross misdemeanors; however, if the neglect or endangerment results in substantial harm to the child, the act is punishable as a felony. **Minn. Stat. § 609.378**

**Newborns Left at
Hospitals; Immunity**

A mother may not be prosecuted for leaving an unharmed newborn (less than three days old) with an employee at a hospital. A person who is not the mother may leave the newborn with the mother's permission. **Minn. Stat. § 609.3785**

**Nonsupport
(Misdemeanor)**

No person legally obligated to provide for the support of a child may knowingly fail to do so without lawful excuse. **Minn. Stat. § 609.375, subd. 1**

(Gross Misdemeanor)

The offense becomes a gross misdemeanor if (1) the nonsupport continues for more than 90 days or (2) the arrears amount to more than six times the monthly obligation. **Minn. Stat. § 609.375, subd. 2**

(Felony)

The offense becomes a felony if (1) the nonsupport continues for more than 180 days or (2) the arrears amount to more than nine times the monthly obligation. **Minn. Stat. § 609.375, subd. 2a**

Contempt proceedings must precede prosecution for nonpayment of child support. Procedures for discharge and dismissal may apply to persons who execute a written payment agreement and comply with it. **Minn. Stat. § 609.375, subd. 2b**

**False Imprisonment
(Felony)**

No person who knowingly lacks legal authority may intentionally confine or restrain someone else's minor child without the consent of the minor's parent or legal custodian. **Minn. Stat. § 609.255, subd. 2**

(Gross Misdemeanor)

No parent, guardian, or caretaker may subject a minor to unreasonable physical confinement or restraint, if done in a cruel manner and if excessive under the circumstances. **Minn. Stat. § 609.255, subd. 3**

(Felony)

If substantial bodily harm results from the unreasonable confinement or restraint, the offense becomes a felony. **Minn. Stat. § 609.255, subd. 3**

**Kidnapping
(Felony)**

No child under 16 years of age may be confined or taken from one place to another without the consent of the child's parents or legal custodial guardian. Unlike the situation with adult kidnapping victims, consent of the child victim to the kidnapping is not a defense. **Minn. Stat. § 609.25**

Deprivation of Parental or Custodial Rights

(Gross Misdemeanor; Felony)

No person may conceal a minor child for the purpose of depriving a parent or other custodian of his or her parental, custodial, or parenting time rights to the child, nor may a person abduct a minor child for the purpose of depriving a parent of his or her parental rights, unless a person reasonably believes the action is necessary to prevent physical or sexual assault or substantial emotional harm. Additionally, no person who is at least 18 years old and more than two years older than a minor child may refuse to return the child to a parent or lawful custodian, and no adult may contribute to the child's truancy or running away, or reside with a child under the age of 16 without parental consent. **Minn. Stat. § 609.26**

Safety Laws

DWI; Child Endangerment

(Gross Misdemeanor)

A person who violates "driving while intoxicated" laws is subject to increased criminal and administrative penalties if the person commits the offense with a child in the vehicle who is under the age of 16 and is more than three years younger than the driver. **Minn. Stat. §§ 169A.03, subd. 3; 169A.25; 169A.26; 169A.60; 169A.63**

Unused Refrigerator or Container

(Misdemeanor)

It is unlawful to allow an unused refrigerator or other container to be exposed and accessible to children, if it is large enough to contain a child and has doors that fasten automatically when closed. **Minn. Stat. § 609.675**

Alcoholic Beverage Sales

(Gross Misdemeanor or Felony)

No one may sell or give alcoholic beverages to a person under 21 years of age. The penalty for this crime increases to a felony if alcohol is furnished to an underage purchaser, and the purchaser becomes intoxicated and suffers or causes great bodily harm or death. **Minn. Stat. §§ 340A.503; 340A.701; 340A.702**

Tobacco Sales

(Misdemeanor or Gross Misdemeanor; Civil Penalty)

It is unlawful to sell or furnish tobacco or tobacco-related devices, such as cigarette papers or pipes, to a minor. A violation of this prohibition is punishable by both criminal and civil penalties. Repeat violations are subject to increased penalties. The civil penalties may be assessed against the retailer employing the individual as well as the individual making the unlawful sale. **Minn. Stat. §§ 609.685; 461.12**

Tear Gas Sales

(Misdemeanor)

No one may knowingly sell or furnish tear gas to a child under 16 years of age without the written permission of the child's parent or guardian. **Minn. Stat. § 624.731**

Firearms Sales
(*Felony or
Misdemeanor*)

No one within any municipality may furnish a minor with a firearm, air gun, ammunition, or explosive without prior consent of the minor's parent or the municipality's police department. Outside municipalities, no one may furnish such items to a minor under 14 years of age without parental consent nor may a parent or guardian permit such a minor to handle or use a firearm outside the parent or guardian's presence. **Minn. Stat. § 609.66**

Ammunition Displays
(*Petty Misdemeanor*)

It is unlawful to display centerfire handgun ammunition for sale to the public in a manner that makes the ammunition accessible to minors unless the ammunition is in an enclosed display case, under observation by store employees, or otherwise inaccessible to minors. **Minn. Stat. § 609.663**

Negligent Storage of a Firearm
(*Gross Misdemeanor*)

No person may negligently store or leave a loaded firearm in a location where the person knows or reasonably should know a child under the age of 18 is likely to gain access, unless reasonable action is taken to secure the firearm against access by the child. **Minn. Stat. § 609.666**

Electronic Incapacitation Device Sales
(*Misdemeanor*)

No one may knowingly sell or furnish an electronic incapacitation device ("stun gun") to a child under 18 years of age. **Minn. Stat. § 624.731**

Child Restraint Seats
(*Petty Misdemeanor*)

When transporting a child under four years of age in a motor vehicle, the vehicle operator must install and use a federally approved child restraint seat. **Minn. Stat. § 169.685**

Seat Belt Use
(*Fine*)

A driver of a passenger or commercial motor vehicle must ensure that children older than three but younger than 11 years old wear seat belts while riding in the vehicle. **Minn. Stat. § 169.686**

Controlled Substance ("Drug") Laws

Drug Sale or Distribution to or by Means of a Minor
(*Felony*)

A person who unlawfully sells or distributes controlled substances to a minor or uses a minor to unlawfully sell, import, or distribute controlled substances, is subject to increased criminal penalties. **Minn. Stat. §§ 152.022 to 152.024; 152.0261**

Drug Crimes Committed in School Zones
(*Felony*)

A person who commits certain controlled substance crimes on or near school property (excluding postsecondary schools) or on a school bus while it is transporting students is subject to increased criminal penalties. **Minn. Stat. §§ 152.022 to 152.023**

Drug Paraphernalia Sales
(*Gross Misdemeanor*)

An adult may not knowingly deliver drug paraphernalia to a minor who is at least three years his or her junior. **Minn. Stat. § 152.094**

Miscellaneous Criminal Laws

Junk or Secondhand Dealers
(*Misdemeanor*)

No junk dealer or secondhand dealer is allowed to purchase property from a minor without the written consent of the minor's parent or guardian. **Minn. Stat. § 609.815**

Pawnbrokers
(*Misdemeanor*)

No pawnbroker is allowed to accept a pledge or purchase property from a person under the age of 18. **Minn. Stat. § 325J.08**

Abduction for Marriage
(*Gross Misdemeanor*)

No person may take a minor for the purpose of marriage without the consent of the minor's parents or legal custodian. **Minn. Stat. § 609.265**

Solicitation of Juveniles to Commit Crime
(*Misdemeanor; Gross Misdemeanor; or Felony*)

It is a crime for any adult to solicit or conspire with a minor to commit a criminal or delinquent act. The penalty for this crime varies depending on the severity of the solicited criminal act. **Minn. Stat. § 609.494**

Contributing to Delinquency
(*Civil Sanctions; Gross Misdemeanor*)

No person may encourage, cause, or contribute (1) to the need for protective services or delinquency of a minor; or (2) to the minor's status as a petty offender. **Minn. Stat. §§ 260B.335; 260B.425; 260C.425**

Gambling
(*Misdemeanor*)

It is illegal for racetracks, lottery ticket retailers, and organizations that conduct lawful gambling to allow persons under age 18 to gamble. It is also illegal for anyone to give a lottery ticket to a person under age 18. **Minn. Stat. §§ 240.13, subd. 8; 349.2127, subd. 8**

There is no prohibition in state law against persons under age 18 entering casinos or gambling in them. However, tribal-state compacts prohibit Indian casinos from allowing a person under age 18 to play blackjack or video gambling machines. A casino that allows a person under age 18 to gamble is not violating state law but may be subject to federal court action for violating the compact.

Providing a Tattoo to a Minor
(*Misdemeanor*)

No person may provide a tattoo to a minor unless the person receives written parental consent from both custodial and noncustodial parents. **Minn. Stat. § 609.2246**

Miscellaneous Age Provisions

This section describes rights granted on the basis of age, in addition to those covered in other sections of the guidebook.

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**Access to Government
Records**

A minor and his or her parent or guardian may examine private or public government data on the minor, with certain exceptions:

- Parental financial data filed with a school are not available to a minor. **Minn. Stat. § 13.32, subd. 4**
- At the minor's request, data will be withheld from a parent or guardian if the government agency determines that withholding is in the minor's best interest. **Minn. Stat. § 13.02, subd. 8**
- Copies of child abuse victim videotape interviews can only be obtained by court order. **Minn. Stat. §§ 13.821; 611A.90**

**Fishing and Hunting
Licenses**

Residents under age 16 may fish without a license. **Minn. Stat. § 97A.451, subd. 2**

Residents under age 16 may hunt small game under certain conditions, even though they cannot receive small game licenses. If they are under age 13, they must be accompanied by a parent or guardian. If they are 13 years old, they must be accompanied by a parent or guardian and have a firearms safety certificate. If they are age 14 or 15, they must have a firearms safety certificate. Residents under age 16 may also trap small game under certain conditions without a small game license. Residents between 13 and 15 years old must have a trapping license to do so, but residents younger than that do not need a license. **Minn. Stat. § 97A.451, subd. 3**

Residents under age 16 can hunt big game with a firearms safety certificate and after purchasing a big game license. Residents under age 14 must be accompanied by a parent or guardian to hunt big game. **Minn. Stat. § 97A.451, subd. 4**

Office Holding

An individual must be 21 years old in order to hold state or local office. **Minn. Const., Art. VII, Sec. 6**

Voting

An individual may vote at age 18. **Minn. Const., Art. VII, Sec. 1; U.S. Const. Amend. XXVI**

Part 2: The Courts

Minnesota law makes distinctions between adults and minors not only with regard to substantive rights and responsibilities, as described in Part 1, but also with respect to the type of court procedures under which these rights and responsibilities are judicially decided. Part 2 explains these court procedures in three sections.

Civil Adult Court describes procedures applicable to minors who are parties or witnesses to civil lawsuits in adult court.

Criminal Adult Court describes procedures applicable to minors who are involved in criminal cases in adult court as witnesses or parties. It also explains certain procedural protections pertaining to the care and custody of minors found to have committed criminal acts.

Juvenile Court describes the purposes and procedures of the juvenile court, which hears most cases involving unlawful acts committed by minors and cases involving children in need of protection or services from the state.

Civil Adult Court

This section describes the rights and restrictions affecting minors as parties or witnesses in civil lawsuits in adult court.

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Parental Liability for Children's Torts and Contracts

The parent or guardian of a minor who willfully or maliciously causes personal injury or property damage is jointly and severally liable for up to \$1,000 in damage, or up to \$5,000 in a civil action for conduct that would be a bias crime. **Minn. Stat. §§ 540.18; 611A.79, subd. 4; 617.90**

The general rule is that minors are not bound by contracts that they enter. *Kelly, Jr. v. Furlong*, 261 N.W. 460 (1935). Accordingly, unless a minor's parent cosigned the contract, a court generally cannot compel a parent to fulfill a minor's contractual obligations. A court may impose contractual liability on a parent if the child is not emancipated and the contract is for a "necessity" (e.g., food, clothing, shelter).

Parents' Liability to Children

Children may sue their parents for torts. Parents are judged by a "reasonable parent" standard in determining whether they are negligent. *Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980).

Injury to Minors

A parent may bring suit to recover for injury done to a minor child. **Minn. Stat. § 540.08**

Statute of Limitations

The statute of limitations does not run while a person is a minor. A statute of limitation does not begin to run on a minor's legal right of action until he or she is 18 unless parents file suit before then, with one exception. The suspension of the statute of limitation ceases in a medical malpractice case either seven years after the action arises or one year after the plaintiff turns 18. **Minn. Stat. § 541.15**

Minors as Witnesses

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. **Minn. Stat. § 595.02, subd. 1(m)**

Criminal Adult Court

This section describes procedures applicable to minors who are parties or witnesses in criminal cases in adult court, or who are confined in a correctional facility.

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**Criminal
Responsibility**

Children under the age of 14 are considered legally incapable of committing crimes.

Children between the ages of 14 and 18 accused of criminal acts may be certified for adult criminal prosecution or designated as extended jurisdiction juveniles in the manner provided in the juvenile code and under the rules of juvenile procedure.

If a child 16 years old or older is certified to adult court and is convicted of a felony offense, he or she may be charged and tried in adult court for any subsequent felony without going through the juvenile court's certification process.

A child who is alleged to have committed first-degree murder after becoming 16 years old may be charged and convicted in adult court without going through the juvenile court's certification process, and without regard to the child's previous criminal or juvenile court record. **Minn. Stat. § 609.055**

**Admissibility of a
Child's Hearsay
Statements in Child
Abuse Cases**

Hearsay statements made by a child sex or physical abuse victim under ten years of age may be admitted into evidence in abuse cases if (1) the statement is shown to be reliable, and (2) the child either testifies in person or is unavailable as a witness and there is corroboration of the abuse. **Minn. Stat. § 595.02, subd. 3**

**Testimony by Closed
Circuit TV or
Videotape**

A child under 12 years old who is a victim of physical or sexual abuse or another violent crime or who is a witness to the physical or sexual abuse of another may be allowed to give testimony over closed-circuit TV or on videotape, if the court decides that use of these devices is necessary to allow the child to testify without undue psychological trauma. **Minn. Stat. § 595.02, subd. 4**

Minors as Witnesses

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. **Minn. Stat. § 595.02, subd. 1(m)**

**Child Sex Abuse
Victim**

No data in records or reports relating to criminal child sex abuse petitions, complaints, or indictments that specifically identify the child are accessible to the public, except by court order. Furthermore, when a child abuse victim is interviewed by the government, a record must be made of the time, place, duration, identity of persons present, and substance of the interview. **Minn. Stat. §§ 609.3471; 626.561**

**Exclusion of Public
from Trials Involving
Children**

The public may be barred from the courtroom by the judge during all or part of a child sex abuse trial if necessary to ensure fairness or protect the child. **Minn. Stat. § 631.045**

**Exclusion of Children
from Criminal and
Scandalous Trials**

No person under age 17 may be present at a criminal prosecution unless involved or directly interested in the case. **Minn. Stat. § 631.04**

The court is permitted to exclude minors whose presence is not necessary, if a trial involves obscene or scandalous matters. **Minn. Stat. § 546.37**

**Care and Custody of
Juvenile Offenders**

A minor may not be detained or confined in the same area as adult prisoners while in jail or lockup unless the minor has been indicted for first-degree murder, certified for trial as an adult, or convicted of a crime as an adult. **Minn. Stat. § 641.14**

The Commissioner of Corrections is prohibited from placing in a penal institution any juvenile referred by the juvenile court. **Minn. Stat. § 242.14**

It is a misdemeanor for any person to abduct, conceal, or improperly interfere with any inmate in a juvenile correctional facility. **Minn. Stat. § 242.47**

**Expungement of
Certain Criminal
Records**

A juvenile who has been certified to stand trial as an adult in criminal court and who is convicted of a crime may petition for the expungement of the criminal record if the juvenile has been discharged from the custody of the Department of Corrections or has successfully served the conditions of probation ordered by the court. If expungement is approved by a court, the juvenile's criminal record is sealed and cannot be reopened except under limited circumstances. **Minn. Stat. §§ 609A.02, subd. 2; 609A.03**

**Access to Juvenile
Delinquency Records**

A juvenile and his or her parents have access to the juvenile's records. Some juvenile records are also public. Others are not public but by statute the records are available for specified purposes to various entities including schools, law enforcement, and entities doing background checks pursuant to statute. **Minn. Stat §§ 13.82, subd. 2; 13.84; 260B.171; 260B.198; 299C.095; 299C.105; 299C.13;** see also *Access to Government Data Maintained on Juvenile Offenders*, House Research Department, September 2004.

Juvenile Court

This section provides a general overview of the juvenile justice system in Minnesota. First, the purpose and jurisdiction of the juvenile court are described with an explanation of key terms and concepts necessary for understanding the function of the court. Next, the juvenile court process is explained: first, for delinquency and other offenses; second, for cases involving a child in need of protection or services (CHIPS).

Most of the statutory provisions discussed in this section are located in Minnesota Statutes, chapters 260, 260B, and 260C. Several other provisions are found in the Minnesota Rules of Juvenile Delinquency Procedure and Rules of Juvenile Protection Procedure as of August 1, 2006.

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Purpose and Jurisdiction of Juvenile Court

The juvenile court in Minnesota is authorized to hear and decide two main categories of cases:

- those involving juveniles who commit unlawful acts
- those involving children who, for a variety of reasons, are in need of protection or services by or from the juvenile court (CHIPS)

The juvenile court, however, lacks jurisdiction over two types of juvenile offenders:

(1) juveniles 16 years old or older who are alleged to have committed first-degree murder, and
(2) juveniles 16 years old or older who are alleged to have committed a petty misdemeanor-level traffic offense or a DWI or related nonfelony offense. **Minn. Stat. §§ 260B.007, subd. 6; 260B.101; 260B.225**

In addition, the juvenile court is responsible for the following legal actions:

- **terminations of parental rights** to a child. Parental rights may be terminated by the court either (1) for good cause with parental consent, or (2) if the child has been abandoned, continuously neglected, or the parent's conduct shows a clear unwillingness or unfitness to be a parent (**Minn. Stat. §§ 260C.101, subd. 2(a); 260C.301**)
- juvenile **marriages** (**Minn. Stat. § 260C.101, subd. 2(c)**)
- **adoptions** (**Minn. Stat. § 260C.101, subd. 2(d)**)
- **persons** (including adults) alleged to be **contributing to the neglect, delinquency, or juvenile petty offender status of a minor**. Juvenile courts may order relief of a civil or injunctive nature and hear and decide a gross misdemeanor criminal charge in these cases (**Minn. Stat. §§ 260B.335; 260B.425**)
- appointments and removals of **guardians** for minors (**Minn. Stat. § 260C.101, subd. 2(b)**)
- periodic review of a child's **foster care status** (**Minn. Stat. § 260C.101, subd. 2(e)**)

Records of juvenile court delinquency actions are accessible to the minor and his or her parents or guardian. Juvenile delinquency records may be seen by others outside the judicial and law enforcement systems in most cases only with a court order, except in the following situations:

- The victim of any alleged delinquent act may obtain the name and age of the juvenile, the act for which the juvenile was petitioned, the date of the offense, and the disposition of the case. **Minn. Stat. § 260B.171, subd. 4**
- A county attorney may give a law enforcement agency that referred a delinquency matter to the county attorney a summary of the results of that referral, including the details of any juvenile court disposition. **Minn. Stat. § 260B.171, subd. 4**
- Court disposition orders in certain cases are shared with schools as discussed on page 31. **Minn. Stat. § 260B.171, subd. 3**

- Records of adjudications, court transcripts, and delinquency petitions must be released to law enforcement agencies and prosecuting authorities for purposes of investigating and prosecuting crimes committed for the benefit of a gang. **Minn. Stat. § 260B.171, subd. 1**

All delinquency proceedings conducted by the juvenile court are closed to the public except (1) hearings and court records involving minors 16 years or older are open to the public if the minor is accused of a felony-level offense; and (2) a victim of a child's delinquent act may attend any related delinquency proceeding, subject to the court's authority to exclude the victim for specified reasons. **Minn. Stat. § 260B.163, subds. 1, 3**

The Bureau of Criminal Apprehension retains juvenile history data on a child against whom a delinquency petition was filed and continued without adjudication, or a child who was found to have committed a felony or gross misdemeanor-level offense, until the child reaches age 28. If, however, the offender commits a felony violation between the ages of 18 and 28, the bureau retains the juvenile data for as long as the data would have been retained if the offender had been an adult at the time of the juvenile offense. **Minn. Stat. § 299C.095, subd. 2**

All CHIPS hearings are accessible to the public, absent exceptional circumstances. In addition, juvenile protection case records relating to CHIPS cases are accessible to the public pursuant to the Rules of Juvenile Protection Procedure.¹

Juveniles Who Commit Unlawful Acts

As mentioned earlier, one important type of case generally assigned to the juvenile court involves minors who engage in unlawful conduct. In contrast to the adult courts, the juvenile proceeding in this context is not a criminal proceeding designed to determine criminal responsibility and punishment but, rather, is a civil proceeding designed to protect the child from the consequences of his or her own conduct, develop individual responsibility for unlawful behavior, rehabilitate him or her, and, at the same time, promote public safety. **Minn. Stat. § 260B.001, subd. 2**

Juveniles committing unlawful acts fall into one of the following categories, depending mostly on the nature of the conduct involved:

- **Delinquents:** individuals under the age of 18 who commit acts which would be unlawful if committed by an adult, except for those the law designates as petty offenses (**Minn. Stat. § 260B.007, subd. 6**)²

¹ Minn. R. Juv. Prot. P. 8.01; 27.01

² However, children who commit traffic offenses are not labeled as delinquents, even if the conduct would have been unlawful if committed by an adult. **Minn. Stat. § 260B.225**. Similarly, children who commit certain nonviolent misdemeanors or who are found in possession of a small amount of marijuana are classified as petty offenders rather than delinquents. **Minn. Stat. § 260B.007, subd. 16**.

- **Extended jurisdiction juveniles:** children 14 years old or older who commit felony-level delinquent acts and who are designated as being in this category by the prosecutor or the court (**Minn. Stat. 260B.130**)
- **Petty offenders:** children who engage in conduct that is unlawful for them but not unlawful for adults (i.e., status offense), such as violating curfew, drinking, and smoking. Also included in the petty offender category are juveniles charged with their first or second nonviolent misdemeanor offense, with the exception of certain designated offenses (**Minn. Stat. § 260B.007, subd. 16**)
- **Juvenile traffic offenders:** children who violate traffic laws. In certain cases, depending on the age of the child and the nature of the traffic offense, the matter may be handled exclusively by the adult court rather than the juvenile court (**Minn. Stat. § 260B.225**).

Certification for Adult Prosecution

In some cases, the juvenile court may decide that a child over the age of 14 who is accused of a particularly dangerous offense and/or has engaged in criminal conduct in the past would be handled more appropriately in the adult court. These alleged delinquents may be “certified to adult court for criminal prosecution” upon motion by the prosecutor if the juvenile court finds, after a hearing, that there is probable cause to believe the child committed a felony offense and that there is clear and convincing evidence that public safety is not served by handling the case in juvenile court. Once a child has been certified to the adult court for prosecution he or she may be prosecuted, convicted, and sentenced as if he or she were an adult.

The law presumes that certain juvenile offenders will be certified to adult court for criminal prosecution. A child is subject to this presumption if:

- the child was 16 or 17 years old at the time of the felony offense; and
- the court finds probable cause to believe the child committed either: (1) a felony offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes (generally violent or other repeat serious offenses); or (2) any felony offense while using a firearm.

In such cases, the child has the burden to rebut the presumption by clear and convincing evidence demonstrating that retaining the case in juvenile court serves public safety. If the child does not rebut the presumption, the court must certify the case to adult court.

Minn. Stat. § 260B.125

Dispositions for Juvenile Offenders and Juvenile Petty Offenders

Assuming the juvenile court retains jurisdiction over the alleged juvenile offender, and, after a hearing, determines that the child did engage in the unlawful conduct, the court has available to it a variety of dispositions, including: fines, probation, counseling, home detention, sex offender treatment, placement out of the home, loss of driver's license, restitution or community service, and (for delinquents only) commitment to the Commissioner of Corrections for placement in a state juvenile correctional facility. A juvenile petty offender may not be placed outside the home except for in-patient treatment for chemical dependency. The juvenile court's jurisdiction over the child lasts until the child's 19th birthday. **Minn. Stat. §§ 260B.193, subd. 5; 260B.198; 260B.225; 260B.235**

Extended Jurisdiction Juveniles

A juvenile offender alleged to have committed a felony-level offense after reaching the age of 14 may be prosecuted as an "extended jurisdiction juvenile" (EJJ) instead of being certified to adult court or dealt with as a juvenile delinquent. This intermediate category may apply to the following offenders:

- 14- to 17-year-olds who are designated EJJ's instead of being certified to adult court following a certification hearing
- 16- and 17-year-olds who would have been subject to the presumption in favor of certification but who are, instead, designated EJJ by the prosecutor
- 14- to 17-year-olds who are designated EJJ's by the court after a hearing on the matter

A child who is designated an EJJ has the right to a jury trial in juvenile court and the effective assistance of counsel on the issue of guilt.

If an EJJ is convicted of the offense, the child receives both a juvenile disposition and a stayed adult sentence. This stayed adult sentence may be executed and the child may be sent to prison if the child violates the terms of the juvenile disposition order. The court's jurisdiction over an EJJ lasts until the child's 21st birthday, unless terminated sooner by the court. **Minn. Stat. §§ 260B.130; 260B.193, subd. 5**

CHIPS Cases

The other major category of cases the juvenile court hears are those involving “children in need of protection or services” (CHIPS) by or from the juvenile court. Grounds for invoking the juvenile court’s CHIPS jurisdiction include the following:

- the child is abandoned
- the child is physically or sexually abused or emotionally maltreated
- the child resides with a victim or perpetrator of domestic child abuse
- the child needs necessary food, shelter, or other care
- the child needs special care due to a physical, mental, or emotional condition
- the child is medically neglected, including infants in need of “medically indicated treatment” within the statute’s definition
- the child’s parent or guardian desires, for good reason, to be relieved of the child’s care and custody
- the child is in an illegal adoptive or foster care placement
- the child’s parent or guardian is unable to provide care due to disability or immaturity
- the child is in dangerous surroundings or is exposed to criminal activity in the home
- the child has committed a delinquent act or juvenile petty offense before becoming ten years old
- the child is a runaway from home
- the child is an habitual truant from school
- the child is experiencing growth delays, which may be referred to as a failure to thrive, that have been diagnosed by a physician and are due to parental neglect
- the child 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 certification, EJJ, or juvenile petty offense proceeding

- the child has engaged in prostitution

In CHIPS cases, the juvenile court is directed by law to secure for each child the care and guidance that is in the child's best interests. In so doing, the court must observe the following policies wherever possible and in the best interests of the child:

- to make reasonable efforts to maintain the child in his or her own home
- to provide judicial procedures that protect the welfare of the child
- to remove the child from parental custody only when his or her welfare or safety cannot otherwise be adequately safeguarded
- when the child is placed out of the home, to secure care and discipline for him or her similar to that which should have been given by the parents
- to make reasonable efforts to reunite the child with his or her family, consistent with the child's best interests and safety, except in certain types of cases

Minn. Stat. §§ 260.012; 260C.001; 260C.007

Notice

After a petition has been filed alleging a child to be in need of protection or services, the court must issue a notice to an adjudicated or presumed father of the child, an alleged father of the child, or noncustodial mother, and a grandparent with statutory rights to participate, unless these persons voluntarily appear or have been summoned. **Minn. Stat. § 260C.151**

Dispositions in CHIPS Cases

The types of dispositions available to the court to achieve these purposes are: placing the child under protective supervision while permitting the child to remain at home; placing the child out of the home in a foster care setting or, under certain limited circumstances, in an independent living arrangement; allowing the child to be adopted in cases where the child is not returned home; ordering the abuser out of the home in cases of domestic child abuse; or ordering that the child receive special treatment for his or her mental or physical health. Dispositional orders are for a fixed period of time not to exceed one year and may be renewed or modified by the court.

If the child is in need of protection or services due to truancy or running away from home, the court may also order counseling, probation, delivery of the child to school by the parent or legal guardian, a fine, community service, loss or denial of driving privileges, or placement in a correctional group home.

The court's continuing jurisdiction over the child lasts until the child's 19th birthday, except in truancy cases where jurisdiction ends on the child's 18th birthday. **Minn. Stat. §§ 260C.193; 260C.201**

Court Process for Delinquency and Other Offenses

The following is a summary of the major stages of the juvenile court process for children alleged to have committed unlawful acts.

Apprehension

A child may be apprehended and taken into immediate custody by the police or a probation or parole officer before any court papers are filed, if the child is:

- in need of protection or services;
- a juvenile petty offender;
- one who has committed a delinquent act that would be a petty misdemeanor or misdemeanor if committed by an adult;
- found in dangerous surroundings;
- the subject of an arrest warrant;
- subject to arrest;
- a parole/probation violator;
- excluded from the parent's home under an order for protection against the child, in situations where the parent is unable or unwilling to provide an alternative safe living arrangement for the child; or
- under age 18 and truant from school. Custody under this circumstance is for the purpose of transporting the child home and into the custody of a parent or guardian, to school, or to a truancy service center.

Minn. Stat. §§ 260B.143; 260B.175; 260C.143; 260C.175

Pretrial Detention

Children taken into custody must be released as soon as possible to their parents, guardian, or custodian unless the child is a flight risk or the child's health or welfare would be immediately endangered. In those situations, an alleged delinquent may be held up to 36 hours, excluding Saturday, Sunday, and holidays, in a juvenile secure or shelter care facility. In order to detain children in juvenile facilities longer than these time periods, the court must hold a detention hearing and find that pretrial detention is necessary. Then, it must review the propriety of this continued detention every eight days until the child's case is heard and decided.

The detention of alleged delinquents in an adult jail or lockup is strictly limited under Minnesota law. In most cases, no child may be detained in an adult jail or lockup for longer than six hours in a standard metropolitan statistical area or for longer than 24 hours elsewhere unless a juvenile court petition and a motion to certify the juvenile for adult prosecution have been filed and a judge has approved the continued detention. A limited exception to the 24-hour rule exists if distance or weather conditions preclude a court appearance within 24 hours. In these cases, the juvenile may be detained in the adult facility for up to 48 additional hours or, in the case of weather conditions, for up to 24 hours after safe travel is available. **Minn. Stat. §§ 260B.176 to 260B.181**

Filing of Petition or Citation

The juvenile court process is begun officially by the filing of a petition or citation with the court. Delinquency petitions are prepared and filed by the county attorney; citations for petty offenses and misdemeanor offenses may be filed by a peace officer. **Minn. Stat. §§ 260B.141; 260B.143**

Arraignment Hearing

At the arraignment hearing, the child is given the opportunity to admit or deny the allegations contained in the petition. This hearing must be held within 30 days of the date on which the petition is served or, if the child is in detention, within five days of the time he or she was taken into custody. **Minn. R. Juv. Del. P. 7.03**

If the child denies the allegations in the petition or if the court refuses to accept the child's admission, an adjudicatory hearing is scheduled to take place within 30 or 60 days, depending on whether or not the child is in detention. If the child admits to the allegations and the court accepts the admission, the court will schedule a disposition hearing. **Minn. R. Juv. Del. P. 7, 8, 13, and 15**

**Certification for Adult
Prosecution Hearing**

A hearing may be held by the juvenile court judge, upon motion by the prosecutor, as to whether an alleged delinquent over the age of 14 should be referred to the adult court for criminal prosecution. In ordering the certification, the court must find that there is probable cause that the child committed the charged offense and that there is clear and convincing evidence that the public safety would not be served by handling the case in the juvenile system. The law presumes that certain offenders will be certified to adult court (see page 99). **Minn. Stat. § 260B.125**

**Extended Jurisdiction
Juvenile Hearing**

Upon request of a prosecuting attorney, the juvenile court must hold a hearing on whether to designate an offender as an “extended jurisdiction juvenile” (EJJ). Additionally, a child may be placed in the EJJ category by the court or the prosecutor without a hearing as an alternative to certification, under certain circumstances. If the child is not being considered for certification, the prosecutor must ask the court to hold a hearing if the prosecutor wants the child placed in the EJJ category. The effects of placement in the EJJ category are described on page 106. **Minn. Stat. §§ 260B.125; 260B.130; 260B.141**

**Adjudicatory Hearing
(Trial)**

This hearing is the equivalent of a trial in adult court. The hearing is held before a judge, except that in EJJ prosecutions the child has the right to a jury trial on the issue of guilt. At the conclusion of the hearing the court has seven days to decide whether the allegations in the petition have been proven beyond a reasonable doubt. If the allegations have not been proven, the court must dismiss the petition. If they have been proven, the court may either (1) adjudicate the child as a delinquent or an offender, or convict the child as an EJJ and schedule a disposition hearing; or (2) withhold adjudication for up to 180 days pending examination or counseling of the child or pending probationary supervision. **Minn. Stat. §§ 260B.163; 260B.198; Minn. R. Juv. Del. P. 13, 14, and 15**

Disposition Hearing

This hearing is similar to a sentencing hearing in adult court. It is designed to be informal and to allow all participants the opportunity to be heard. Based on the information received, the judge may order any one of the dispositions summarized on page 106. **Minn. Stat. § 260B.198; Minn. R. Juv. Del. P. 15**

**Major Constitutional
Rights of a Child in
Juvenile Court**

Historically, children who appeared in juvenile court on charges of delinquency were not accorded the same constitutional rights as adults charged with criminal offenses. The rationale for this distinction was that the juvenile delinquency process was not designed to fix criminal responsibility, guilt, and punishment, but rather, was designed to protect and rehabilitate the child.

Since 1966, however, the U.S. Supreme Court has recognized that juvenile court proceedings can and do affect the rights of children to “life, liberty, and the pursuit of happiness” and, therefore, that juvenile court hearings and procedures must measure up to the essentials of due process and fair treatment.

Thus, during the late 1960s and early 1970s, the U.S. Supreme Court found, in a series of cases, that alleged delinquents have the following constitutional rights in juvenile adjudicatory hearings:

- right to **written advance notice** of the adjudicatory hearing, allowing adequate time to prepare for it
- **right to counsel**³
- **privilege against self-incrimination**
- right to **cross-examine witnesses** *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428 (1967)
- findings of delinquency must be based on **proof beyond a reasonable doubt** if the offense is one that would be unlawful if committed by an adult *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970)
- the **Double Jeopardy** Clause of the Fifth Amendment prohibits prosecution in adult court of a juvenile if an adjudicatory hearing has been held on the same matter in juvenile court *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975)

In contrast, however, the U.S. Supreme Court held in *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976 (1971) that a **jury trial** is not constitutionally required in the adjudicative phase of a juvenile court proceeding, because juries are not essential to fundamental fairness in fact-finding procedures. However, several states have extended the right to trial by jury in some or all juvenile cases. Juveniles who have been designated “extended jurisdiction juveniles” in Minnesota’s juvenile courts have a right to a jury trial during the adjudicatory hearing.

³ In 1994, the Minnesota Legislature made it extremely difficult for juvenile offenders charged with serious crimes to waive their right to counsel: juvenile offenders who are charged with felonies or gross misdemeanors or are to be placed out of the home must have counsel or, if the right to counsel is waived, must have stand-by counsel appointed. However, in 1995 the Minnesota Legislature provided that juveniles charged with a juvenile petty offense are not entitled to counsel appointed at public expense. The petty offender category includes not only status offenses, but also certain nonviolent misdemeanors.

Additionally, the Court held in *Schall v. Martin*, 467 U.S. 253, 104 S. Ct. 2403 (1984) that **pretrial detention** of an alleged delinquent, based on the risk that the child may commit additional crimes prior to trial, does not violate the child's due process rights. It held that pretrial detention of alleged delinquents is compatible with the fundamental fairness requirement of the Due Process Clause of the Fifth Amendment, given the protective rather than punitive objectives of the juvenile justice system.

Court Process for CHIPS Cases

The following is a summary of the major stages of the juvenile court process as it relates to (1) children alleged to be in need of protection or services (CHIPS) and (2) terminations of parental rights to children.

Pre-Adjudication Detention

As explained more fully on page 109, under certain circumstances a child may be taken into immediate custody by a peace officer or by order of the court prior to a juvenile court hearing. In child protection cases, the usual reasons for doing so are because the child is a runaway, to ensure the child's presence at the hearing, or to remove the child from surroundings or conditions which endanger or reasonably appear to endanger the child's health or welfare. Such a child may be held in a shelter care facility for no longer than 72 hours, unless (1) a petition has been filed and the judge determines after a detention hearing that the child should remain in custody, or (2) after a hearing on an order for protection, the court has made a finding of domestic abuse perpetrated by the minor. If a child is taken into custody under a warrant or for the child's safety, the child is entitled to a hearing within 72 hours, excluding Saturdays, Sundays, and holidays, of initial detention. In addition, upon the request of a party, the court will hold the adjudicatory hearing on the petition within 60 days of the detention hearing. However, if another party shows good cause why the hearing should not be held, the hearing will be held within 90 days.

The detention order must be reviewed informally by the judge every eight days until the case is decided. The detention order must include rules for parental visitation unless visitation would endanger the child's physical or emotional well-being.

Children who are detained because they are alleged child abuse victims cannot be given mental health treatment for the effects of the abuse until the court finds probable cause to believe the abuse occurred or unless treatment is agreed to by the child's parent or guardian. **Minn. Stat. §§ 260C.175; 260C.176; 260C.178; 260C.181**

Filing of Petition or Citation

Any reputable person, including any agent of the Commissioner of Human Services, may file a CHIPS petition in juvenile court. Additionally, the social service agency responsible for the placement of a child in voluntary foster care may petition the court to review the child's foster care status. A county attorney must draft the petition upon a showing of reasonable grounds to support the petition. A petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services must be filed on a form developed by the state court administrator. All petitions must be verified (sworn to) by the petitioner.

Any reputable person may likewise petition the juvenile court to terminate the rights of a parent to his or her child if the person has knowledge of circumstances that support such a petition.

A peace officer may issue a notice to appear to a child believed to be a runaway, and a school attendance officer may issue a notice to appear to an alleged truant. A notice to appear filed with the court has the legal effect of a petition. **Minn. Stat. §§ 260C.141; 260C.143; 260C.307**

First Appearance

This is a hearing at which the child and the child's parents and guardian are required to admit or deny the allegations of the petition. This hearing must be held within 10 days after a detention hearing for a child who has been placed in pre-adjudication detention, or 20 days after the child is served with the petition or citation if he or she is not in detention. If the allegations contained in the petition are admitted, the court will schedule a disposition hearing. If denied, the court will schedule an adjudicatory hearing within 60 to 90 days, depending on the disposition involved. **Minn. R. Juv. Prot. P. 34 and 39**

Adjudicatory Hearing

The adjudicatory hearing is held to determine if the allegations of the petition are proven. In contrast to the delinquency or offender adjudicatory hearing, proof of the allegations need not be made "beyond a reasonable doubt" but only by "clear and convincing evidence," which is a lesser standard. If the court finds the allegations of the petition are proven, it may either withhold adjudication for up to 90 days, or adjudicate the child as being in need of protection or services, or neglected and in foster care, and schedule a disposition hearing.

If the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before an out-of-home placement can be ordered, the court must appoint a public defender or counsel at public expense if the party is unable to obtain counsel on their own.

To the extent practicable, the court must conduct a disposition hearing and must enter its order the same day it makes a finding that the child is in need of protection or services, or is neglected and in foster care. In all cases, the order must be issued within ten days after the finding.

Where the petition is one to terminate parental rights and the allegations are proven, the court will terminate parental rights and transfer custody of the child in a disposition hearing. Even where the allegations have not been proven, the court may still determine that the child is in need of protection or services, or that the child is neglected and in foster care. In such a case the court will adjudicate the child accordingly and will schedule a disposition hearing. **Minn. Stat. §§ 260C.163; 260C.201; 260C.312; 260C.317; Rules of Juvenile Protection Procedure**

Review of Court-Ordered Placements

The court must conduct a hearing to determine the permanent status of the child not later than 12 months after the child is placed outside the home of the parent. However, if the child was under eight years of age at the time the CHIPS petition was filed, the hearing must be conducted no later than six months after the child is placed outside the home of the parents. This review requirement does not apply to cases where the child is in placement due solely to the child's developmental disability or emotional disturbance and where custody has not been transferred to the responsible social services agency, and the court finds compelling reasons. **Minn. Stat. § 260C.201, subs 11, 11a**

Disposition Hearing

If the court finds that a child is in need of protection or services, it may order the dispositions summarized on page 106. Where the court terminates the parental rights of both parents or of the only known living parent, guardianship and legal custody of the child will be transferred to the Commissioner of Human Services, a licensed child-placing agency, or a willing individual capable of assuming parental duties. **Minn. Stat. §§ 260C.201; 260C.317; 260C.325**

For more information about youth, visit the children and youth area of our web site, www.house.mn/hrd/issinfo/child.htm.

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