



Child Protection Removals and Reunifications

2022
EVALUATION REPORT

Program Evaluation Division
OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Program Evaluation Division

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • Judy Randall, Legislative Auditor

June 2022

Members of the Legislative Audit Commission:

To ensure child safety, sometimes the government intervenes by removing a child from the care of their parents. When a child experiences a removal, local child protection agencies and courts work to find the best long-term outcome for the child, which is often reunification with their parents.

We identified several areas for improvement in Minnesota's child protection system. We found that despite the important role of law enforcement officers in removing endangered children from their homes, there are no statewide requirements for ongoing training of law enforcement officers on child protection issues. We also found that documentation provided to parents involved in child protection cases is complex and difficult to understand. Additionally, performance measures used by the Judicial Branch to assess court performance in child protection cases focus on expeditious processing and exclude other priorities. We make recommendations to address these concerns.

Our evaluation was conducted by David Kirchner (project manager), Eleanor Berry, Donald Hirasuna, and Caitlin Zandoni-Wells. The Department of Human Services and the Judicial Branch cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,

A handwritten signature in black ink that reads "Judy Randall".

Judy Randall
Legislative Auditor



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Summary

Child Protection Removals and Reunifications

Key Facts and Findings:

- State law gives local authorities the power to remove endangered children from their homes and place them in foster care. (pp. 6-12)
- State child protection statutes prioritize keeping children safe. State law also emphasizes keeping families together when it is safe to do so. (pp. 4-5)
- In 2019, there were 6,431 child removals in Minnesota, the lowest number in six years. For most out-of-home placement stays ending that year, children were reunited with parents. (pp. 17, 53)
- State law does not allow child protection agencies to remove a child from the home without the parent's consent; only law enforcement and the courts have this authority. (pp. 8-12)
- Over half of out-of-home placements begin with law enforcement emergency holds, but their use varies widely. (pp. 28-31)
- Law enforcement officers are not statutorily required to consult with local child protection agencies when deciding to remove a child, though they often do. (pp. 10, 32-34)
- There are no statewide requirements for ongoing training of law enforcement on child protection issues. (pp. 37-38)
- In the case files we reviewed, child protection agencies and courts varied widely in how they interpreted and enforced the requirement to make "reasonable efforts" to prevent the removal of a child. (pp. 42-43)
- Performance measures used by the Judicial Branch to monitor court performance in child protection cases focus on meeting time deadlines. (pp. 55-56)
- Plans developed by child protection agencies that document the actions parents must take to reunite with their children are often lengthy and difficult to understand. (pp. 57-58)

Key Recommendations:

- The Department of Human Services (DHS) should convene a working group to make recommendations to the Legislature regarding training of law enforcement officers in child protection removals. (p. 38)
- DHS and the Judicial Branch should continue their efforts to improve the provision and documentation of services offered to families to prevent child removals. (pp. 46-47)
- The Judicial Council should consider additional performance measures that more fully reflect statutory priorities for child protection cases. (p. 56)
- The Legislature should direct child protection agencies to produce short, easy-to-understand summary documents for parents explaining the steps they should take to pursue reunification. (pp. 58-59)

Report Summary

When children are endangered in their homes, the government may step in to protect their safety. In some circumstances, this intervention includes removing children from the care of their parents and placing them outside the home.

State statutes regarding child protection removals emphasize two key priorities: (1) protecting children’s safety and (2) keeping families together. Child protection authorities can face difficult choices as they weigh the risks of too little action against the risks of too much intervention.

The number of Minnesota children removed from their homes peaked in calendar year 2017 before declining to a six-year low in 2019. In that year, Minnesota authorities conducted 6,431 child removals. In about half the cases from 2014 through 2019, parent substance abuse or alleged neglect was the primary reason recorded for the removal.

Minnesota’s locally administered child protection system spreads responsibilities across many different entities.

Statutes assign child protection responsibilities to county social service agencies, which we refer to as “child protection agencies.” These agencies evaluate reports of possible child maltreatment and offer services to families and children.

However, child protection agencies do not have the authority to remove a child from the home independently. State law instead gives this power to law enforcement and the courts.

Law enforcement officers can remove a child from the home under an emergency hold. Children removed under a law enforcement hold must be returned to the parents within 72 hours, unless a court orders a further placement. Courts can also place a short-term emergency hold. Further, a court can order the child into a longer-term out-of-home placement. Child protection agencies may only place a child outside the home without law enforcement or court involvement if the

parents consent (called a “voluntary” placement).

Child protection agencies, courts, and law enforcement have significant discretion in how they carry out their responsibilities related to removals. Although the Department of Human Services (DHS) broadly oversees the actions of local agencies, its involvement in individual cases is limited. Individual court decisions are only reviewed if a case is appealed to a higher court. No statewide agency oversees local law enforcement practices.

Several other entities may also play key roles in child protection cases, including county attorneys, guardians ad litem (court-appointed individuals who advocate for the best interests of the child), and attorneys representing the parents and children.

When a child is American Indian, tribal representatives, tribal child protection agencies, and tribal courts may also be involved. Tribal law, rather than state law, may guide the actions of these entities, depending on the circumstances.

Over half of out-of-home placement stays conclude with reunification, but individual outcomes vary.

Children removed from a parent and placed outside the home follow a variety of trajectories. Some are released from emergency holds and returned to their parents within days, without any court involvement. Other children are placed in foster care settings for weeks, months, or years.

For children removed from the home from 2014 through 2017, 53 percent of placement stays led to reunifications with parents within two years, 12 percent led to permanent placements with relatives, and 9 percent led to adoption (including adoptions by relatives). However, for 23 percent of placement stays, children were still in out-of-home placements two years following the removal.

Foster care can include placements with a child’s relatives, or even with the child’s own parents under a “trial home visit.” DHS data indicate that the percentage of

Local child protection agencies, courts, and law enforcement have substantial discretion to make child removal decisions.

placement stays during which children spent a majority of time with relatives increased in recent years, approaching 60 percent for children whose placement stays began in 2019. The increase was larger for African-American and Hispanic children, and notable differences that once existed between children from these groups and other children have diminished.

Most child protection removals begin through law enforcement emergency holds, but practices vary widely.

According to DHS data, 65 percent of child protection removals statewide from 2014 through 2019 were carried out under the authority of a law enforcement hold. However, the use of emergency holds ranged widely across jurisdictions. In some counties, over 80 percent of out-of-home placements began with a law enforcement hold; in others, less than 40 percent did.

There was also significant variation in whether children continued in placements under a court order after the law enforcement holds expired. In some counties, over 90 percent of law enforcement holds led to a longer out-of-home placement. In others, over one-third of children removed through law enforcement holds returned to their parents’ custody following the hold.

Child protection agencies may request that law enforcement officers remove a child from the home through an emergency hold, but officers have the final authority. There is no statutory requirement that officers consult with child protection staff before placing a hold. In surveys we conducted of local child protection agency and law enforcement administrators, many respondents reported collaborative working relationships with one another. However, others reported concerns.

Many law enforcement officers receive relatively little training on child protection removals.

There is no state requirement for ongoing law enforcement training regarding child

protection issues. In response to our survey of law enforcement agencies, about 85 percent of agencies told us they do not require continuing training on child protection removals. As a result, officers may rely on the information presented in their initial licensure training or field training during their first year on the job.

In written comments on our survey, some law enforcement chiefs and sheriffs said that they would like more resources for child protection training. We recommend that DHS convene a working group including state and local stakeholders to make recommendations to the Legislature regarding law enforcement training on child protection removals.

Child protection agencies must make “reasonable efforts” to avoid child removals, but this standard is not well defined nor consistently implemented.

State and federal laws require child protection agencies to make reasonable efforts to assist a family to avoid placement of a child in foster care. Efforts to prevent the removal of an American Indian child from the home must meet a higher standard (“active efforts”).

However, in our review of a sample of case files, the prevention services that child protection agencies provided to families before a child’s removal from the home varied widely from agency to agency and case to case. In some cases, child protection agencies provided extensive services before seeking a removal. In others, preventive services were limited. In still others, the child was removed before child protection agencies could offer services to the family.

Recent changes to federal law have emphasized prevention efforts. Prompted by these changes, both DHS and the Judicial Branch have recently taken steps to address prevention of out-of-home placements. It was too soon to assess the impact of these initiatives, but we encourage both DHS and the Judicial Branch to continue their efforts.

Although law enforcement officers make high-stakes child removal decisions, there is no state requirement for ongoing training.

The Legislature should require child protection agencies to provide clearer, more concise information to parents about how to pursue reunification.

The Judicial Branch’s performance measures pertaining to child protection cases focus primarily on whether courts meet time deadlines.

The State Court Administrator’s Office issues a report each year on judicial districts’ outcomes on a series of performance measures. The report is reviewed by the Judicial Council, the Judicial Branch’s administrative decision-making body, and some judges told us they feel pressure to achieve acceptable outcomes.

All of the performance measures for courts that specifically relate to child protection cases are related to expeditious processing, such as the percentage of children reunifying with the parent or finding another permanent home within 18 months and the percentage of children adopted within 24 months.

Although timely court action is important, state laws entrust courts with many more responsibilities regarding child protection cases. The emphasis on timeliness alone does not assess courts’ performance of other important responsibilities—for example, ensuring that agencies conduct thorough searches for a child’s relatives and notify them of the child protection case.

We recommend that the Judicial Council consider additional performance measures that more broadly reflect courts’ statutory responsibilities in child protection cases.

Documents that inform parents what steps they must take to reunify with their children are often lengthy and difficult to understand.

Child protection agencies prepare out-of-home placement plans for children placed in foster care. State law lists many requirements for the contents of these plans; local child protection agencies may also add additional elements. The plans are intended to ensure that agencies have a comprehensive understanding of children’s and parents’ needs.

The resulting documents can be lengthy and difficult to decipher. Similarly, legal documents associated with court cases can also be challenging to understand without a legal background.

While comprehensive planning documents are useful, the Legislature should direct child protection agencies to also produce a short, easy-to-understand document for parents explaining the steps they should take to pursue reunification.

Summary of Responses

In a letter dated June 15, 2022, Department of Human Services Commissioner Jodi Harpstead wrote that the agency appreciated “the thoughtful evaluation of this important issue” and agreed with the report’s recommendations for DHS. “Overall,” she wrote, “this report supports our efforts to strengthen child protection in Minnesota.” In a letter dated June 17, 2022, State Court Administrator Jeff Shorba highlighted the Judicial Branch’s ongoing efforts “related to reasonable and active efforts findings in court orders.” He also responded to the report’s recommendation that the Judicial Council consider additional performance measures for district courts, committing to “take this recommendation to Judicial Council for consideration.”

The full evaluation report, *Child Protection Removals and Reunifications*, is available at 651-296-4708 or: www.auditor.leg.state.mn.us/ped/2022/childprotect.htm

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Introduction

Child protection agencies, law enforcement agencies, and courts make important and challenging decisions about how government should intervene in families' lives to protect children from maltreatment. In situations where a child may be endangered, law enforcement agencies and courts can remove a child from the care of their parents. Separations may be temporary or permanent; state law directs child protection agencies and courts to prioritize child safety and emphasize reunifying the child with the family when it is safe to do so.

In April 2020, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate child protection removals and reunifications in Minnesota. Our evaluation addressed the following questions:

- **How consistently do local authorities implement state and federal laws regarding the removal of children?**
- **What barriers exist to reunification of children with their families, and how do these barriers vary across the state?**

To address these questions, we spoke with county and tribal child protection administrators; senior law enforcement officers, parents' attorneys, judges, and stakeholders from around the state; and staff at the Minnesota Department of Human Services (DHS) and the State Court Administrator's Office. We examined state and federal laws and judicial procedures and reviewed the relevant academic literature.

We analyzed statistical data from several different sources. We obtained DHS data on child protection removals and out-of-home placements; we also obtained data on child protection court cases collected by the State Court Administrator's Office. In addition, we reviewed data on county children's social services spending from DHS. We also obtained and analyzed data on individuals admitted to state or federally funded drug treatment programs who indicated in their admission or discharge forms that they were parents involved with a child protection case.

To scrutinize the details of individual cases, we selected a sample of 150 child protection cases that involved a child removal; these cases were spread across ten counties (one county in each of Minnesota's ten judicial districts). For each of these cases, we read through court filings and judicial orders from the entire court case, and social worker case notes from the 30 days preceding and 60 days following the removal of the child.

We also conducted two surveys. We sent one survey to administrators in all county child protection agencies, and we asked questions broadly about child protection removals and reunifications.¹ We sent our second survey to all local law enforcement

¹ We received responses from 75 local agencies, for a response rate of 96 percent. (Some counties are part of multicounty agencies.)

agencies in the state employing at least ten officers; that survey focused narrowly on the use of emergency child protection holds.²

We worked through a DHS-coordinated youth advisory council to interview several teenagers and young adults who had been removed from their homes and placed in foster care. We appreciated their willingness to share their stories with us. Most of the research for this project was conducted in the summer and fall of 2020; because of the logistical and safety challenges of arranging interviews during the early part of the COVID-19 pandemic, we decided not to interview parents with recent experience in the child protection system.

We focused our evaluation narrowly on the processes of removals and reunifications. We did not attempt to evaluate other aspects of child protection, such as initial screening, investigation, quality of foster care, or adoption.

² We received responses from 184 of 223 law enforcement agencies, for a response rate of 83 percent. We did not send surveys to tribal child protection or law enforcement agencies as we did not evaluate these entities' activities in our report.

Chapter 1: Background

When children are endangered in their homes, the government may step in to protect their safety. In some circumstances, this intervention includes removing children from the care of their parents and placing them outside the home. After children are removed from the home, child protection agencies and courts work to determine the best long-term outcome for them.¹ In many instances, children eventually return to their homes to be reunified with their parents.² But in others, a court decides that permanent separation is the best option.

This report examines the processes by which children are removed from their homes and, when circumstances permit, returned to their parents. We focus on situations where authorities remove children because they are endangered by their parents' actions or inactions. We do not address other situations where a child might be removed from the home (for example, because the child is charged with a crime, or because the child poses a danger to others). Similarly, when we refer to "child protection" throughout this report, we are referring to efforts to protect children from harm caused by parents or other adults in the home, and not efforts to protect children from harm caused by adults outside the home, other children, or themselves.



Foster Care and Out-of-Home Placements

After a removal, while efforts are being made to reunite the family or find another permanent home for a child, the child is placed in foster care or another out-of-home placement. Foster care includes a variety of placement settings, such as foster family homes with relatives or nonrelatives, group homes, and emergency shelters.³ In some instances, a child placed outside the home may spend time in a setting that does not meet the statutory definition of foster care, such as a hospital, chemical dependency treatment center, or correctional facility. In this report, we use "out-of-home placement" as a broader term that includes foster care and other placements.⁴ However, we also sometimes refer to foster care, particularly when that is the term used in state statutes.

In this chapter, we start with a brief discussion of statutory goals related to child protection. We then provide an overview of the processes for removing a child from their parent and reunifying them with the parent. We then discuss overall trends related to out-of-home placements in Minnesota. Last, we briefly discuss child protection funding.

¹ In this report, we use "child protection agency" to refer to the local social services agency responsible for child protection services. In all Minnesota counties, child protection services are the responsibility of a broader social services agency.

² In this report, we use "parent" to include a child's legal guardian.

³ *Minnesota Statutes* 2021, 260C.007, subd. 18.

⁴ Somewhat confusingly, both terms "out-of-home placement" and "foster care" can include when a child is placed back with the parent under a trial home visit, during which the child protection agency has legal custody of the child.

Child Protection Goals

Child protection efforts in Minnesota have long been framed by two key goals: protecting children’s safety and welfare, and preserving families. Over many years, different studies and reform efforts have alternately emphasized one goal or the other.

State child protection statutes prioritize keeping children safe. State law also emphasizes keeping families together when it is safe to do so.

In child protection proceedings, state statutes specify that “the health, safety, and best interests of the child” are the “paramount” concerns.⁵ Child protection agencies and courts must consider child safety in removal and reunification decisions.⁶ Child protection agencies must evaluate “the needs of the child” when making decisions about where to place the child following removal.⁷ If a child cannot be returned to the home safely “in a timely manner,” the child may be placed in a permanent home away from their parents, with the most important consideration being the best interests of the child.⁸

State statutes also identify the importance of keeping children at home with their families when possible and “removing the child from the custody of parents only when the child’s welfare or safety cannot be adequately safeguarded without removal.”⁹ If removal occurs, state statutes prioritize reuniting children with their parents when possible.¹⁰ Unless the court determines that reunification efforts are not required, state statutes say that there should be “a primary plan for reunification with the child’s parent or guardian and a secondary plan for an alternative, legally permanent home for the child...”¹¹ Children should be returned to the home “as soon as return is safe for the child.”¹²

In the 2000s, the Legislature enacted significant changes to Minnesota child protection laws, many of which were targeted toward family preservation. These changes included, for example:

- Requiring courts to make “individualized, explicit findings” to justify out-of-home placements (2001).¹³

⁵ *Minnesota Statutes* 2021, 260C.001, subd. 2(a).

⁶ *Minnesota Statutes* 2021, 260C.178, subd. 1(e); and 260C.204(d)(1)(i); see also 260C.001, subds. 2(b)(3) and 2(b)(7)(v).

⁷ *Minnesota Statutes* 2021, 260C.212, subd. 2(a).

⁸ *Minnesota Statutes* 2021, 260C.001, subds. 2(b)(7)(i) and 3(3).

⁹ *Minnesota Statutes* 2021, 260C.001, subds. 2(b)(1) and 2(b)(3).

¹⁰ *Minnesota Statutes* 2021, 260C.001, subd. 2(b)(7)(i).

¹¹ *Ibid.* If the parent has committed certain offenses such as assault of the child or sexual abuse against any of their children, the court may decide that the child protection agency does not need to pursue reunification. See *Minnesota Statutes* 2021, 260.012(g).

¹² *Minnesota Statutes* 2021, 260C.001, subd. 2(b)(7)(v).

¹³ *Laws of Minnesota* 2001, chapter 178, article 1, secs. 12-13, codified as *Minnesota Statutes* 2021, 260C.151, subd. 6; and 260C.178, subd. 1(f).

- Strengthening requirements that child protection agencies search for and involve relatives in child protection cases (2004, 2009, 2012).¹⁴
- Introducing “family assessments” instead of investigations to address situations when there are no allegations of significant danger to the child (2005).¹⁵
- Requiring child protection agencies to develop plans for parents to visit with their children while in foster care (2009).¹⁶

Following a child’s death in 2013 after multiple reports of suspected maltreatment, a Governor’s task force examined child protection policies and practices and declared it was time to “readjust the pendulum” between family preservation efforts and child safety.¹⁷ The task force concluded that the recent focus on working collaboratively with families had not sufficiently prioritized child safety. The task force’s 2015 report included 93 recommendations intended to build a “child-focused” system, and resulted in numerous changes, including revised statewide guidelines for screening and responding to child maltreatment reports.¹⁸ The Legislature also allocated new funding to address staffing shortages, service needs, and racial disparities.¹⁹

At the federal level, the Children’s Bureau of the U.S. Department of Health and Human Services has increasingly emphasized policies aimed at strengthening families to prevent child maltreatment before it occurs, in contrast to past policies that focused on providing services after maltreatment happened. The Family First Prevention Services Act of 2018 marked a significant shift in how federal funds may be used by state and local child protection authorities.²⁰ Previously, funding that states received under Title IV-E of the Social Security Act—a major source of federal child protection funding—primarily supported children that were already in out-of-home placements. The Family First Prevention Services Act now limits uses of funding for out-of-home placements and allows states to also use these funds to support prevention services that enable families to stay together and reduce the need for foster care placements.²¹

¹⁴ *Laws of Minnesota* 2004, chapter 288, art. 3, sec. 30; *Laws of Minnesota* 2009, chapter 163, art. 2, secs. 18-19 and 34; *Laws of Minnesota* 2012, chapter 216, art. 1, sec. 15, and art. 4, secs. 13 and 15-17, codified as *Minnesota Statutes* 2021, 260C.221; 260C.007, subd. 25; 260C.150, subds. 3-8; 260C.204(c)-(d); 260C.193, subds. 3(b) and 3(d); 260C.201, subd. 2(a)(4)(iii-iv); and 260C.202(b).

¹⁵ *Laws of Minnesota* 2005, chapter 159, art. 1, secs. 2 and 5, codified as *Minnesota Statutes* 2021, 260E.03, subd. 7; and 260E.17, subd. 1.

¹⁶ *Laws of Minnesota* 2009, chapter 163, art. 2, sec. 28, codified as *Minnesota Statutes* 2021, 260C.178, subd. 3. Agencies are not required to develop visitation plans under certain circumstances, such as if “visitation would endanger the child’s physical or emotional well-being.”

¹⁷ Governor’s Task Force on the Protection of Children, *Final Report and Recommendations* (St. Paul, 2015), 1.

¹⁸ *Ibid.* A change in state law required county agencies to follow these screening guidelines. See *Laws of Minnesota* 2015, chapter 71, art. 1, sec. 93, codified as *Minnesota Statutes* 2021, 260E.15.

¹⁹ *Laws of Minnesota* 2015, chapter 71, art. 1, secs. 12 and 46, and art. 14, sec. 2, codified as *Minnesota Statutes* 2021, 256E.28; and 256M.41.

²⁰ Title VII of the Bipartisan Budget Act of 2018, Public Law 115-123, February 9, 2018, codified in 42 *U.S. Code*, secs. 671-679c (2020).

²¹ *Ibid.*

Entities Involved in Removals and Reunifications

As of 2017, Minnesota was one of nine states with a locally administered child protection system. Currently, 77 local child protection agencies (representing Minnesota's 87 counties) and 3 tribal child protection agencies are responsible for the delivery of child protection services in Minnesota.²² These agencies receive reports alleging child maltreatment, assess child safety in response to those reports, and provide case management services to children and their parents. Child protection agencies also work with district and tribal courts and local law enforcement agencies to carry out child protection responsibilities. At the state level, the Minnesota Department of Human Services (DHS) provides oversight of child protection agencies. Other key entities in the child protection system include county and tribal attorneys, who represent child protection agencies in child protection court proceedings; guardians ad litem, who are appointed by the court to advocate for the best interests of the child; tribal representatives, who provide input in child protection proceedings involving American Indian children; and attorneys for parents and children, who advocate for their clients' preferences.



Key Entities in Minnesota's Child Protection System

- Local child protection agencies
- Minnesota Department of Human Services (DHS)
- County and tribal attorneys
- Courts
- Law enforcement agencies
- Guardians ad litem
- Tribal representatives
- Attorneys for parents and children

Although the child protection system is locally administered, state law provides the legal framework for child protection removals and reunifications. Notably, state statutes establish the circumstances in which a child may be removed from the home, who may authorize a child's removal from the home, timelines required for court hearings related to out-of-home placements, and priorities for permanency planning.²³

Removing a Child from the Home

Forms of child maltreatment, such as neglect and physical abuse, are common conditions associated with child removals.²⁴ However, children may also be removed

²² The Leech Lake Band of Ojibwe, Red Lake Nation, and White Earth Nation have reached agreements with the state to provide all child protection services to American Indian families on their respective tribal lands. Some other Minnesota tribal governments have child protection agencies that provide services in their communities in collaboration with county agencies. Tribal child protection laws may differ from state laws; as a result, statements in this report about the authority or responsibilities of county child protection agencies may or may not be accurate for tribal agencies.

²³ See *Minnesota Statutes* 2021, 260C.151, subd. 6; 260C.175, subd. 1(2); 260C.227(a); 260C.178, subd. 1(a); 260C.202(a-b); 260C.204(a); 260C.503, subd. 1(a); 260C.513(a); and 260C.001, subd. 2(b)(7)(i). Permanency planning refers to the process of reunifying the child with their parent or finding another "legally permanent home for the child." See *Minnesota Statutes* 2021, 260C.001, subd. 2(b)(7)(i).

²⁴ Statutes define maltreatment as egregious harm, neglect, physical abuse, sexual abuse, substantial child endangerment, threatened injury, and mental injury. *Minnesota Statutes* 2021, 260E.03, subd. 12. For definitions of these forms of maltreatment, see *Minnesota Statutes* 2021, 260E.03, subs. 5, 13, 15, 18, 20, 22, and 23.

from the home for other reasons—for example, if a parent suffers a medical emergency and there is no relative immediately available to care for the child.

Local authorities and district courts have significant discretion in the decision to authorize removing a child from the home.

State statutes authorize the removal of a child from the family home if a child is “in surroundings or conditions which endanger the child’s health, safety, or welfare.”²⁵ Statutes do not further define the “surroundings or conditions” that would warrant a removal, nor do they define “danger.” The decision to authorize a removal depends almost entirely on professional judgment of local officials and district court judges.

Local child protection agencies, law enforcement agencies, and the courts all have responsibilities in child removals. The following sections describe the roles of these entities in placing a child out of the home.

Child Protection Agencies

Child protection agencies receive reports from members of the community of suspected child maltreatment.²⁶ If the report includes allegations of maltreatment and sufficient information to identify the child or family, the agency “screens in” the report for further action.²⁷ When the agency screens in a report related to alleged maltreatment within a family, the agency assigns the report to either a family assessment or family investigation. Family assessments are generally intended for less serious allegations, where a likely outcome would be connecting the family with services and supports without a finding of whether maltreatment occurred. Family investigations are for more serious allegations and include a formal process to determine whether maltreatment has occurred. Family assessments can be converted into family investigations (or vice versa) if circumstances warrant.²⁸

During a family assessment or investigation, the child protection agency assesses child safety and the risk of future harm and determines whether ongoing child protection services are appropriate for the family. Before a family assessment or investigation closes, DHS requires child protection agencies to formally assess risk and safety by completing standardized assessments. The child protection agency may also complete a safety plan with the family that identifies potential safety concerns and the steps the family will take to address those concerns.

²⁵ *Minnesota Statutes* 2021, 260C.151, subd. 6. See also *Minnesota Statutes* 2021, 260C.175, subd. 1(2)(ii).

²⁶ Under state statutes, certain professionals, including individuals working in “the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services or law enforcement” and members of the clergy, are required to report suspected child maltreatment. Any other individual may also report suspected child maltreatment voluntarily. *Minnesota Statutes* 2021, 260E.06.

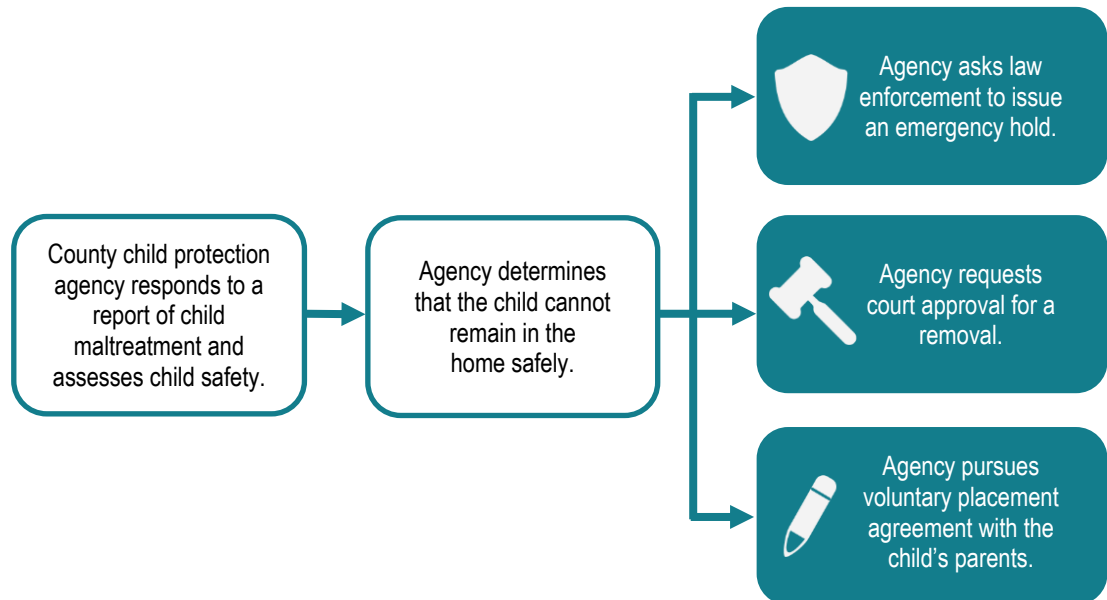
²⁷ We discussed the screening process at length in Office of the Legislative Auditor, Program Evaluation Division, *Child Protection Screening* (St. Paul, 2012).

²⁸ See *Minnesota Statutes* 2021, 260E.17, subd. 1.

Child protection agencies do not have independent authority to remove a child from their home.

During a family assessment or investigation or whenever a child protection agency determines that a child is not safe in the home, the agency may seek to remove the child from their parents.²⁹ However, the agency cannot act on its own; it must rely on the authority of others. There are three pathways a child protection agency may take to initiate a removal, as shown in Exhibit 1.1.

Exhibit 1.1: When a county child protection agency determines that a child is unsafe, there are three pathways to out-of-home placement.



SOURCE: Office of the Legislative Auditor.

1. **Law enforcement emergency hold.** The child protection agency may request a law enforcement agency to temporarily place a child in custody of the child protection agency for up to 72 hours, not including weekends and holidays. Although the child protection agency may recommend that an emergency hold be placed, it is ultimately the law enforcement agency's decision whether or not to issue an emergency hold.

²⁹ In this report, we focus narrowly on the decision of whether to remove a child from the home. Separately from the removal decision, a local child protection agency may make an administrative determination during a child protection investigation that an individual has committed child maltreatment. Depending on the circumstances, law enforcement agencies may also conduct a criminal investigation and the individual may be prosecuted.

2. **Court order.** Working with the county attorney, the child protection agency may request a court to issue an order placing the child in the agency's custody. If the agency believes a child must be removed immediately, it can request an order for immediate custody from a court. An order for immediate custody places a child in the care of the child protection agency for up to 72 hours, again excluding weekends and holidays. If there is already an open child protection case, a child protection agency may also ask the court to order an out-of-home placement for an indefinite period of time without first requesting an order for immediate custody.

When the child protection agency removes a child through a court order, law enforcement may or may not be present when the child is removed from the home.

3. **Voluntary placement agreement.** When a parent consents to a child's out-of-home placement, the child protection agency may enter into a voluntary placement agreement with the parent.³⁰ When a child is out of the home through a voluntary placement agreement, the parent can seek the child's return at any time. Voluntary placement agreements between the child protection agency and the child's parents may last 90 or 165 days before court review, depending on the reason for the voluntary placement.³¹

Law Enforcement

Law enforcement officers may encounter children who are endangered while responding to a request from a child protection agency; investigating a report of child maltreatment; or, more generally, when carrying out their duties in the community. Community members may report child maltreatment directly to a law enforcement agency, rather than to a child protection agency.³² DHS guidelines recommend that individuals contact law enforcement agencies directly if a child is in imminent danger, as those agencies have the ability to intervene immediately to protect child safety.³³

Law enforcement officers may remove a child from the home when officers have concerns about child safety; these emergency holds may last for no more than 72 hours.

If a law enforcement officer determines that a child's health or welfare is or will be endangered by the child's "surroundings or conditions," state statutes authorize the officer to place the child on an emergency hold lasting up to 72 hours, not including

³⁰ *Minnesota Statutes* 2021, 260D.03, subd. 1; 260C.227(a); and 260C.228, subd. 1. Older youth, ages 18 through 20, may also enter into a voluntary placement with the child protection agency on their own to access services through the extended foster care program. See *Minnesota Statutes* 2021, 260C.229(a); and 260C.451, subd. 3a.

³¹ See *Minnesota Statutes* 2021, 260D.06, subd. 1; 260C.227(b)(2)(i); and 260C.228, subd. 2(a).

³² Local law enforcement and child protection agencies are required to notify each other of child maltreatment reports that they receive. *Minnesota Statutes* 2021, 260E.12, subds. 1-2.

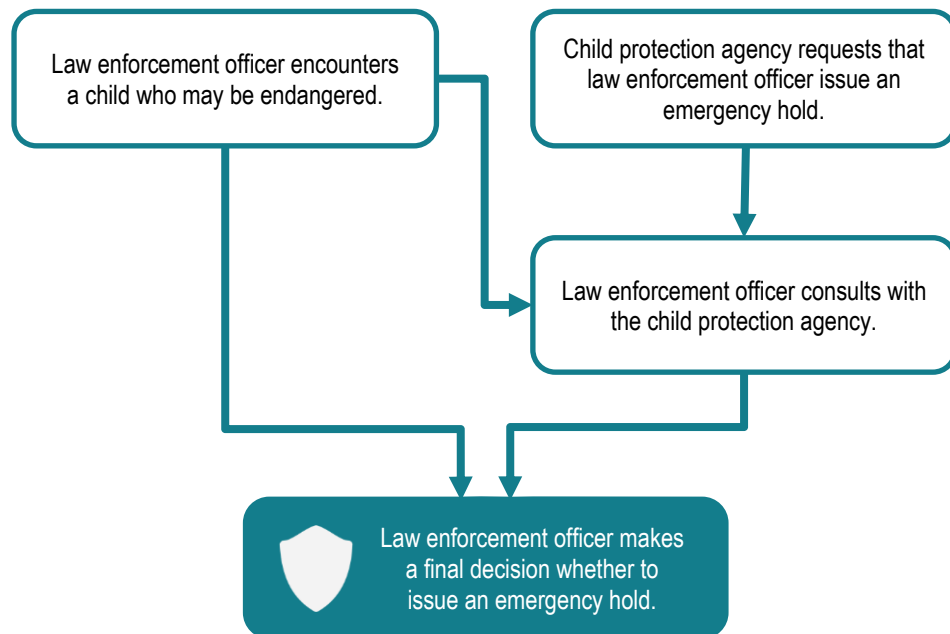
³³ Department of Human Services, *Minnesota Child Maltreatment Intake, Screening and Response Path Guidelines* (2020), 14.

weekends and holidays.³⁴ As shown in Exhibit 1.2, law enforcement officers may consult with the child protection agency before placing a child on an emergency hold, but state statutes do not require them to do so.

After issuing an emergency hold, officers may take the child to a placement suggested by the local child protection agency. If the agency has not suggested a placement, officers commonly place children in an emergency shelter, with a foster family that provides emergency care, or in the home of a relative.

A law enforcement emergency hold automatically expires at the end of the 72-hour period; for the child to remain in the out-of-home placement, either a court must issue an order or the parents must agree to a voluntary placement.³⁵ Under law, the officer that placed the hold, the officer's supervisor, the county attorney, or the child protection agency may end the hold and return the child home without a hearing.³⁶

Exhibit 1.2: A law enforcement officer may issue an emergency hold after encountering a child who is endangered.



SOURCE: Office of the Legislative Auditor.

³⁴ *Minnesota Statutes* 2021, 260C.175, subd. 1(2)(ii); and 260C.178, subd. 1. This statute applies to Minnesota peace officers, including municipal police officers, sheriffs, Minnesota State Patrol officers, and others. State statutes regarding child safety and placement generally delegate child protection responsibilities to child protection agencies but refer to individual officers when describing law enforcement responsibilities.

³⁵ *Minnesota Statutes* 2021, 260C.176, subd. 2(b).

³⁶ *Minnesota Statutes* 2021, 260C.176, subd. 1. Before releasing the hold, the child protection agency completes an assessment and develops and implements a safety plan with the family, if necessary.

Courts

In some parts of the state, court hearings related to out-of-home placements take place in courts dedicated to juvenile matters. In other areas, these hearings take place in general jurisdiction courts, which may also handle other types of cases, such as criminal cases.

Only a court may authorize the removal of a child from their home for an indefinite period of time.

When a child enters an out-of-home placement through a law enforcement emergency hold or court order for immediate custody, the court must hold an emergency protective care hearing to continue the placement longer than 72 hours.³⁷ By the time of the emergency protective care hearing, the county attorney’s office must file a petition with the court that alleges that the child is in need of protection or services (CHIPS).³⁸

At the hearing, the court decides whether to continue the out-of-home placement or return the child to the home. Under state statutes, a court may only continue the out-of-home placement if it believes that otherwise “the child would endanger self or others or not return for a court hearing, or that the child’s health or welfare would be immediately endangered.”³⁹ Further, the court must make “explicit, individualized findings that continued custody of the child by the parent or guardian would be contrary to the welfare of the child.”⁴⁰



CHIPS Case

A Child in Need of Protection or Services (CHIPS) petition asks the court to take actions to protect a child’s safety. Court orders directing that a child be placed outside of the home due to maltreatment are typically in connection with a CHIPS case. However, not all CHIPS cases result in removals. The purpose of a CHIPS case is to help children live in their homes safely or return home from foster care by providing services to children and their families.

Voluntary placements—placements made with the consent of the parent—also require court review if the child is out of the home longer than a certain number of days. For example, if the voluntary placement agreement is for “the child’s safety, health, and best interests,” the child cannot continue in foster care for more than 90 days after their initial placement without

³⁷ The court may extend the time to a hearing on an emergency removal for a brief period if doing so is in the best interests of the child. *Minnesota Statutes* 2021, 260C.163, subd. 1(b). If the child is American Indian, a court hearing may be further extended in order to notify the child’s parent and tribe, and—if requested—to provide additional time to prepare for court proceedings. *25 U.S. Code*, sec. 1912(a) (2020). Although continuing the hearing to a later date is possible, the Minnesota Judicial Branch instructs counties that it is a best practice to hold juvenile protection hearings on the first date scheduled, unless honoring requests for additional time by tribes or parents of American Indian children.

³⁸ Under certain circumstances outlined in law—for example, when a parent has egregiously harmed a child—the county attorney’s office may immediately recommend terminating parental rights or transferring custody of the child to a relative instead of going through the CHIPS process. *Minnesota Statutes* 2021, 260C.503, subd. 2. Technically, any interested person may file a CHIPS petition with the court, not just a county attorney. *Minnesota Statutes* 2021, 260C.141, subd. 1.

³⁹ *Minnesota Statutes* 2021, 260C.178, subd. 1(b).

⁴⁰ *Minnesota Statutes* 2021, 260C.178, subd. 1(f).

approval from the court.⁴¹ A voluntary placement for the child’s health and safety cannot last longer than 180 days.⁴² If the child does not return home within 180 days, the court may continue the placement through a CHIPS case.⁴³

Parents and children 10 years old or older have the right to be represented by an attorney in child protection proceedings.⁴⁴ Currently, state law does not guarantee parents a publicly funded attorney if they cannot afford to hire one. However, a 2021 change to state law that takes effect in 2023 will require courts to appoint attorneys at public expense for eligible parents who want to be represented by an attorney “in all child protection proceedings where a child risks removal....”⁴⁵

With some exceptions, the court must also appoint a guardian ad litem to represent the interest of any child under 18 involved in a CHIPS case.⁴⁶ Guardians ad litem are volunteers or state employees who advocate for children’s best interests in juvenile and family courts. The guardian ad litem makes their own determination about the best interests of the child and presents recommendations to the court.⁴⁷

The Indian Child Welfare Act (ICWA) and the Minnesota Indian Families Preservation Act (MIFPA) establish additional standards for child protection cases involving children who are enrolled or eligible to enroll in a federally recognized tribe.⁴⁸ These laws specify that tribal nations have exclusive jurisdiction in some child protection proceedings. Parents or tribal representatives may also seek to transfer child protection cases that begin in state courts to tribal courts. MIFPA specifies that county child protection agencies must follow placement decisions made by the tribal court when the court orders these agencies to arrange the out-of-home placement.⁴⁹

**ICWA applies to
children in
approximately
19%
of removals in
Minnesota.**

⁴¹ *Minnesota Statutes* 2021, 260C.227(a)-(b).

⁴² *Minnesota Statutes* 2021, 260C.227(c).

⁴³ *Ibid.*

⁴⁴ *Minnesota Statutes* 2021, 260C.163, subd. 3. Children do not have the right to a publicly funded attorney in proceedings that are only related to habitual truancy. *Minnesota Statutes* 2021, 260C.163, subd. 3(b).

⁴⁵ *Laws of Minnesota* 2021, First Special Session, chapter 7, art. 9, sec. 5, codified as *Minnesota Statutes* 2021, 260C.163, subd. 3. The financial eligibility requirements for a court-appointed attorney in a CHIPS case are the same as the eligibility requirements for obtaining a public defender in a criminal case. See *Minnesota Statutes* 2021, 611.17.

⁴⁶ *Minnesota Statutes* 2021, 260C.163, subd. 5. The court does not have to appoint a guardian ad litem in a CHIPS case “where the sole allegation is that the child is a runaway or habitual truant.”

⁴⁷ For more information on the role of guardians ad litem, see Office of the Legislative Auditor, Program Evaluation Division, *Guardian ad Litem Program* (St. Paul, 2018).

⁴⁸ Indian Child Welfare Act of 1978, 25 *U.S. Code*, secs. 1901-1963 (2020); and Minnesota Indian Family Preservation Act, *Minnesota Statutes* 2021, 260.751-260.835.

⁴⁹ *Minnesota Statutes* 2021, 260.771, subd. 4.

Reunification and Other Permanency Outcomes

When a child is in an out-of-home placement, state law requires the child protection agency to create an out-of-home placement plan, which includes the steps a parent should take to reunify with their children.⁵⁰ For example, a plan might include chemical or mental health treatment or domestic violence counseling. The agency must create the plan within 30 days of the child's placement out of the home by a court order or voluntary placement agreement.⁵¹ Plans are subject to court approval.⁵² The court must review the parent's progress on the plan within the first six months of the child's placement.⁵³

Once a court has ordered an out-of-home placement, only the court can determine how and when the placement will end.

According to state law, a child should return home "with supports and services, as soon as return is safe for the child."⁵⁴ Once a child is in the custody of the child protection agency under a court order, the child protection agency may make recommendations to the court about when it is safe to return a child home, but only the court can return custody to the parent.

Courts may order a trial home visit prior to finalizing reunification. During a trial home visit, the child remains in the legal custody of the child protection agency but lives with the parent. Trial home visits may last up to six months. If a trial home visit is not successful, the child protection agency may end the visit and move the child to another foster care placement.

If the court determines that the child cannot return home safely within the required timelines, the child protection agency and courts must take steps to finalize another permanent home for the child. This process may involve a court decision to end the parent-child relationship through a termination of parental rights so that the child may be adopted. Another common decision is for the court to permanently transfer custody of the child to a relative of the child.⁵⁵ By state law, a court must begin holding hearings on a permanent home for the child no later than 12 months after the child's removal from the parent.⁵⁶ Exhibit 1.3 provides an overview of the process of reunifying the child with the parent or finalizing another permanent living arrangement for the child.

⁵⁰ *Minnesota Statutes* 2021, 260C.212, subd. 1(a); and 260C.212, subd. 1(c)(2)-(3). The plan need not include reunification conditions if the case meets the legal criteria that allow a county attorney to bypass the CHIPS process and immediately seek permanent separation of the child from the parent.

⁵¹ *Minnesota Statutes* 2021, 260C.212, subd. 1.

⁵² *Minnesota Statutes* 2021, 260C.212, subd. 1(b)(1); and 260C.178, subd. 7.

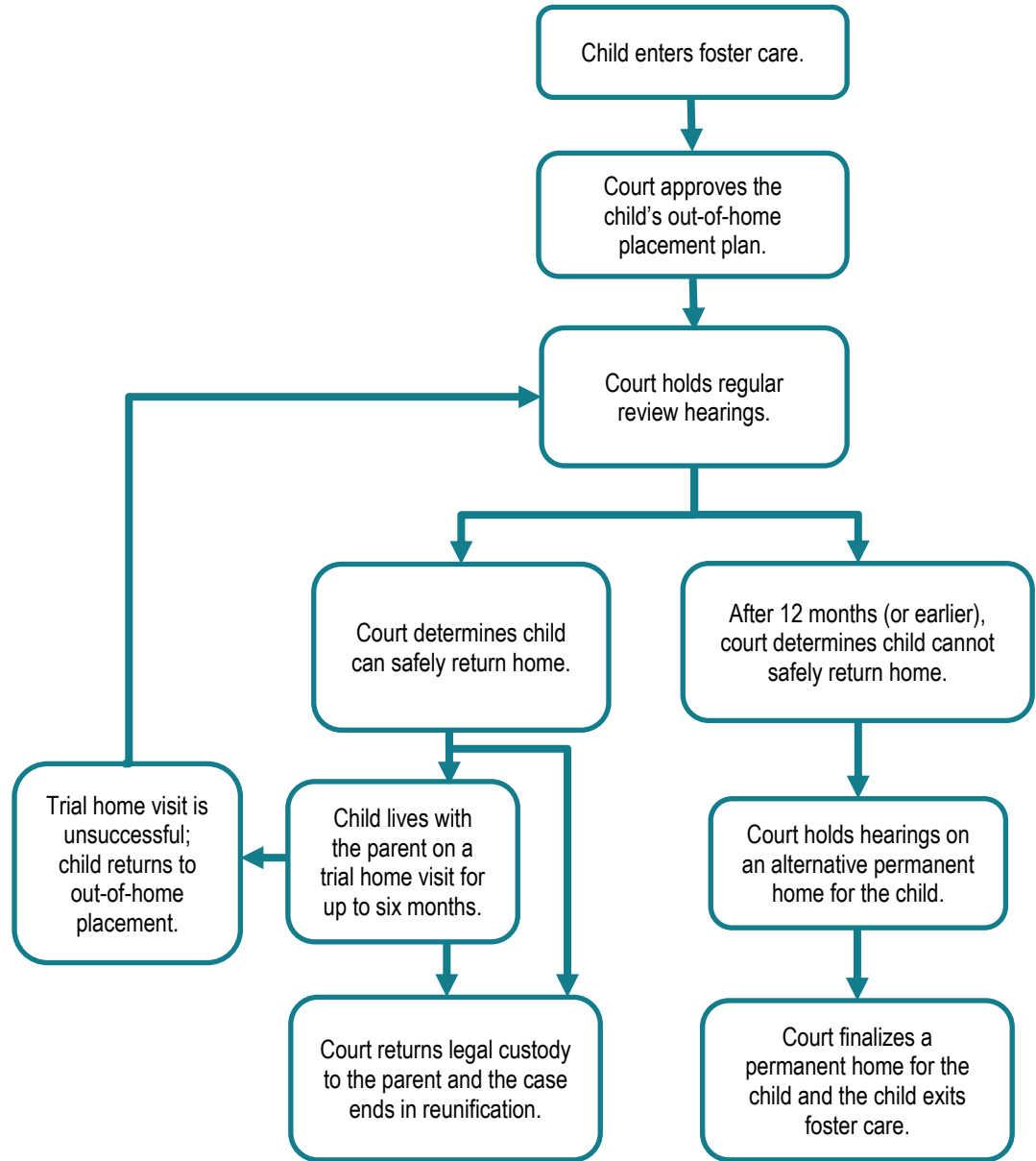
⁵³ *Minnesota Statutes* 2021, 260C.204(a)(1).

⁵⁴ *Minnesota Statutes* 2021, 260C.001, subd. 2(b)(7)(v).

⁵⁵ We discuss possible permanency outcomes further in Chapter 4.

⁵⁶ *Minnesota Statutes* 2021, 260C.503, subd. 1; and 260C.507(a).

Exhibit 1.3: A child may leave foster care to reunify with their parent or when the court finalizes another permanent home.



NOTES: The diagram illustrates common paths through foster care, but other paths may occur. For example, some children leave foster care after turning 18 before a permanent home can be finalized.

SOURCE: Office of the Legislative Auditor.

Oversight

As described above, child protection agencies, law enforcement agencies, and courts have responsibilities and decision-making authority within the child protection system. There are also multiple entities with certain oversight responsibilities, including the Children's Bureau within the U.S. Department of Health and Human Services, Minnesota Department of Human Services (DHS), and Minnesota courts.

Different entities oversee different parts of Minnesota's child protection system.

As shown in Exhibit 1.4, the Children's Bureau, DHS, and Minnesota courts each provide different forms of oversight to different parts of Minnesota's child protection system.

The Children's Bureau monitors state child protection performance as a condition of providing federal funding, although this funding makes up only a portion of total child protection funding (as we discuss later in this chapter). One way that the Children's Bureau has monitored state performance is through Child and Family Service Reviews. The Children's Bureau assesses state performance in child safety, permanency, and well-being using aggregate data from the state's child welfare data system, reviews of individual cases, and interviews. If a state does not achieve substantial conformity with the Bureau's standards, the state must implement a Program Improvement Plan.

DHS monitors the performance of individual child protection agencies.⁵⁷ State law requires DHS to establish performance standards for counties and to monitor county compliance with federal law and performance standards.⁵⁸ When counties are not meeting these standards, DHS primarily focuses on providing technical assistance. However, state law authorizes DHS to withhold a portion of a county's state and federal funding for noncompliance.⁵⁹

Oversight by DHS focuses primarily on child protection agencies; the Children's Bureau indirectly oversees the work of local child protection agencies through its oversight of DHS. The Children's Bureau provides some monitoring of state court performance through the federal Court Improvement Program, but DHS does not have oversight authority over courts.⁶⁰ Neither agency oversees law enforcement actions nor the county attorney offices, which represent child protection agencies in child protection cases.

⁵⁷ State oversight may extend to tribal child protection agencies when these agencies receive state funding.

⁵⁸ *Minnesota Statutes* 2021, 256M.41, subd. 4; and 256M.20, subd. 3.

⁵⁹ *Minnesota Statutes* 2021, 256M.20, subd. 3.

⁶⁰ Through the Court Improvement Program, the Children's Bureau awards grants to state courts to conduct assessments of court performance in child protection and implement strategies for improvement. The Court Improvement Program funds the state's Children's Justice Initiative, discussed below.

Exhibit 1.4: The Children’s Bureau, DHS, and the Courts have different oversight responsibilities related to child protection removals and reunifications.

	Oversight Body		
	Children’s Bureau	DHS	Courts
Child protection agencies	The Children’s Bureau indirectly oversees the work of child protection agencies by monitoring state child protection outcomes.	DHS sets performance standards for child protection agencies, provides guidance and technical assistance, and monitors funding distributed to agencies.	Court review of child protection agencies is carried out through review of individual cases.
Law enforcement agencies	The Children’s Bureau has no direct oversight of law enforcement agencies.	DHS has no direct oversight of law enforcement agencies.	Courts may return a child home following a law enforcement emergency hold but do not have direct oversight over the decision to place a hold.
Courts	The Children’s Bureau funds the Children’s Justice Initiative (CJI) through the Court Improvement Program and monitors state efforts to achieve program goals. CJI does not have direct oversight over court actions.	DHS has no direct oversight of courts.	The Court of Appeals or Supreme Court may review final decisions of a District Court.

SOURCE: Office of the Legislative Auditor.

Judicial oversight of the child protection system occurs in two different ways. First, courts review child protection cases. As discussed previously, courts review the initial decision to place a child out of the home, except when parents voluntarily agree to the placement. Courts also conduct periodic reviews of out-of-home placements. If a court disagrees with the actions of a county child protection agency, it can order changes. For example, the court could order modifications to the out-of-home placement plan or end an out-of-home placement if it determined that it is safe for a child to return to the care of their parents.

Second, the Judicial Branch also provides some oversight across child protection cases by establishing goals and monitoring court performance.⁶¹ In 2000, the Judicial Branch created the Children’s Justice Initiative in collaboration with the Minnesota Department of Human Services to improve outcomes for children who have experienced abuse and

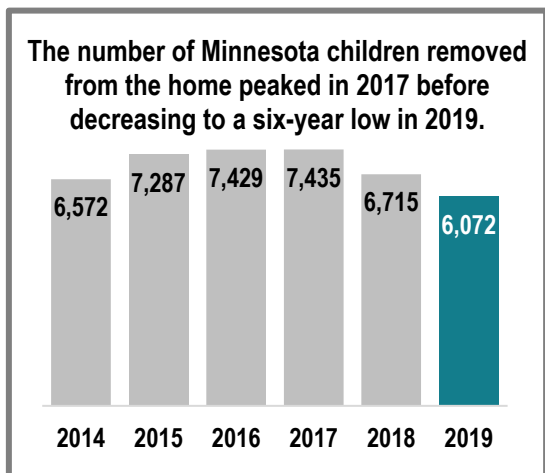
⁶¹ For examples of past assessments of court performance in child protection cases, see Minnesota Supreme Court, State Court Administration, Office of Research and Planning, *Minnesota Supreme Court Foster Care and Adoption Task Force Final Report* (St. Paul, 1997); and Minnesota Supreme Court, State Court Administrator’s Office, Court Services Division, *Minnesota’s Court Performance in Child Protection Cases: A Reassessment Under the Federal Court Improvement Program* (St. Paul, 2005).

neglect. Among other goals, the Children’s Justice Initiative has worked to ensure that court procedures are consistent and compliant with state and federal laws.⁶² Additionally, judicial policy requires annual reporting of court progress on key child protection performance measures.⁶³ We discuss these performance measures further in Chapter 4.

As described above, law enforcement officers have the ability to remove a child from their parent through law enforcement emergency holds when officers have concerns about the child’s safety, but there is limited oversight of these decisions. If it is safe for a child to return home, the officer’s supervisor, the county attorney, or the child protection agency may release the hold prior to a court hearing, or the court can decide to return a child home at the time of the emergency protective care hearing. However, these decisions happen after the removal has already occurred, and there is not necessarily a review of whether the initial removal decision was appropriate. Although individual law enforcement agencies may have their own procedures for approving and reviewing holds, no outside agency is responsible for assessing law enforcement performance in initiating removals.

Recent Trends

In 2019, there were 6,431 new removals involving 6,072 children in Minnesota.⁶⁴ The number of children removed in Minnesota increased from 6,572 children in 2014 to 7,435 children in 2017 before decreasing in 2018 and 2019.



The number of children entering out-of-home placements in Minnesota reached a six-year low in 2019.

This increase and subsequent decline mirrored national trends for children entering foster care. Nationally, the number of children entering foster care increased from Federal Fiscal Year 2014 to Federal Fiscal Year 2016, then declined to a six-year low in Federal Fiscal Year 2019.⁶⁵

⁶² For more information about the Children’s Justice Initiative, see <https://www.mncourts.gov/Help-Topics/CJI.aspx>.

⁶³ “Children’s Justice Policy,” Minnesota Judicial Branch Policy 601, https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/600/601-Children%e2%80%99s-Justice-Policy.pdf?ext=.pdf, accessed March 29, 2022.

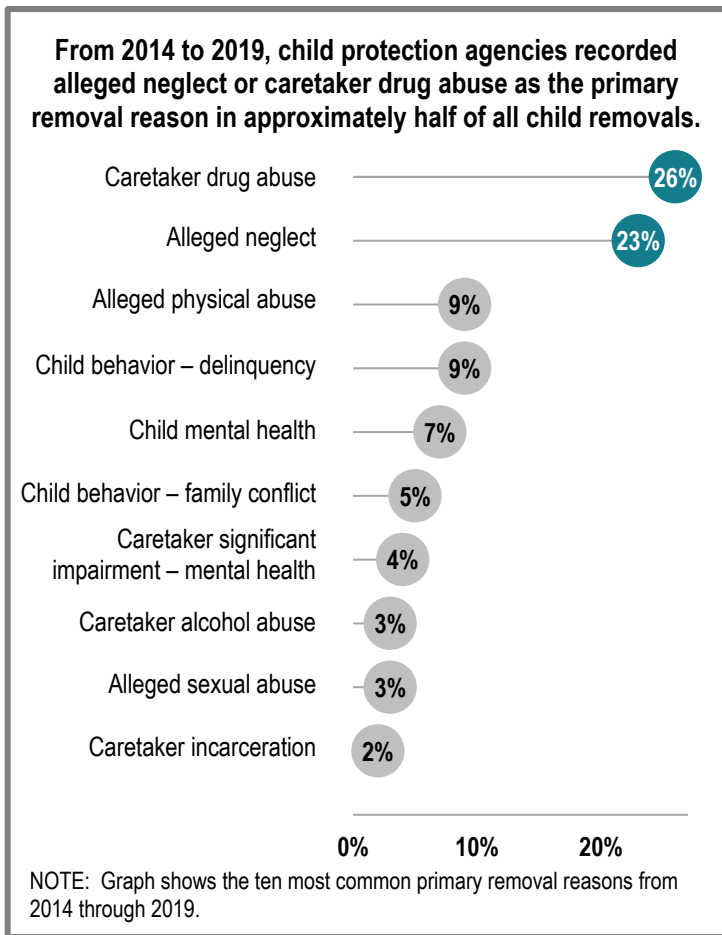
⁶⁴ These counts are from our analysis of DHS data and include all removals, regardless of whether removals related to caregiver maltreatment. When multiple children from the same family are removed at the same time, each child and each removal are counted separately. Removal data do not include some removals where the child was never in a DHS-defined “placement”—for example, when a child was immediately placed with a noncustodial parent. Removal data also likely exclude some removals followed by out-of-home placements lasting 24 hours or less; child protection agencies may report such placements, but are not required to do so.

⁶⁵ Federal fiscal years begin on October 1 and end on September 30. Therefore, Federal Fiscal Year 2019 began on October 1, 2018, and ended on September 30, 2019. We present state child protection data in the report by calendar year (January 1 to December 31).

Removal Reasons

When children are removed from the home, child protection agencies record the primary reason for removal and additional secondary factors associated with the removal.

In Minnesota, the most commonly recorded reasons for removing a child from the home are alleged neglect and caretaker drug abuse.



From 2014 through 2019, child protection agencies cited alleged child neglect and caretaker drug abuse as the most common primary removal reasons.⁶⁶ Child protection agencies listed alleged neglect as the primary reason for removing a child from their home in 25 percent of removals in 2014 and 2015.⁶⁷ In 2016, caretaker drug abuse surpassed alleged neglect as the most common primary removal reason; alleged neglect remained the second most common reason through 2019.

Child protection agencies also frequently listed caretaker drug abuse and alleged neglect as secondary reasons associated with removing a child from their home. In each year from 2014 through 2019, child protection agencies cited alleged neglect as a factor (primary or secondary) in at least 35 percent of removals. The percentage of removals in which child protection agencies identified caretaker drug abuse as a factor grew from 26 percent in 2014 to 41 percent in 2019. In our review of a sample of case files, we observed that drug or alcohol use by parents was related to over half of all removals.⁶⁸

⁶⁶ Although we usually use the term “parent” in this report for adults from whom children may be removed, local child protection agencies report these data using the term “caretaker,” so we followed that usage here. Caretaker includes a parent, legal guardian, or other caretaker responsible for the child.

⁶⁷ According to DHS, when alleged neglect is indicated as a removal reason, it refers to “alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person responsible for the child’s welfare.” “Removal Conditions Help Text” (Social Services Information System help text, Minnesota Department of Human Services, November 2019).

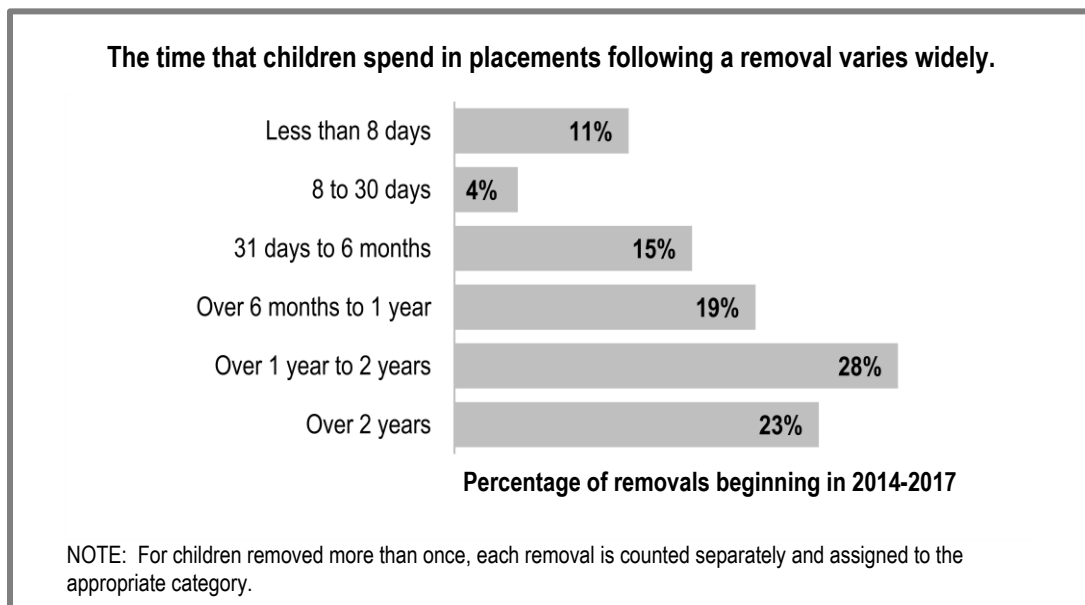
⁶⁸ We conducted a file review in which we examined county child protection agency case notes, data entered by the agency in DHS’s database, and court documents. We reviewed 150 cases of children removed between July 1, 2017, and June 30, 2018, by selecting 15 cases from a single county child protection agency in each of Minnesota’s ten judicial districts. We selected cases to represent diverse removal experiences, including length of time out of the home and race of the child. The file review sample was not representative, so observations from the file review are not generalizable.

Time in Out-of-Home Placements

Sometimes, a child can be safely returned home in a matter of days. In other cases, it may be years before children are reunified with their families or leave foster care to another permanent home.

The length of time children spend in placements following a removal varies widely, from a few days to multiple years.

As is shown in the box below, from 2014 through 2017, 15 percent of removals led to short placement stays of 30 days or less.⁶⁹ Children spent one year or less in placements following approximately half of all removals, but others stayed in placements much longer. Over 20 percent of removals occurring in 2014 through 2017 led to placement stays of longer than two years.



⁶⁹ Because our interest is primarily in removals related to maltreatment, in the statistics we present here, we have excluded cases where the only reasons listed were related to the actions or behavior of the child. Such cases made up 21 percent of all removals in DHS data over this time period. We excluded an additional 2 percent of cases that had no removal reasons listed.

Racial Disproportionality

For decades, American Indian and African American children have accounted for disproportionately large shares of out-of-home placements in the United States, relative to their shares of the overall population.⁷⁰ Minnesota shares this history.⁷¹

Minnesota has a history of child protection removals disproportionately affecting African American and American Indian children.

Studies have repeatedly highlighted disproportionality and disparities in Minnesota's child protection system.⁷² For example, the Association on American Indian Affairs submitted data to Congress in 1974 showing that American Indian children in Minnesota and several other states were more likely to be placed in foster care than non-American Indian children.⁷³ More recently, in 2001, in response to a legislative mandate, DHS convened a committee to examine racial disparities affecting African American families involved in the child protection system.⁷⁴ The committee's report

⁷⁰ For research summaries on racial disparity and disproportionality, see Jude Mary Cénat, Sara-Emilie McIntee, Joana N. Mukunzi, and Pari-Gole Noorishad, "Overrepresentation of Black Children in the Child Welfare System: A Systematic Review to Understand and Better Act," *Children and Youth Services Review*, 120 (2021): 105714; John Fluke, Brenda Jones Harden, Molly Jenkins, and Ashleigh Ruehrdanz, *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (Washington: Center for the Study of Social Policy, 2011), <https://www.aecf.org/resources/disparities-and-disproportionality-in-child-welfare/>, accessed June 10, 2020; and Robert B. Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update* (Baltimore: The Annie E. Casey Foundation, Casey-CSSP [Center for the Study of Social Policy] Alliance for Racial Equity in the Child Welfare System, 2006), <https://www.aecf.org/resources/synthesis-of-research-on-disproportionality-in-child-welfare-an-update/>, accessed May 21, 2020.

⁷¹ In this section, we focus on the experiences of African American and American Indian children within the child protection system as they are overrepresented in out-of-home placements, nationally and in Minnesota. Asian children enter the child protection system at a rate considerably lower than their proportion in the general population. Nationwide, Hispanic children enter the child protection system at about the same rate as non-Hispanic white children, but there are differences between states. In Minnesota, Hispanic children enter foster care at a somewhat higher rate than their proportion in the population.

⁷² Minnesota-specific studies include Margaret Skrypek, Kyler Woodmass, Maxie Rockymore, Geoff Johnson, and Susan J. Wells, "Examining the Potential for Racial Disparity in Out-of-Home Placement Decisions: A Qualitative Matched-Pair Study," *Children and Youth Services Review* 75 (2017): 127-137; Sheila D. Ards, Samuel L. Myers, Jr., Patricia Ray, Hyeon-Eui Kim, Kevin Monroe, and Irma Arteaga, "Racialized Perceptions and Child Neglect," *Children and Youth Services Review*, 34 (2012): 1480-1491; Minnesota Department of Human Services, Children and Family Services, *Minnesota Child Welfare Disparities Report* (St. Paul, 2010); Erik P. Johnson, Sonja Clark, Matthew Donald, Rachel Pedersen, and Catherine Pichotta, "Racial Disparity in Minnesota's Child Protection System," *Child Welfare*, 86, no. 4 (2007): 5-20; Sheila D. Ards, Samuel L. Myers, Jr., Allan Malkis, Erin Sugrue, and Li Zhou, "Racial Disproportionality in Reported and Substantiated Child Abuse and Neglect: An Examination of Systemic Bias," *Children and Youth Services Review* 25, no. 5/6 (2003): 375-392; and Minnesota Department of Human Services, Children's Services Administration, *Minnesota Department of Human Services Report to the Legislature on the Study of Outcomes for African American Children in Minnesota's Child Protection System* (St. Paul, 2002).

⁷³ United States Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Problems that American Indian Families Face in Raising Their Children and How these Problems Are Affected by Federal Action or Inaction*, 93rd Cong., 2nd sess., April 8, 1974, 80.

⁷⁴ *Laws of Minnesota* 2001, First Special Session, chapter 9, art. 11, sec. 15.

found that disparities existed throughout the child protection process, including at the decision to place a child out of the home.⁷⁵

DHS reports annually on out-of-home placement rates for children by racial and ethnic categories. In 2020, according to DHS,

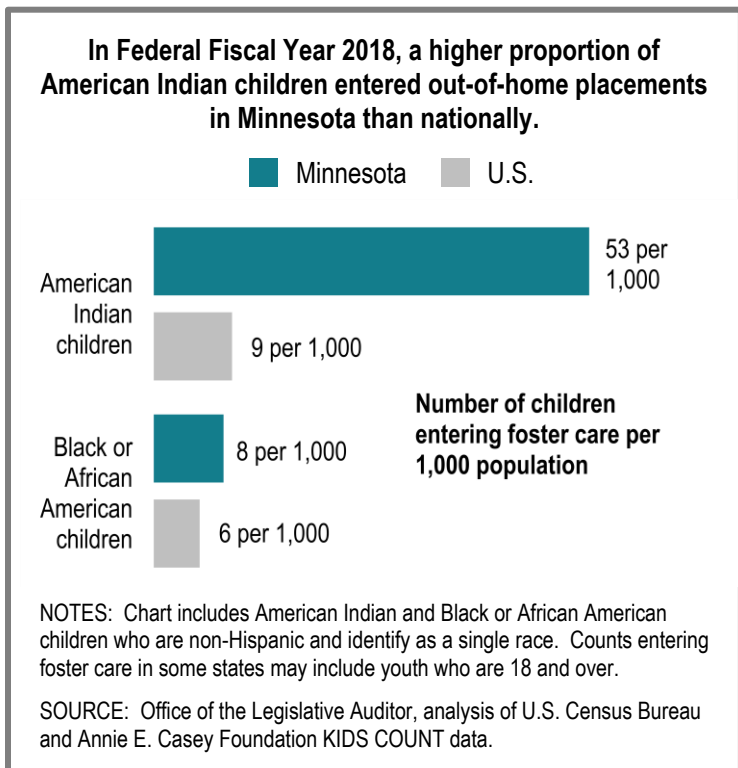
American Indian children were 16.4 times more likely, African American/Black children 2.4 times more likely, and those identified as two or more races were 6.8 times more likely than white children to experience [out-of-home placements], based on Minnesota population estimates from 2019.⁷⁶

Of the children identifying as two or more races, 57 percent identified at least one race as African American/Black, and 64 percent identified at least one race as American Indian.

Data show that both African American and American Indian children are overrepresented in foster care compared to their representation in the general population both in Minnesota and nationally.⁷⁷ However, the proportion of American Indian

children entering foster care in Minnesota is far higher than the proportion of American Indian children entering foster care nationally. In Federal Fiscal Year 2018, 53 out of every 1,000 children identifying as American Indian in Minnesota entered foster care compared to 9 out of every 1,000 children identifying as American Indian nationally, as shown in the graph to the left.

It is unclear to what extent Minnesota’s statistics for American Indian children are directly comparable to those reported by other states. According to DHS administrators, Minnesota includes in its statewide data children whose cases begin in tribal jurisdictions or transfer to those jurisdictions; other states may exclude such children from the data they report. However, it is clear that, within Minnesota, American Indian children enter foster care at far higher rates than other Minnesota children.



⁷⁵ Minnesota Department of Human Services, *Report to the Legislature on the Study of Outcomes for African American Children*.

⁷⁶ Department of Human Services, Children and Family Services, *Minnesota’s Out-of-home Care and Permanency Report, 2020* (St. Paul, 2022), 6.

⁷⁷ Charles Puzzanchera and Moriah Taylor, *Disproportionality Rates for Children of Color in Foster Care Dashboard* (Pittsburgh: National Council of Juvenile and Family Court Judges, 2020), http://www.ncjj.org/AFCARS/Disproportionality_Dashboard.aspx, accessed February 2, 2021.

Despite the long history of these disproportionate outcomes for African American and American Indian children, scholars have not coalesced around a single explanation for why disproportionality occurs.⁷⁸ Much research has focused on demonstrating that disproportionality exists, rather than on its causes. Studies attempting to demonstrate causal relationships between different factors and disproportionate outcomes have produced limited or mixed results. Some studies are based on small numbers of cases or have other methodological shortcomings, making it difficult to extrapolate their conclusions to larger populations.

Multiple factors may play a role in producing disproportionate outcomes. Scholars have suggested that factors may include, for example, higher incidences of poverty and drug addiction in some communities; conscious or unconscious bias by child protection workers, law enforcement officers, or others; and system-level factors, such as child protection agency policies and practices and a lack of culturally appropriate resources. Scholars have also suggested that a series of smaller inequalities at earlier decision points may combine together to form a larger disproportionate outcome in foster care placements—for example, evidence exists that American Indian children and African American children are reported to child protection agencies at higher rates than other children.⁷⁹

Funding

County social service agencies report their spending to DHS. However, due to the presence of multiple funding streams and overlaps in social service activities, it is difficult to isolate spending for child protection services from other social services provided to children and families. For example, there is no way to determine what proportion of the funds local agencies spend on “interpreter services” is specifically tied to child protection cases. As a result, we can only examine county spending on the broad category of children’s social services. Child protection spending makes up a significant proportion of children’s social services, but children’s social services also include many services other than child protection.

The majority of costs for children’s social services are borne by local governments.

In calendar year 2019, county social services agencies reported spending just over \$570 million on children’s social services. Local sources, such as property taxes, funded the largest portion of this spending, accounting for just over half of children’s social services expenditures.

Local funding sources accounted for 53 percent of county children’s social services spending in calendar year 2019.

Local sources	\$300.2 million	53%
Federal sources	\$130.4 million	23%
State sources	\$121.9 million	21%
Miscellaneous	\$ 18.9 million	3%
Total	\$571.4 million	100%

NOTES: Miscellaneous sources include revenues from third parties, such as private grants and child support payments.

SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Human Services.

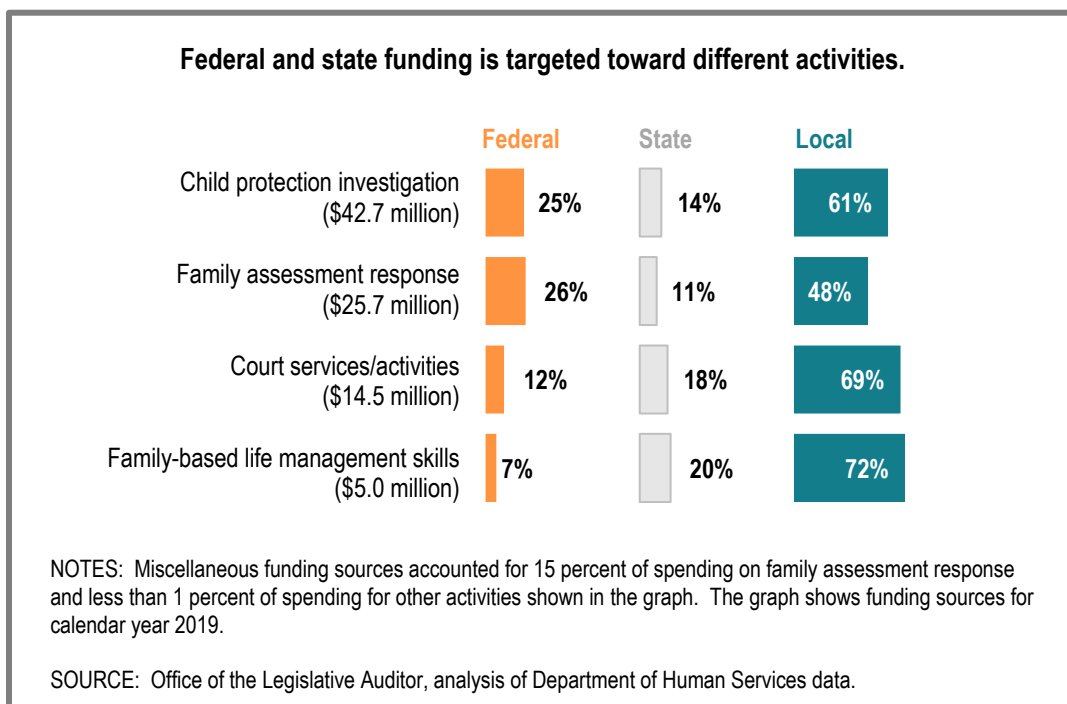
⁷⁸ The discussion in this paragraph and the next is based largely on the research summaries in Fluke, et al, *Disparities and Disproportionality in Child Welfare: Analysis of the Research*; and Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update*.

⁷⁹ Fluke, et al, *Disparities and Disproportionality in Child Welfare: Analysis of the Research*, 32.

Federal sources funded 23 percent of total spending, and state sources funded 21 percent.

DHS reported children’s social services spending in 53 categories, the largest of which were “General Case Management” (\$128 million, 22 percent of the total) and “Child Family Foster Care” (\$105 million, 18 percent). All other categories were 7 percent or less of the total spent on children’s social services in calendar year 2019. For most categories, local sources make up the majority of the total funds spent.

Although federal and state sources contribute roughly equivalent amounts to total spending, federal and state funding is targeted toward different activities, as shown by the examples below.





OLA

Chapter 2: Removals

As we described in Chapter 1, Minnesota has a locally administered child protection system, and entities such as child protection agencies, courts, law enforcement, county attorneys, and tribal authorities all play a role in child protection. Differences among these entities contribute to variation across the system as a whole. While these differences may be necessary to accommodate local service areas, funding, and policy decisions, children and families may experience different outcomes depending on the agencies with which they interact.

In this chapter, we first discuss the potential impacts of removing—or not removing—a child from the home. We then describe the extent to which removals initiated through law enforcement emergency holds occur at different rates throughout the state. We explain how entities in the child protection system play different roles in removal decision-making depending on the local context, and examine some challenges to this arrangement.

Key Findings in This Chapter

- Over half of out-of-home placements begin with law enforcement emergency holds.
- Most law enforcement emergency holds are followed by longer-term out-of-home placements, but the extent varies across the state.
- There are no statewide requirements for ongoing training of law enforcement officers on child protection issues.

Decisions to Remove Children from the Home

When child protection agencies, law enforcement agencies, and courts interact with families whose children are endangered in the home, there often are no simple solutions. Authorities can face difficult choices as they weigh the risks of too little action against the risks of too much intervention.

Decisions to remove—or not to remove—a child from the home are challenging and can have profound consequences for the children involved.

If children are not sufficiently protected, the effects of child abuse and neglect can be deep and long-lasting. Children subject to abuse or neglect may suffer immediate effects such as physical harm, and the academic literature shows that abuse and neglect can also result in adverse consequences throughout a child's life. Abuse and neglect may negatively impact a child's brain development and cognitive functioning.¹ Children who experience

¹ See, for example, Danya Glaser, "Child Abuse and Neglect and the Brain—A Review," *Journal of Child Psychology and Psychiatry* 41, no. 1 (2000): 97-116; Rebecca T. Leeb, Terri Lewis, and Adam J. Zolotor, "A Review of Physical and Mental Health Consequences of Child Abuse and Neglect and Implications for Practice," *American Journal of Lifestyle Medicine* 5, no. 5 (2011): 454-468; Johanna Watson, *Literature Review: Child Neglect* (Ashfield, NSW: Centre for Parenting and Research, 2005); and National Research Council, *New Directions in Child Abuse and Neglect Research* (Washington, DC: National Academies Press, 2014): 117-140.

abuse or neglect may also be at higher risk for behavioral problems and mental health issues, such as aggressive behavior, anxiety, and depression.² Experiences of abuse or neglect may increase the risk of problematic drug and alcohol use later in life.³ A training resource by the U.S. Department of Health and Human Services states:

The consequences of child maltreatment can be profound and may last long after the abuse or neglect occurs. The effects can appear in childhood, adolescence, or adulthood and may affect every aspect of an individual's development — physical, cognitive, psychological, societal, and behavioral. While the effects of child abuse and neglect are often discussed in terms of these specific categories, it is not truly possible to separate them completely. Physical consequences, such as damage to a child's growing brain, for example, can have psychological implications as well, including cognitive delays, emotional difficulties, depression, or anxiety.⁴

The academic literature also indicates that removal from the home and placement in the foster care system can have adverse consequences both during childhood and later in life.⁵ The Children's Bureau of the U.S. Department of Health and Human Services has called on state agencies administering federally funded child protection programs to make policy and practice changes to address the trauma of child protection removals:

Placing a child in out-of-home care can cause irreparable damage to the child and the broader family unit. Removal and subsequent continued separation makes the sustenance of primary relationships and prospects of reunification more problematic. The loss a child experiences when separated from his or her parent or parents is profound and can last into adulthood. In terms of evolutionary biology, losing a parent or primary

² See, for example, Rosana E. Norman, Munkhtsetseg Byambaa, Rumna De, Alexander Butchart, James Scott, and Theo Vos, "The Long-Term Health Consequences of Child Physical Abuse, Emotional Abuse, and Neglect: A Systematic Review and Meta-Analysis," *PLOS Medicine* 9, no. 11 (November 2012): 3-4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3507962/>, accessed April 21, 2021; and Leeb et al., "Review of Physical and Mental Health Consequences."

³ See, for example, Shanta R. Dube, Vincent J. Felitti, Maxia Dong, Daniel P. Chapman, Wayne H. Giles, and Robert F. Anda, "Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study," *Pediatrics* 111 (2003): 567; and Cathy Spatz Widom, Helene Raskin White, Sally J. Czaja, and Naomi R. Marmorstein, "Long-Term Effects of Child Abuse and Neglect on Alcohol Use and Excessive Drinking in Middle Adulthood," *Journal of Studies on Alcohol and Drugs* (May 2007): 323-324.

⁴ U.S. Department of Health and Human Services, Child and Family Services Review E-Training Platform, *Section 2: Understanding the Child Welfare System*, <https://training.cfsrportal.acf.hhs.gov/section-2-understanding-child-welfare-system/3031>, accessed June 3, 2020.

⁵ See, for example, Kimberly Howard, Anne Martin, Lisa J. Berlin, and Jeanne Brooks-Gunn, "Early mother-child separation, parenting, and child well-being in Early Head Start families," *Attachment & Human Development* 13, no. 1 (January 2011): 5-26; Catherine R. Lawrence, Elizabeth A. Carlson, and Byron Egeland, "The impact of foster care on development," *Development and Psychopathology* 18 (2006): 57-76; and Miyoung Yoon, Anna E. Bender, and Jiho Park, "The association between out-of-home placement and offending behavior among maltreated youth: A systematic review," *Children and Youth Services Review* 95 (2018): 263-281. See also Anouk Goemans, Mitch van Geel, Merel van Beem, and Paul Vedder, "Developmental Outcomes of Foster Children: A Meta-Analytic Comparison With Children From the General Population and Children at Risk Who Remained at Home," *Child Maltreatment* 21, no. 3 (2016): 198-217, which found, across multiple studies, no improvement in cognitive, adaptive, and behavioral functioning of at-risk children placed in foster care when compared with at-risk children remaining at home.

protective adult can represent a grave danger to survival for a child. Evidence of this activation and its harmful physiological and psychological consequences is well established.⁶

A number of people in the child protection system, including child protection agency staff, law enforcement officials, attorneys, and individuals involved in the court system, told us that removing a child from the home can be a traumatic experience for the child. Interviewees also told us about strategies child protection agencies use to help mitigate some of the trauma of the removal for the children, such as allowing a parent to bring the child to the agency instead of sending officers to remove the child from the home.



Every day, life-changing decisions are made by these workers with a moment's notice or without all of the information they would like to have, in an attempt to provide safety in the least traumatizing manner possible. Child protection staff see and feel the trauma of removal and share the joy of reunification. These decisions are not made lightly.

— Child protection agency administrator

Similarly, young people we spoke with described their memories of being removed from the home and how this affected them.⁷ Most of the young people we spoke with acknowledged that they had been in abusive or neglectful situations prior to their removal from the home. However, a common concern in these interviews was that the young person was not aware of what was happening at the time nor did they know the reason for their removal from the home. The young people we spoke with expressed a desire for greater communication at the time of removal.

Law Enforcement Emergency Holds

There are two possible means of removing a child from the home on an emergency basis: by court order or by law enforcement emergency hold. In this section, we discuss emergency removals under the authority of a law enforcement hold, as these are the most common form of removing a child from the home in Minnesota. As stated in Chapter 1, an emergency hold may last no longer than 72 hours, excluding weekends and holidays.⁸

⁶ U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, “Family Time and Visitation For Children and Youth in Out-Of-Home Care,” Informational Memo ACYF-CB-IM-20-02, February 5, 2020, 1-2. See also U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, “Foster Care as a Support to Families,” Informational Memo ACYF-CB-IM-20-06, April 29, 2020.

⁷ We interviewed volunteers drawn from several Youth Leadership Councils regarding their experience with removal from the home and foster care placement. These councils, made up of teens and young adults who have experienced foster care, are coordinated by the Department of Human Services, and locally facilitated by nonprofit organizations or county social service agencies in different parts of the state. Council members educate the public on the foster care system and provide feedback to the Department of Human Services about policies affecting foster care youth.

⁸ The court may extend the time to a hearing on an emergency removal for a brief period if doing so is in the best interests of the child. *Minnesota Statutes* 2021, 260C.163, subd. 1(b). If the child is American Indian, a court hearing may be further extended in order to notify the child’s parent and tribe, and—if requested—to provide additional time to prepare for court proceedings. *25 U.S. Code*, sec. 1912(a) (2020). Although continuing the hearing to a later date is possible, Minnesota Judicial Branch guidance indicates that holding juvenile protection hearings on the first date scheduled is a best practice, unless honoring requests for additional time by tribes or parents of American Indian children.

A law enforcement officer may place an emergency hold to immediately remove a child from the home if the child is found in a situation that may endanger their health or welfare. Emergency holds can occur when law enforcement is called to respond to a child maltreatment report or if an officer encounters a child in danger in the course of their work. If child protection staff determine that a child is in immediate danger, the child protection worker may notify local law enforcement that they believe the child should be removed from the home on an emergency basis. However, law enforcement officers ultimately have the authority to remove a child from the home under state law, so the decision rests with the officer.⁹

Frequency

Department of Human Services (DHS) data show that from 2014 to 2019, there were 34,372 removals of individual children from their parents' homes or care in Minnesota.¹⁰

Over half of out-of-home placements begin with law enforcement emergency holds.

According to data collected by DHS, 65 percent of child removals in Minnesota from 2014 through 2019 occurred through a law enforcement emergency hold. There was little variation from year to year, with 64 percent to 66 percent of stays in out-of-home placement annually beginning with law enforcement emergency holds.¹¹ The remaining removals occurred mostly through court orders (29 percent) or voluntary placements (6 percent).¹²

Although we are confident that a majority of child removals occurred through law enforcement emergency holds, data limitations make us less certain that the percentages we calculated are precise. First, child protection agencies are only required to report when children are out of the home for more than 24 hours, so removals followed by very short out-of-home placements may not be included in these figures. Second, agencies may not report some removals when the child did not go to a DHS-defined “placement”—for example, when a child was immediately placed with a noncustodial parent following the removal. Third, we found errors—law enforcement holds reported

⁹ *Minnesota Statutes* 2021, 260C.175, subd. 1(2).

¹⁰ In addition to removals related to child protection concerns, children may be removed from the home due to the child's behavior, mental health, or other reasons. Sometimes, children are removed for multiple reasons, or the reason a child is placed out of the home changes after the data are initially entered. The numbers reported here, and throughout the rest of the report, only include children with a removal reason related to the parent's actions, such as alleged neglect or caretaker drug abuse. Although many of these removals were due to child protection concerns, some children may have been removed for other reasons. We could not fully distinguish removals for the purposes of child protection from all removals. If a child was removed from the home multiple times during this period, the child would be counted multiple times in the data.

¹¹ Somewhat confusingly, an “out-of-home placement” can include when a child is placed back with the parent under a trial home visit, in which the child protection agency has legal custody of the child. We discuss trial home visits further in Chapter 4.

¹² As we described in Chapter 1, removals that begin as court orders may occur on an emergency basis or after the child has already been involved in child protection court proceedings. Voluntary placements occur when the parent enters an agreement to place the child out of the home. In calculating these percentages, we made several assumptions to account for missing or ambiguous data.

as court orders or vice versa—in over 5 percent of child maltreatment cases we reviewed in our file review sample.¹³

The use of law enforcement emergency holds varies across the state.

In some counties, a large majority of removals occur through law enforcement emergency holds, while other counties make far more use of court orders. As shown in Exhibit 2.1, over 80 percent of removals in some counties were initiated by law enforcement holds, while in other counties, less than 40 percent of removals were initiated by law enforcement holds.

There is also variation *within* counties. In our survey of county child protection agency administrators, we asked to what extent administrators agreed that some law enforcement agencies in their service area were more likely than other law enforcement agencies in their area to issue holds, given similar situations.¹⁴ Forty-seven percent of administrators strongly agreed or agreed that some law enforcement agencies were more likely than others to issue holds.

A few child protection administrators expressed concerns that sometimes law enforcement officers have placed emergency holds when removal might otherwise have been prevented. The Hennepin and Ramsey county child protection agencies have recently taken steps to increase collaboration between child protection staff and law enforcement staff during situations in which law enforcement is considering an emergency hold. For example, both child protection agencies now send staff to the home when they become aware that a law enforcement emergency hold is possible to determine if there are alternative options. Administrators reported that this practice better enables child protection staff to place the children temporarily with relatives or develop a safety plan for the family. Hennepin County child protection administrators noted that this practice has reduced the number of law enforcement emergency holds; Ramsey County administrators said that as of April 2021, the practice had been instituted too recently to determine yet whether it has had an effect.

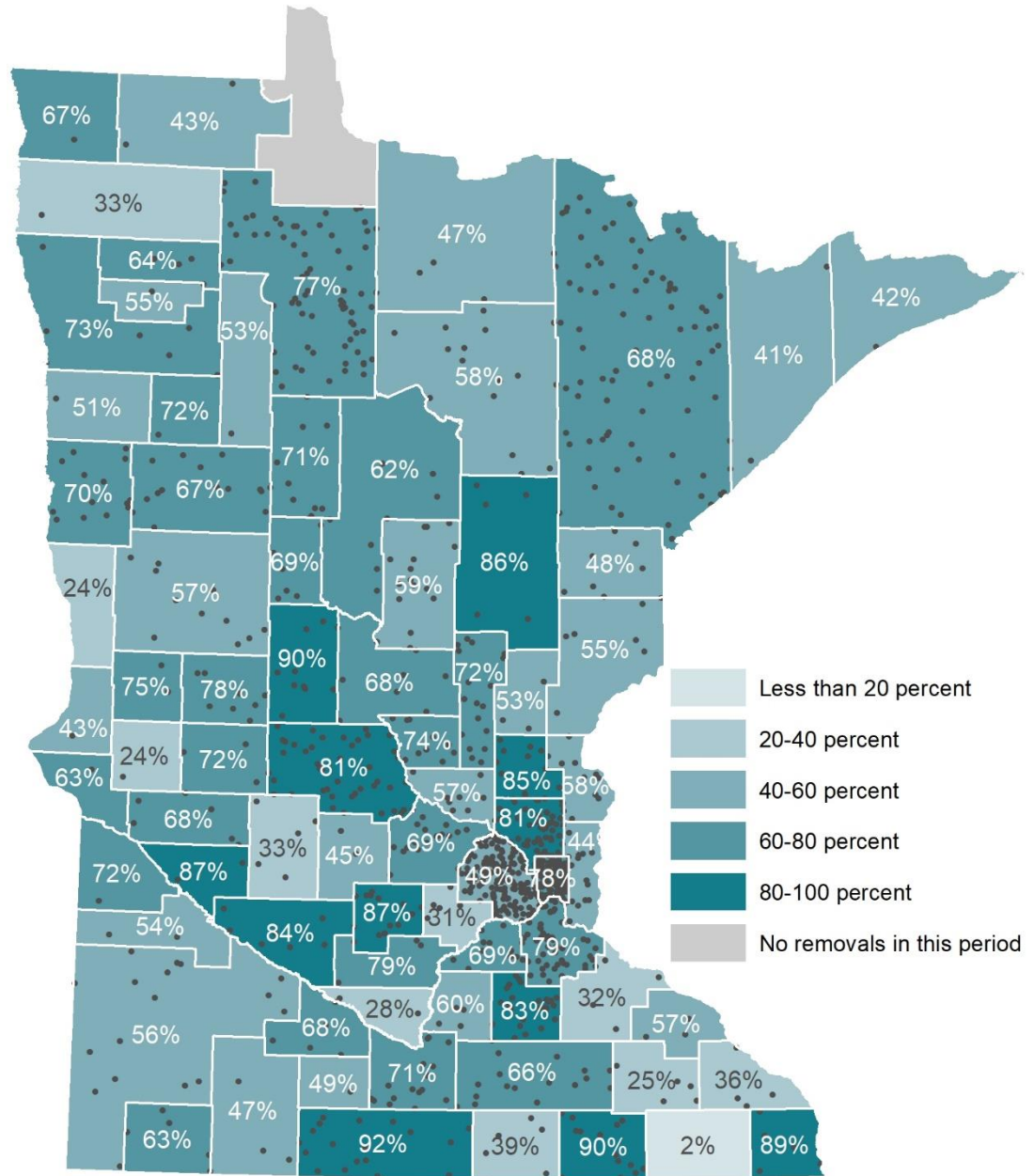


Fillmore and Mower Counties are neighboring counties that have very different rates of removals occurring through law enforcement emergency holds. In Fillmore County, only 2 percent of removals from 2014 through 2019 occurred through a law enforcement hold, while in Mower County, 90 percent were law enforcement holds. Child protection administrators from both counties explained that these practices are historically the way removals have occurred in those counties. Administrators added that the current practice works well in their respective counties.

¹³ We conducted a file review in which we examined county child protection agency case notes, data entered by the agency in DHS's database, and court documents. We reviewed 150 cases of children removed between July 1, 2017, and June 30, 2018, by selecting 15 cases from a single county child protection agency in each of Minnesota's ten judicial districts. We selected cases to represent diverse removal experiences, including length of time out of the home and race of the child. The file review sample was not representative, so observations from the file review are not generalizable. The 5 percent figure excludes cases that did not contain sufficient information to complete our file review protocol or did not have any child maltreatment basis for the removal.

¹⁴ We sent a questionnaire to all county social services agency directors and asked that a senior administrator who works in child protection complete the survey. We received responses from 75 local agencies, for a response rate of 96 percent. (Some counties are part of multicounty agencies.) We asked respondents to primarily consider child protection cases involving maltreatment when answering questions. We did not send surveys to tribal social service agencies, as we did not evaluate these agencies' activities in our report.

Exhibit 2.1: The percentage of removals that begin with law enforcement holds varies widely across the state.



NOTES: Dots indicate the number of removals in each child protection agency service area from 2014 through 2019. Each dot represents 20 child protection removals; dots are placed randomly within service areas. Data do not include law enforcement removals on Leech Lake Band of Ojibwe and White Earth Nation lands. Data also may not include some holds where the child was released in less than 24 hours.

SOURCE: Office of the Legislative Auditor, analysis of Department of Human Services data.

More generally, representatives of child protection and law enforcement agencies had mixed opinions as to how the involvement of child protection staff affects whether an emergency hold occurs. We asked child protection and law enforcement agencies across the state whether involving child protection staff in decisions about issuing an emergency hold made law enforcement more likely to issue a hold, less likely to issue a hold, or if the outcome was generally the same.¹⁵ Overall, the most common response of child protection and law enforcement survey respondents was that law enforcement staff were more likely to issue an emergency hold if child protection staff help make the decision, as shown in the box at right.

How does involvement of child protection staff affect decisions about issuing a law enforcement hold?

	Child Protection Respondents	Law Enforcement Respondents
More likely to issue hold	46%	58%
Less likely to issue hold	18%	4%
Outcome is generally the same	36%	38%

NOTE: Missing and “don’t know” responses are omitted.
 SOURCE: Office of the Legislative Auditor, surveys of child protection and law enforcement agencies, 2020.

However, there were significant differences in responses to this question from child protection administrators based on the population of the area served. In service areas with a population of 30,000 people or less, 8 percent of county child protection administrators said that their agency’s involvement made law enforcement holds less likely. In service areas with populations of 100,000 people or more, 36 percent of the administrators said their agency’s involvement made law enforcement holds less likely.

DHS does not track which law enforcement agencies place emergency holds.

Some child protection agencies may track information on which law enforcement agency placed a hold at the local level, but this information was not in DHS’s statewide data. Given the lack of information, we cannot identify how practices differ locally, apart from responses to our surveys of child protection and law enforcement agencies. Having statewide information on which law enforcement agency placed an emergency hold could help DHS or county child protection agencies identify important differences among agencies—for example, whether a given law enforcement agency removes a high number of children who are subsequently released from the hold by the child protection agency prior to a court date.

¹⁵ We sent a questionnaire to all county sheriffs and to all police chiefs whose departments employed at least ten officers. Chiefs and sheriffs could delegate their survey response to an administrator or supervisor with relevant expertise. We received responses from 184 of 223 law enforcement agencies, for a response rate of 83 percent. We asked respondents to primarily consider removals related to maltreatment when answering questions. We did not send surveys to tribal law enforcement agencies as we did not evaluate these agencies’ activities in our report. Child protection administrators were asked to answer this question referring to the law enforcement agency they work with most frequently in their service area.

RECOMMENDATION

DHS should track which entities place law enforcement emergency holds.

There are compelling reasons for governments to authorize officials to remove children from the home under certain conditions; children who are endangered may be unable to protect themselves when in situations that threaten their safety. Nonetheless, the authority to remove a child from the home is among the most intrusive ways in which the government can intervene into private family life. We find it concerning that we could not identify any statewide data on how often individual law enforcement agencies use this authority.

Further, some of our findings raise questions about how consistently this authority is exercised. Nearly half of child protection agency administrators told us that some law enforcement agencies in their service areas were more likely than others to issue holds, given similar situations. As we will discuss in an upcoming section, in some counties, nearly every law enforcement hold is followed by a court order that the child remain outside the home, while in other counties, as many as one-third of law enforcement holds are not followed by similar court orders. Given the lack of data, we were unable to further explore such variations in the use of emergency holds.

Because some children that are removed through law enforcement emergency holds are released without a court hearing, DHS—not the State Court Administrator’s Office—should take the lead in collecting data about law enforcement holds. We suspect that information on which law enforcement agency issued a hold is readily available to the social workers who already enter other information about each case into DHS’s database system. We acknowledge that any new data entry requirements may pose a burden to social workers, but believe that such a requirement would provide useful information to local child protection agencies and DHS.

Collaborative Efforts

Several representatives from local child protection and law enforcement agencies told us that collaboration between entities involved in the child protection system is important. Some said that different entities are able to provide different perspectives. For example, child protection staff have expertise in child welfare, law enforcement officers specialize in responding to potentially violent situations, and medical professionals may provide input about possible causes of injuries if there is suspected abuse. Others suggested that involving multiple groups in decision making about removing a child from the home provides checks and balances, ensuring there is some additional scrutiny for these decisions.

Most child protection and law enforcement agency administrators said they often work together to determine whether to remove a child from the home.

In our surveys of child protection and law enforcement agencies, we asked how often child protection staff work with law enforcement officers to decide whether to issue a law enforcement emergency hold. Eighty-two percent of law enforcement agency representatives who responded to our survey said officers always or often consult with child protection agency staff when deciding whether to issue an emergency hold.

Fifty-five percent of child protection administrators who responded to our survey said that in the past two years, child protection staff helped with the emergency hold decision in more than half, almost all, or all law enforcement holds in their service areas.



When removing a child from their home is necessary, many positive impacts to the child and their family may occur. However, removing a child when not necessary can create many negative impacts to the child and their family, also. As such, I believe police need to be involved in this process as a check and balance along with child protection workers whenever possible.

— Police Chief

The form of collaboration between child protection agencies and law enforcement agencies differs throughout the state. Some county child protection administrators described a collaborative approach in which their agency and law enforcement work together to make decisions about whether to remove a child from the home. A few child protection administrators suggested that their agency sometimes or often leads the process, with officers issuing holds at the

recommendation of child protection staff. Sixty-three percent of law enforcement agencies who responded to our survey said officers always or often issue an emergency hold if requested by staff from a local child protection agency.

We heard mixed views about whether child protection agencies should be given authorization in law to issue emergency holds.¹⁶ Of the law enforcement representatives responding to our survey, 78 percent agreed or strongly agreed that child protection agencies should be empowered to issue emergency holds. In contrast, child protection administrators generally did not favor or did not express an opinion about expanding their authority to issue emergency holds; only 20 percent agreed or strongly agreed that their agencies should have the power to issue emergency holds.

Though most law enforcement and child protection agencies stated that they have a collaborative relationship when it comes to issuing emergency holds, some cited concerns. In response to our survey, one child protection agency administrator said that “law enforcement is generally unsure if they should do a hold or not and often leave children in homes [that] may be unsafe and depend on [child protection] to secure court orders.” A police chief said the “biggest issue has been with



Our Law Enforcement teams, both city and county work well with us. They communicate with us on situations where they feel a hold needs to be placed and request feedback. They back us up when we request assistance and a possible hold. We mutually discuss the situation and make a decision based on the facts and statutory criteria.

— Child protection agency administrator

¹⁶ Some other states, such as Illinois and Indiana, permit child protection agencies to remove children from homes without law enforcement involvement.

social workers trying to influence officers to place a child on a hold when the criteria has not been met so they do not have to file petitions with the County Attorney's Office." Another police chief said that when law enforcement staff request that the child protection agency be involved in responding to a call, child protection staff are "not readily available during normal business hours [or are] unwilling to travel to call location."

Continuing Out-of-Home Placements Past an Emergency Hold

Once a law enforcement officer removes an endangered child from the home on an emergency hold, there are three possible paths, as shown in Exhibit 2.2:

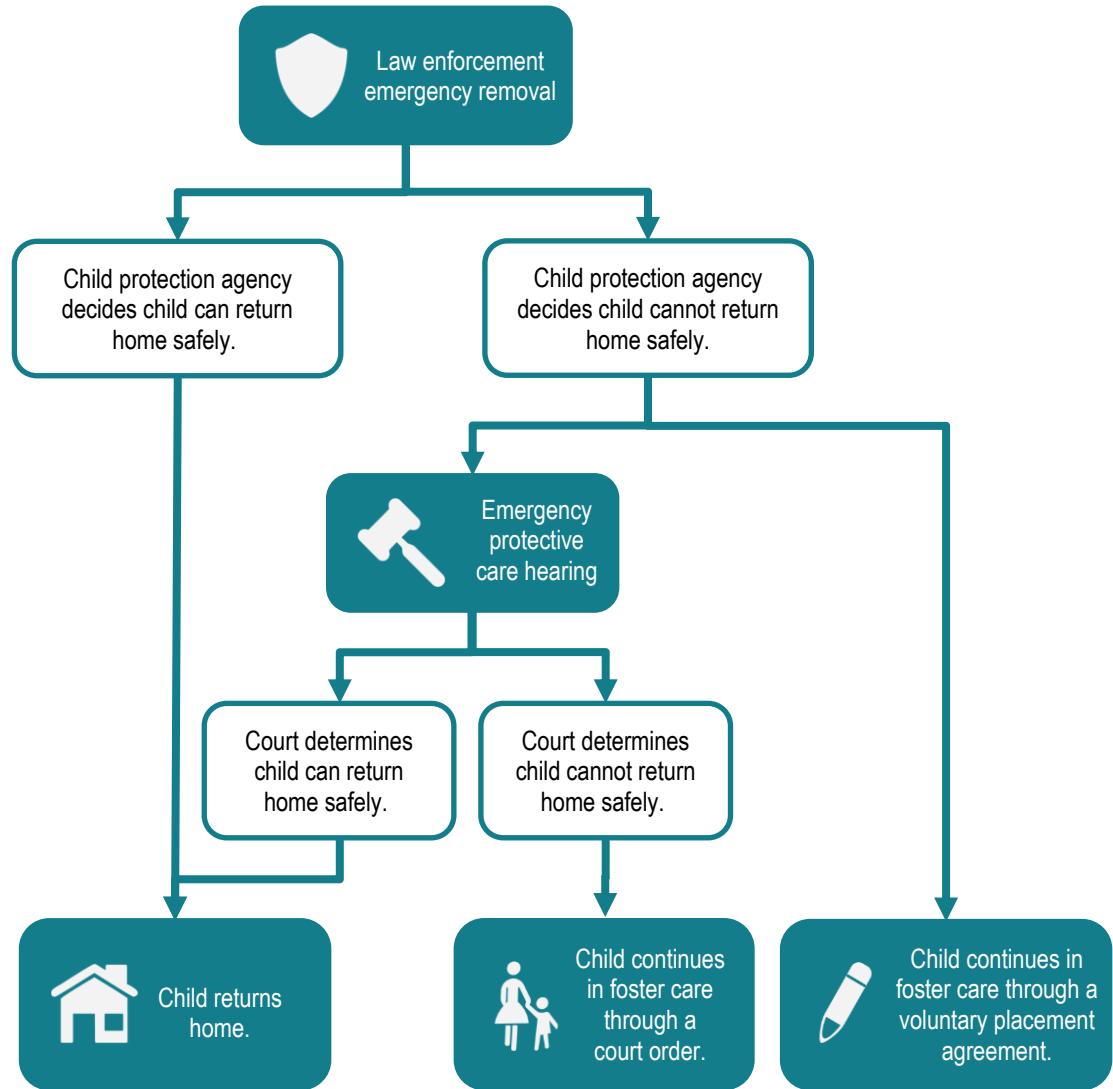
1. **Local authorities or courts return the child home within the 72-hour period.** The child protection agency may determine that there is no reason to pursue a longer out-of-home placement than the initial hold. In these cases, the agency may decide that the dangerous situation has ended, or it may reach an agreement with the parents that they will follow certain conditions in order to reunify with the child. The agency releases the child back to the custody of the parents or other relatives, and there is no court hearing.¹⁷

If there is a court hearing, the court may decide that the child is not currently in danger and return the child to the parents. If the court decides to return the child, the court may place conditions on the parents intended to ensure the child's safety.

2. **The court orders that the child remain out of the home.** The court determines that the child would be in danger if returned to the home. The court orders the child protection agency to take responsibility for the child and approves the child's placement in foster care for an indefinite period of time.
3. **The parents voluntarily agree for the child to remain out of the home.** As an alternative to a court decision, the child protection agency and parents may agree to a voluntary out-of-home placement. Unlike a court-ordered placement, parents can elect to end the placement at any time—although the agency always has the ability to pursue a court order if it believes that it would not be in the best interests of the child to return home.

¹⁷ State law allows other entities, such as law enforcement or the county attorney, to release a child back to the parent after a law enforcement emergency hold. *Minnesota Statutes* 2021, 260C.176, subd. 1. In practice, however, 99 percent of county child protection agencies responding to our survey said that child protection staff and supervisors always or often participate in making the decision to return the child to the parent. Administrators noted that county attorney's or tribal attorney's offices also participate frequently in making these decisions, but law enforcement staff are less involved.

Exhibit 2.2: After a law enforcement emergency hold, the child may return home or continue in foster care.



NOTES: In addition to the child protection agency, county attorneys and others sometimes participate in the decision whether to release the emergency hold and return the child home. In some cases (for example, a newborn who remains in a hospital), the child remains out of the home but is not technically in “foster care.”

SOURCE: Office of the Legislative Auditor.

Most law enforcement emergency holds are followed by longer-term out-of-home placements, but the extent varies across the state.

According to DHS data, in 85 percent of child removals occurring through an emergency hold from 2014 through 2019, children remained in an out-of-home placement under a court order directly after the hold. For 13 percent of removals occurring through an emergency hold, children returned to their parents following the hold; after 2 percent of emergency hold removals, children continued in an out-of-home placement through a voluntary placement agreement.

However, whether a child continued in an out-of-home placement after an emergency hold varied across the state. The examples in the box at right demonstrate that in some counties (such as Beltrami and Faribault/Martin), over 90 percent of law enforcement emergency holds led to a court order keeping the child in an out-of-home placement beyond the initial hold. In other counties (such as Washington), over one-third of law enforcement emergency holds ended without the child remaining in out-of-home placement for a longer period following the hold.

In our examination of case files, we reviewed 17 instances in which a child was released from out-of-

home placement within seven calendar days.¹⁸ Generally, the decision to release the child was either because (1) the child could live with an adult other than the parent from whom they were removed (such as a noncustodial parent), or (2) the situation in the home had changed and the child could safely live there (possibly under conditions set by the agency or the court). In four of the files we reviewed, it appeared that the brief out-of-home placement allowed agencies enough time to collect information that convinced them there was no danger in the home for that child, so the child could be returned to the parents.

Counties have varied widely in how often children continued in an out-of-home placement after being removed through a law enforcement emergency hold.

County	Placement ended with emergency hold	Placement continued by court order	Placement continued by voluntary agreement
Beltrami	<1%	>99%	<1%
Clay	12	86	2
Faribault/Martin	9	91	0
Ramsey	21	78	1
Scott	12	74	13
Washington	38	58	4
Winona	4	83	12
Minnesota	13%	85%	2%

NOTE: Data are for children removed from their parents' care from 2014 through 2019.

SOURCE: Office of the Legislative Auditor, analysis of Department of Human Services data.

¹⁸ Of these children, about two-thirds were released prior to a court hearing and around one-third were released by a court.

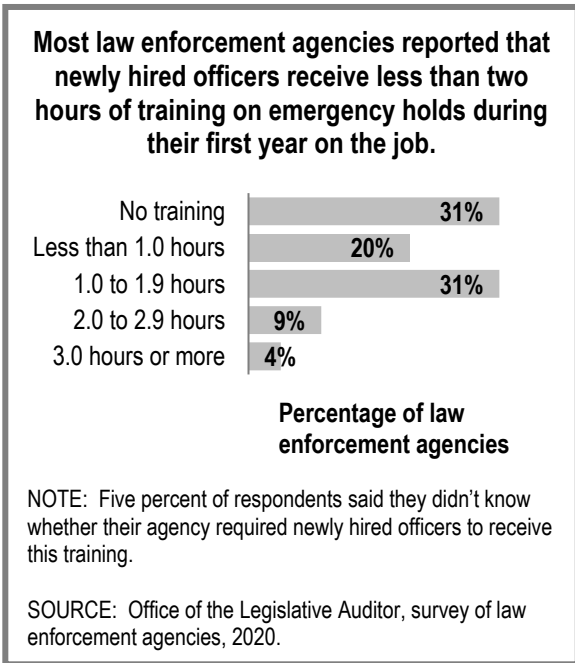
Training on Child Removals

Though law enforcement officers in Minnesota play an important role in removing children from the home, they receive relatively little training on child protection matters.

There are no statewide requirements for ongoing training of law enforcement officers on child protection issues.

Law enforcement officers educated in Minnesota receive initial training through a professional peace officer education program and must pass Minnesota’s state licensing exam.¹⁹ One requirement for licensure is training on community policing, including “training on child development issues to enable officers to respond appropriately to perceived child protection situations.”²⁰ Officers fulfill continuing education requirements following initial licensure, but there are no state-mandated continuing education requirements on child protection.²¹

Officers also receive field training once hired by a law enforcement agency, but training varies from agency to agency. Sixty-four percent of law enforcement agencies responding to our survey said their agency requires all newly hired officers to receive training on emergency child protection holds. When asked how many hours of training related to emergency holds newly hired officers receive in their first year, most law enforcement agencies that require this training said the training is less than two hours long.



According to our survey respondents, few law enforcement agencies require officers to receive supplementary training on emergency child protection holds. Only 16 percent of agencies responding to our survey require that most or all officers receive continuing education or ongoing training on emergency holds.²² Many law enforcement

¹⁹ Individuals with non-Minnesota law enforcement experience may instead take a reciprocity exam to be licensed to work as an officer in Minnesota.

²⁰ *Minnesota Statutes* 2021, 626.8455, subd. 1.

²¹ The Legislature has established a training program covering topics such as circumstances where a removal is appropriate and which services are available to prevent child maltreatment and keep the family together. *Minnesota Statutes* 2021, 260E.36, subd. 4. Although the departments of Human Services and Public Safety share statutory responsibility for the program and it appears that the training content could apply to both child protection agency staff and law enforcement officers, the training is currently offered only to child protection workers.

²² In comparison, child protection workers are required to receive 15 hours of continuing education on providing child protective services each year. *Minnesota Statutes* 2021, 260E.36, subd. 1(b).

agencies with this requirement have had officers participate in an hour-long online training offered by the League of Minnesota Cities and accredited by the Police Officer Standards and Training (POST) Board. Some county child protection agencies and county attorney's offices also provide trainings for law enforcement officers on child protection issues.

Several respondents to our surveys of both child protection agencies and law enforcement agencies told us that they would like law enforcement officers to have more training in child protection or the use of emergency holds. A couple of law enforcement agencies specifically asked if our office could suggest additional resources for training officers about emergency holds. Several county child protection agency administrators cited concerns about a lack of knowledge on child protection and emergency holds by officers in their area. These administrators suggested that increased training would place less of a burden on the child protection staff and improve officers' understanding of when they should place a hold.



I feel like there is a general lack of knowledge on holds within law enforcement. Typically, [child protection] is the one guiding the process and law enforcement just does what we ask them to as they are the ones with the authority.

— Child protection agency administrator

RECOMMENDATION

DHS should convene a working group to make recommendations to the Legislature regarding training of law enforcement officers in child protection removals.

Considering whether to remove a child from a family is an important and serious decision. On the one hand, choosing not to remove a child in imminent danger could expose the child to preventable harm. On the other hand, removing a child who is not in imminent danger creates unnecessary trauma for both children and parents. We are concerned that some law enforcement officers may make these decisions guided only by minimal training that may have occurred long in the past.

However, law enforcement officers have numerous other responsibilities that involve high-stakes decision making. Thus, we are hesitant to recommend a training requirement related to child protection removals without examining how it might fit into the context of other training needs. Further, it is not clear to us whether resources would be better spent providing minimal training to all officers or more extensive training to officers that might serve as specialists in their departments. Therefore, we recommend that DHS convene a working group consisting of key stakeholders, including the Minnesota POST Board, local law enforcement representatives, child protection agency staff, and representatives from the judicial branch, to make recommendations to the Legislature on training of law enforcement officers on child protection removals. The working group could further examine training content and whether training should vary based on characteristics such as size of the department.

Chapter 3: Prevention Efforts

The best way to address child maltreatment is to prevent it from happening in the first place. If child protection agencies can assist families before a child becomes endangered, they may be able to preserve the child’s safety and avoid a removal from the home.

Recent federal initiatives, such as the 2018 Family First Prevention Services Act, have increasingly emphasized prevention services in child protection.¹ In guidance from the U.S. Department of Health and Human Services, the Children’s Bureau stated:

Child protection will always be paramount and will always be needed, but the system can and should be designed to protect children by keeping families safe, healthy, and together whenever possible before remedial efforts become necessary. Coordinated and robust primary prevention efforts are critically important to strengthen families and prevent both the initial occurrence of child abuse and neglect and ongoing maltreatment; prevent unnecessary family disruption; reduce family and child trauma; interrupt intergenerational cycles of maltreatment; and build a well-functioning child welfare system.²

Key Findings in This Chapter

- The prevention services that child protection agencies provide to families before a child’s removal from the home vary widely from agency to agency and case to case.
- Many removals occur before social workers begin providing services; in such cases, efforts to address safety concerns in the home may begin only after removal has already occurred.
- In the files we reviewed, courts generally ruled that agencies made sufficient efforts to avoid removing a child from the home, but the court orders often do not indicate what the efforts were.

Both state and federal law direct child protection agencies to take preventive actions to avoid the need to remove a child from the home.³ In this chapter, we describe the legal requirements for child protection agencies to provide prevention services and the challenges in providing these services uniformly across the state. In particular, we focus on the legal standards of “reasonable efforts” and “active efforts,” and examine how they have been implemented by child protection agencies and overseen by the courts.

¹ Title VII of the Bipartisan Budget Act of 2018, Public Law 115-123, February 9, 2018.

² U.S. Department of Health and Human Services, Children’s Bureau, Program Instruction ACYF-CB-PI-19-02, February 26, 2019, p. 3, <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1902.pdf>, accessed April 19, 2021.

³ 42 U.S. Code, sec. 671(a)(15) (2020); 45 CFR, sec. 1356.21(b) (2020); and *Minnesota Statutes* 2021, 260.012(a).

Reasonable and Active Efforts

Minnesota child protection agencies are subject to federal and state laws regarding the provision of prevention efforts to avoid removing a child from the home. There are different standards for prevention efforts—either “reasonable” or “active”—depending on whether the Indian Child Welfare Act applies to the child.

Reasonable Efforts

“Reasonable efforts” is the basic standard under federal and state law for actions needed to avoid removing a child from the home.⁴ This standard applies to all children; “active efforts,” which we discuss in the next section, must include reasonable efforts.

Although federal and state laws require child protection agencies to make “reasonable efforts” to avoid removals, statutes do not clearly define how child protection agencies should demonstrate such efforts.

Under federal law, states must have an approved foster care and adoption assistance plan to be eligible for federal funding to support foster care and adoption activities.⁵ The state plan must provide that “reasonable efforts shall be made...prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home.”⁶ State law requires that:

Once a child alleged to be in need of protection or services is under the court’s jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child’s family at the earliest possible time.⁷

The burden lies with the child protection agency to demonstrate that it has made reasonable efforts to prevent placement of a child in foster care, eliminate the need for removal, and reunify the family, among other things. However, a court may waive the requirement under some circumstances specified in law (for example, when a child is abandoned as an infant).⁸

State statutes do not clearly define “reasonable efforts” for preventing an out-of-home placement. For example, one strategy for preventing an out-of-home placement is developing a safety plan to ensure the ongoing welfare of the child while in the home; statutes require that child protection agencies work with families to create and enact such plans.⁹ However, there is no explanation in statutes of what a safety plan should

⁴ 42 U.S. Code, sec. 671(a)(15) (2020); and *Minnesota Statutes* 2021, 260.012(a).

⁵ 42 U.S. Code, sec. 671(a) (2020).

⁶ 42 U.S. Code, sec. 671(a)(15) (2020).

⁷ *Minnesota Statutes* 2021, 260.012(a).

⁸ *Ibid.*

⁹ *Minnesota Statutes* 2021, 260.012(d).

entail. State law also concedes that reasonable efforts to prevent placement could mean that “given the particular circumstances of the child and family at the time of the child’s removal, there are no services or efforts available which could allow the child to safely remain in the home.”¹⁰

Courts must decide whether the actions taken by the child protection agency were sufficient in each individual case.¹¹ If the court finds that the child protection agency made reasonable efforts to avoid the removal, the court will make a written “reasonable efforts finding” indicating that the agency made efforts to prevent the out-of-home placement.¹² This finding must be issued at the initial court hearing that approves the child’s out-of-home placement. If the court finds that services or other efforts could enable the child to return home, the court is supposed to order those services and return the child to the family, as long as it is safe to do so.¹³ If the court does not issue a finding that the agency made reasonable efforts to prevent the removal, the child protection agency cannot access certain federal funds to support the child’s time in foster care.¹⁴ As shown in the box to the left, state law directs a court to consider a number of specific factors when determining whether the agency made reasonable efforts.



In determining whether reasonable efforts were made, the court should consider if services were:

1. Relevant to safety and protection of the child
2. Adequate to meet needs of child and family
3. Culturally appropriate
4. Available and accessible
5. Consistent and timely
6. Realistic under the circumstances

— *Minnesota Statutes 2021, 260.012(h)*

Active Efforts

“Active efforts” is a higher standard that applies to removals of American Indian children. Both the federal Indian Child Welfare Act and the Minnesota Indian Family Preservation Act define active efforts; the state definition is more stringent.¹⁵

Compared to “reasonable efforts,” federal and state laws offer clearer definitions of “active efforts,” which apply to cases involving American Indian children.

Active efforts must include reasonable efforts, but must also include “rigorous and concerted” efforts throughout the case to involve the child’s tribe.¹⁶ Under federal law,

¹⁰ *Minnesota Statutes 2021, 260.012(d)*.

¹¹ According to one study reviewing nationwide court rulings, discussions of reasonable efforts findings have rarely focused on the original removal decision. Instead, appeals courts have focused most of their attention on reasonable efforts to avoid terminating a parent’s parental rights. Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), 41 and 43, <http://www.judgeleonardedwards.com/docs/reasonableefforts.pdf>, accessed March 8, 2021.

¹² The court may also find that no services or other efforts were possible.

¹³ *Minnesota Statutes 2021, 260C.178, subd. 1(e)(2)*.

¹⁴ 45 *CFR*, sec. 1356.21(b)(1)(ii) (2019).

¹⁵ See Indian Child Welfare Act of 1978, Public Law 95-608, 92 Stat. 3069, codified as amended at 25 *U.S. Code*, secs. 1901-1963 (2020); 25 *CFR*, sec. 23.2 (2020); and *Minnesota Statutes 2021, 260.751-260.835*. State law *requires* courts to assess whether a child protection agency took specific actions to meet the active efforts requirement. Federal rules only list examples of what active efforts “may include,” except for the requirement regarding case plans described in the next paragraph.

¹⁶ *Minnesota Statutes 2021, 260.755, subd. 1a*.

active efforts must include assisting parents “through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.”¹⁷ Active efforts include using the tribe’s “social and cultural values” to preserve the family, prevent out-of-home placement when possible, and return the child to the family as soon as possible if placement does occur.¹⁸

State law lays out specific actions that must occur in order for the court to determine that the child protection agency made active efforts, as detailed in the box at right.¹⁹ A court may not order a child covered by the Indian Child Welfare Act into an out-of-home placement unless it finds that a child protection agency made active efforts to prevent placement.²⁰

Required “Active Efforts” Findings

To place an American Indian child outside the home, a court must find that the child protection agency appropriately:

- Made early efforts to determine whether a child was American Indian.
- Requested participation from the child’s tribe as early as possible.
- Requested that a tribal representative evaluate the case and help with planning.
- Provided ongoing services to the child’s family, including financial assistance, food, housing, and other community support services.
- Notified the child’s extended family and engaged with them in providing support to the family.
- Arranged for visits to occur between the child and the child’s family members.

— *Minnesota Statutes 2021, 260.762, subd. 3*

Variation in Prevention Services

Neither DHS nor the Judicial Branch systematically track what prevention services have been provided to families prior to a removal. As a result, we relied primarily on our review of case files to assess prevention efforts.²¹

The prevention services that child protection agencies provide to families before a child’s removal from the home vary widely from agency to agency and case to case.

In some cases in our file review, the child protection agency provided extensive services in its attempt to avoid removing the child from the home. For example, in one case, the agency provided mental health services, chemical health services, and assistance from public health nurses to the parents. The agency also gave the parents a trial period to prove that they were able to provide for the child’s medical needs while

¹⁷ 25 *CFR*, sec. 23.2 (2020). A case plan includes goals, steps needed to resolve problems, and a plan with a timeline by which the child should return to the parent or other permanency proceedings should begin.

¹⁸ *Minnesota Statutes 2021, 260.755, subd. 1a.*

¹⁹ *Minnesota Statutes 2021, 260.762, subd. 3.*

²⁰ *Ibid.*

²¹ We conducted a file review in which we examined county child protection agency case notes, data entered by the agency in DHS’s database, and court documents. We reviewed 150 cases of children removed between July 1, 2017, and June 30, 2018, by selecting 15 cases from a single county child protection agency in each of Minnesota’s ten judicial districts. We selected cases to represent diverse removal experiences, including different lengths of time out of the home and different races of the child. The file review sample was not representative, so observations from the file review are not generalizable.

under supervision of hospital staff. In another case, the parent was provided with mental health services, chemical health services, and parenting support services. However, in both instances, the court found that the children remained in danger despite the services provided, and ultimately ordered the children placed outside the home.

Other cases showed more limited efforts to prevent the child's removal from the home. In one case, the initial court order documenting the reasonable efforts by the child protection agency listed only activities that would be part of normal case management, such as an assessment responding to a child maltreatment report, even though the social worker stated in an affidavit that the parent needed a chemical dependency assessment. There was no record in the file of the child protection agency attempting to help the parent obtain chemical dependency services before the child was removed from the home. In another case, the court order's description of reasonable efforts included only efforts to "locate a relative for a temporary, voluntary family placement." The court did not identify any efforts to assist the parent to avoid the removal in the first place.

As part of our file review, we reviewed court orders approving initial out-of-home placements. The types of prevention services most often listed as reasonable efforts in those orders varied by location. For example, in Stearns County, the most common services listed in court orders were case management activities by the child protection agency, such as assessments or investigations into the child maltreatment reports or developing safety plans. Meanwhile in St. Louis County, orders often described different forms of physical assistance to the household, such as transportation, housing, or health care assistance to the family.

The box below shows examples of services listed in court orders (or documents referenced by court orders) in the cases we reviewed.

Reasonable or Active Efforts to Prevent Removal Cited in Court Orders

At the first hearing approving a child's out-of-home placement, a court must find that the child protection agency made "reasonable" or "active" efforts to prevent removal of the child from the home. In our review of case files of children removed from their homes between July 1, 2017, and June 30, 2018, the prevention services cited by courts as fulfilling this requirement varied widely. They included:

- Case management services (such as conducting assessments or investigations, creating safety plans, or arranging to formally place a child in foster care).
- Changes to household makeup (such as the child staying with relatives for a time or the alleged perpetrator being removed from the household).
- Chemical health services (such as referrals for chemical dependency assessments or chemical health services).
- Mental health services (such as referrals for mental health assessments or mental health services).
- Parenting services (such as parenting education).
- Tribal services (or any assistance arranged and provided by tribal authorities).
- Physical or logistical assistance to the family (such as transportation assistance, referrals for housing services, or healthcare).
- Other services (such as community support services, domestic violence counseling, or intervention by law enforcement to mediate conflict between the parent and child).

Child protection administrators reported that they do not always have sufficient funding to provide meaningful prevention services to avoid removing a child from the home.

Agency funding levels differ. Several child protection administrators we interviewed described the challenges of funding child welfare activities largely through county property taxes, stating that this practice caused disparities among counties because of differences in county tax bases.²²



Funding to our agency directly impacts the number of social workers available to work with families open to child protection.... Agencies need funding to support staffing and resources to support families.

— Child protection agency administrator

Many respondents to our survey of county child protection agencies indicated that funding limitations have affected their ability to appropriately staff child protection work and to provide services that might help prevent removals. While most agency administrators said that funding does not affect actual removal decisions, many commented that funding affects their ability to offer prevention services. One child protection administrator said that “if we had more funding, we could invest in more extensive family preservation services to create safety at the home to avoid placement.”

Timing of Prevention Services

Statutes require that agencies make reasonable efforts to prevent removal in any circumstance that does not meet the exceptions specified in law.²³ However, our interviews and examination of individual cases suggested that agencies and courts do not always implement prevention services prior to removal.

Many removals occur before social workers begin providing services; in such cases, efforts to address safety concerns in the home may begin only after removal has already occurred.

Emergency removals may occur rapidly when officials determine that a child is in danger. In these situations, child protection agencies may have limited opportunity to provide services before the removal. Every district court judge we interviewed told us that there is sometimes nothing that can be done to prevent a removal if a child is in immediate danger. One judge explained that they would not order the child protection agency to take additional steps to prevent the removal if it is evident that the child would be in immediate danger by remaining in the home. Another judge said it is not reasonable to expect the child protection agency to provide prevention services if its staff had no contact with the family prior to the removal.

²² The use of property tax revenue to pay for child protection services is a long-standing practice in Minnesota. See, for example, Office of the Legislative Auditor, Program Evaluation Division, *Child Protective Services* (St. Paul, 1998), 16-17.

²³ *Minnesota Statutes* 2021, 260.012(a).

In over a dozen cases in our file review, the court found that reasonable or active efforts to prevent the removal were not possible given the circumstances of the case.²⁴ Sometimes, the description of why the child protection agency did not provide prevention services referenced the emergency nature of the case or lack of contact between a family and the child protection agency before a removal. Other times, the finding merely stated that no efforts were possible that would have allowed the child to remain in the home.

Safety plans are the one statutorily required element of reasonable efforts to prevent a removal, but our review of cases suggested that this requirement is not always met. We were only able to confirm that a safety plan existed prior to a removal in around 40 percent of cases we reviewed with a maltreatment basis for the removal.²⁵ Cases appeared less likely to have a safety plan prior to the removal if the removal began as an emergency hold; we were able to confirm that a safety plan was in place prior to the removal in only 28 percent of these removals.

Court Findings on Prevention Efforts

In our file review, we examined the extent to which courts found that child protection agencies had made reasonable or active efforts to prevent removal.

In the files we reviewed, courts generally ruled that agencies made sufficient efforts to avoid removing a child from the home, but the court orders often did not indicate what the efforts were.

We reviewed court orders from the first hearing to confirm a child's out-of-home placement, and nearly every order contained a finding that the child protection agency had made reasonable or active efforts to prevent removing the child from the home.²⁶ It was difficult to determine from the case records how judges reached these findings. In over 20 percent of the court cases we reviewed, the court order did not clearly specify what services the child protection agency had provided to meet the reasonable or active efforts requirement. In some cases, the court orders simply stated that reasonable efforts had been made without offering any insight on what they included.²⁷ In others, court orders or caseworker notes referenced a wide variety of services provided to families, but court orders did not clearly indicate which services supported the reasonable or active efforts finding.

²⁴ As our file review only assessed cases of children who were removed from the home, we did not have an opportunity to review instances in which a removal was prevented through the use of prevention services.

²⁵ It is possible that safety plans were created in some of the remaining cases, but were not referenced in either court documents or child protection agency case notes.

²⁶ More specifically, the court found that reasonable or active efforts were made or that providing preventive services was not possible given the circumstances of the case.

²⁷ We cannot discount the possibility that judges further explained their determinations of reasonable or active efforts orally during the court proceedings. Further, court orders may reflect the issues raised by the parties or their attorneys; if all sides acknowledge that reasonable efforts occurred, a judge may not see a need to justify their determination in the written order. In most instances, we were not able to review hearing transcripts.

In several instances, court orders cited prevention efforts that seemed quite unlikely to actually prevent a removal, such as child protection agency efforts to place the child in foster care. In a few cases, prevention services recorded in court orders did not make sense given the facts of the case. Court orders for two cases we reviewed involving the removal of infants listed “attempts...to mediate a solution to the parent-child conflict” as a prevention service. One of these cases involved alleged medical neglect of the baby resulting in hospitalization, and the other removal occurred as the result of the mother’s drug use. It was unclear to us how either instance could be classified as a conflict between the parent and child.

Current Efforts

Under the 2018 Family First Prevention Services Act, states wishing to receive funding from the federal government for prevention services must comply with a number of new requirements related to preventing out-of-home placements with nonrelatives.²⁸ Prevention services must recognize and respond to the effects of trauma on a child and also be supported by evidence that shows the benefits of these programs. States will need to begin tracking the provision of prevention services, including type, duration, and outcomes.

Prompted by these changes at the federal level, both DHS and the Judicial Branch have taken additional steps to address prevention of out-of-home placements since the period of time we focused on in our file review. DHS has convened several workgroups focused on implementing the new federal prevention-related requirements. The department has also released a series of bulletins, guidance documents, and virtual trainings to assist local child protection agencies as they undergo this transition.

The State Court Administrator’s Office has developed court order templates for use in child protection cases, including language for reasonable or active efforts findings. The Children’s Justice Initiative, a joint program of the Judicial Branch and DHS, is also planning training events for judges focused on reasonable efforts findings; the first will be held in early 2023.

These new efforts have been implemented too recently for us to assess how they might affect the availability and consistency of prevention services in Minnesota.

RECOMMENDATION

The Department of Human Services and the Judicial Branch should continue their efforts to improve the provision and documentation of services offered to families to prevent child removals.

Our research suggests that there has been variation in what prevention services child protection agencies provide to families before initiating a child removal. Further, there has been variation across court findings regarding what services are sufficient to meet the requirements in law. We found these inconsistencies concerning.

²⁸ Title VII of the Bipartisan Budget Act of 2018, Public Law 115-123, codified as 42 *U.S. Code*, secs. 671-679c (2020).

Thus, we welcome the recent initiatives by both DHS and the Judicial Branch to strengthen prevention efforts. Preventing the maltreatment that would lead to a removal is always preferable to removing a child after maltreatment occurs. We recommend that both DHS and the Judicial Branch continue to place special emphasis on efforts to improve the consistency, quality, and documentation of prevention services.



OLA

Chapter 4: Placements and Permanency

After a court issues an order to place a child outside the home, state law directs child protection agencies and courts to work toward *permanency*, a long-term living situation for the child that will continue indefinitely into the future.¹ State law is clear that reunification should be the preferred permanency option as long as the safety of the child can be assured.²

In this chapter, we discuss challenges surrounding the journey toward permanency. We begin by briefly examining out-of-home placements, focusing on the extent to which children are placed with relatives.³ In the remainder of the chapter, we examine permanency outcomes, including how frequently parents are able to reunite with their children and some barriers they face in doing so.

Key Findings in This Chapter

- The proportion of out-of-home placements where children spent the majority of time with relatives increased from 2014 to 2019.
- Out-of-home placement plans describing actions parents must take to reunite with their children can be lengthy and difficult to understand.
- Parents seeking to reunite with children may have difficulty accessing social services that would make reunification more likely.

Placements

Even when it is necessary for the safety of a child, removal of a child from the family home can be deeply troubling for the family involved. One approach to lessen the trauma of a family separation is to place the child with relatives or family friends with whom the child already has a trusting relationship.

State law emphasizes the importance of placing a child with relatives (sometimes called “kinship care”) when possible and involving relatives in planning for the child’s welfare. When a child is removed on an emergency basis by law enforcement or a court order, the law requires the child to be released “to the custody of a parent, guardian, *or other suitable relative*” unless doing so would endanger the child or others.⁴ Further,

¹ *Minnesota Statutes* 2021, 260C.001, subs. 2(b)(7) and 3; and 260.012(a).

² *Minnesota Statutes* 2021, 260.012(a); and 260C.001, subd. 2(b)(7)(i).

³ We did not evaluate the quality of foster care placements.

⁴ *Minnesota Statutes* 2021, 260C.176, subd. 1 [emphasis added]. For the purposes of child protection, state law defines a “relative” as a “person related to the child by blood, marriage, or adoption; the legal parent, guardian, or custodian of the child’s siblings; or an individual who is an important friend with whom the child has resided or had significant contact.” *Minnesota Statutes* 2021, 260C.007, subd. 27. The law also states that authorities may elect not to release a child if there is reason to believe the child would not return for a court hearing.

when arranging an out-of-home placement as directed by a court order, an agency must first consider placement with a relative or “important friend.”⁵ Whenever a child protection agency is placing a child in foster care, it must conduct a “comprehensive” search for relatives of the child, notify all identified relatives that the child has been placed in foster care, and invite them to participate in care and planning for the child or volunteer to serve as a placement option.⁷



Foster Care

Under state statutes, “foster care” is “24-hour substitute care for a child for whom a responsible social services agency has placement and care responsibility.”⁶ As we discuss further below, foster care can include placements with relatives or even with the child’s own parents, as long as the child protection agency maintains responsibility for the child’s care.

Under the statutory definition, foster care does not include certain institutional out-of-home placements such as correctional facilities, hospitals, and inpatient treatment facilities.

The Department of Human Services’ data on time children spend in “out-of-home placements” often include periods when children are staying with parents or other relatives.

The Department of Human Services (DHS) publishes detailed data on the experiences of children in foster care in Minnesota.⁸ For example, in 2022, the department reported that in 29 percent of the out-of-home placements ending in 2020, children had spent from one to two years in foster care, and in another 25 percent of placements, children had spent more than two years in foster care.⁹ However, our review of individual cases suggested that these statistics likely give an incorrect impression of the amount of time children spend outside of family or relative settings.¹⁰ Foster care includes nearly all placements when a child is in the legal custody of a child protection agency. These placements include instances where children are placed with strangers, but they also include placements with family members or parents.¹¹ Legally, the children are in foster care, but practically, they may be in familiar surroundings.

⁵ *Minnesota Statutes* 2021, 260C.212, subd. 2(a); and 260C.221(a).

⁶ *Minnesota Statutes* 2021, 260C.007, subd. 18.

⁷ *Minnesota Statutes* 2021, 260C.221. A parent may request that a specific relative not be contacted “due to safety reasons including past family or domestic violence.”

⁸ See, for example, Minnesota Department of Human Services, Children and Family Services, *Minnesota’s Out-of-home Care and Permanency Report, 2020* (St. Paul, 2022), <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-5408Ma-ENG>, accessed March 25, 2022. In this publication, DHS treats the terms “foster care” and “out-of-home placement” as synonymous.

⁹ *Ibid.*, p. 26.

¹⁰ We conducted a file review in which we examined county child protection agency case notes, data entered by the agency in DHS’s database, and court documents. We reviewed 150 cases of children removed between July 1, 2017, and June 30, 2018, by selecting 15 cases from a single county child protection agency in each of Minnesota’s ten judicial districts. We selected cases to represent diverse removal experiences, including length of time out of the home and race of the child. The file review sample was not representative, so observations from the file review are not generalizable.

¹¹ *Minnesota Statutes* 2021, 260C.007, subd. 18.

In some instances, periods of foster care include time that children are living with their parents. Parents progressing towards reunification may be permitted to care for their children on a conditional basis through a “trial home visit.”¹² During a trial home visit, the child returns to the parent from whom they had been removed, but the child protection agency retains legal custody. The trial home visit appears in DHS’s published data as continued foster care. However, considered from the point of view of the child, such an arrangement may feel like a reunification. According to DHS data, 29 percent of out-of-home placements beginning in 2014 through 2017 included a trial home visit within the first two years. Eighty-five percent of these out-of-home placements resulted in reunification; in another 11 percent, the child was still in an out-of-home placement after two years.¹³

DHS statistics showing long stays in out-of-home placements may also mask instances where a permanent outcome was essentially achieved long before the court finalized a permanent home for the child. In one case from our file review, a child was immediately placed with their grandmother following removal. The child remained in the grandmother’s care for the entirety of the out-of-home placement—about 15 months—before permanent custody transferred to the grandmother. Another case we reviewed ended with relatives adopting a child whom they had fostered for nearly three years. In both instances, DHS data would indicate these children remained in “foster care” for long periods of time, when the children’s experience was a single shift in households.



Informal “Placements”

Individual cases that we reviewed suggested that children sometimes leave the home without formal action by an agency or a court. If a child protection agency finds that a child is at risk for maltreatment, one possible outcome is that the parent places the child with relatives by mutual agreement. Such an action may not be considered an out-of-home placement because the child remains in the parent’s custody—the child is just having an extended visit with other family members.

In one case we reviewed, a parent battling alcoholism voluntarily sent his children to live with their aunt and uncle after an initial law enforcement intervention. The child protection agency monitored the situation, but no official placement took place. After a few months, the relatives contacted the agency and expressed doubt that they would be able to continue to care for the children, and only at that point did the county file a petition with the court to officially remove the children from the father’s custody. The relatives subsequently elected to keep caring for the children, but the adjudication of the case meant that the children’s continued residence with their aunt and uncle became “foster care,” even though their actual living circumstances were unchanged. The children were eventually able to reunite with their father.

The proportion of out-of-home placements where children spent the majority of time with relatives increased from 2014 to 2019.

We analyzed child protection data gathered by DHS to determine how frequently children removed from the home were placed with relatives. As shown in the following chart, the proportion of placement stays where the child spent the majority of time with

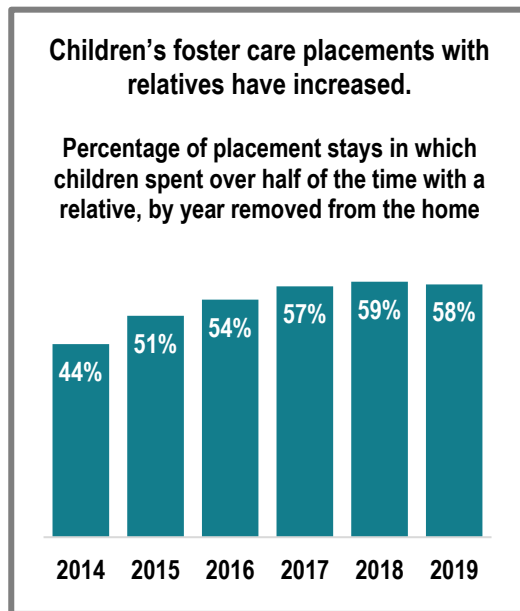
¹² *Minnesota Statutes* 2021, 260C.201, subd. 1(a)(3).

¹³ These statistics exclude a small number of cases with missing data.

relatives increased from 44 percent for removals starting in 2014 to 58 percent for removals starting in 2019. The increase was larger for African American and Hispanic children, and notable differences that once existed between children from these groups and other children have diminished. For removals beginning in 2014, only 28 percent of African American children and 38 percent of Hispanic children were with relatives for a majority of the time in placement. For removals beginning in 2019, those figures increased to 50 percent and 57 percent, respectively.¹⁴

In responses to our survey, county child protection administrators indicated that a variety of reasons may prevent their agencies from placing children with relatives when an out-of-home placement is necessary.¹⁵ Some relate to the willingness or availability of the relatives contacted. For example, 89 percent of respondents to our survey said that relative placement “sometimes” or “often” is difficult because relatives are unable or unwilling to take the child. About three out of four respondents also indicated that inability to locate relatives sometimes or often creates a barrier to making kinship placements. In other instances, relatives may be willing to take children, but other barriers arise. Over 60 percent of the respondents to our survey said that rules and technical issues sometimes or often create barriers to kinship care even when the agency has no concerns with the placement.¹⁶ In other cases, the parents themselves oppose placement of their children with relatives; two-thirds of respondents said that such opposition is sometimes or often a barrier.

Lastly, child protection agencies sometimes reject potential relative placements due to concerns for the child’s welfare. Ninety-three percent of agency administrators said that concerns that children would not be safe sometimes or often presented a barrier to placement with relatives. In one example from our review of individual files, the



¹⁴ We present these figures with some caution; many children that entered foster care in later years were still in placements at the time we pulled our data. We also made several assumptions to account for missing or ambiguous data. The increases we measured are large enough that we are confident that significant increases did occur, but the specific percentages listed could change depending on whether children spent additional time with relatives after the end of the time period we analyzed. Figures presented in this chapter exclude removals where the agency did not record a caregiver-related reason for the removal. See Chapter 2 for further discussion of the removals we included in our analysis.

¹⁵ We sent a questionnaire to all county social services agency directors and asked that a senior administrator who works in child protection complete the survey. We received responses from 75 local agencies, for a response rate of 96 percent. (Some counties are part of multicounty agencies.) We asked respondents to primarily consider child protection cases involving maltreatment when answering questions. We did not send surveys to tribal social service agencies; we did not evaluate those agencies’ activities.

¹⁶ For example, state law requires foster care providers to be licensed and pass a background check. *Minnesota Statutes* 2021, 245A.03, subd. 1(2); and 245C.03, subd 1. Sometimes, a relative is disqualified from providing care due to an issue that the child protection agency considers less relevant to the safety of the child (such as an old check-forging charge).

agency rejected placement of the child with a grandmother because the grandmother had previously been involved in the maltreatment death of another child.

Permanency Outcomes

Once authorities have removed a child from the home and placed the child in a foster care setting, a child protection case can take many paths. Even our limited file review contained a wide variety of circumstances and outcomes.

Despite the complexity of the child protection process, state law directs child protection agencies and courts to move rapidly toward a permanency decision on whether the child will return to the parent's custody.¹⁷ Statutes direct that if reunification has not been achieved within 11 months of a removal, a child protection agency must start the court process to make the separation of the child from the parent permanent, unless there is a "compelling reason" not to do so.¹⁸ A court must hold a hearing within 12 months of a child's entry into foster care.¹⁹

Children are reunified with a parent or placed long-term with relatives within two years of most removals.



Permanency Options

Reunification. The court discontinues the order for out-of-home placement and the child returns home.

Termination of Parental Rights. The parent loses all rights related to the parent-child relationship. Termination of parental rights is often a preparatory step before pursuing adoption. After the termination, the Department of Human Services technically becomes the child's guardian until an adoption is finalized.

Custody to a Relative. The court transfers the custody of the child to a relative. The parent who previously had custody may retain some rights (e.g., visiting), depending on arrangements worked out between the child protection agency, the parent, and the relative.

Permanent Custody to the Child Protection Agency. Only allowed for children age 16 or older, a court may use this option for children who have expressed a preference against being adopted. The child remains in foster care until they become an independent adult.

Transfer to Tribal Court. Cases involving American Indian children may transfer to tribal courts. Additional permanency options may then be possible, depending on relevant tribal law.

Our analysis of DHS data indicated that for removals between 2014 and 2017, 53 percent of placement stays led to children reuniting with their parents within two years. Another 12 percent led to children being placed permanently with relatives, and 9 percent led to an adoption. (In 23 percent of placement stays, children were still in placements two years after the removal).²⁰

These figures are consistent with the information publicly reported by DHS. According to DHS, for out-of-home placement episodes that ended in 2019, 58 percent of children were reunited with parents, 15 percent were placed permanently with relatives, and 18 percent

¹⁷ *Minnesota Statutes* 2021, 260C.503; 260C.505; and 260C.507.

¹⁸ *Minnesota Statutes* 2021, 260C.505(a); and 260C.503, subd. 1(d)(2).

¹⁹ *Minnesota Statutes* 2021, 260C.503, subd. 1(a); and 260C.507(a).

²⁰ Children may be adopted by relatives or nonrelatives, so some of the adoptions likely also resulted in children living permanently with relatives. Several other outcomes with small percentages are not listed here, including transfer to the custody of other agencies and children reaching the age of majority while in foster care.

were adopted.²¹ (DHS only counts placement episodes that ended—that is, instances where the child returned home, was adopted, or exited placement for some other reason—therefore there are no instances where children are still in placements, and higher percentages for other categories are consistent with our findings.)

American Indian children are less likely than children who are not American Indian to be reunified within two years of being placed outside the home.

In our analysis of cases that began with child removals occurring from 2014 through 2017, American Indian children were significantly less likely than others to reunify with their parents within two years; only 44 percent of placement stays involving American Indian children led to reunifications within two years, as compared to the statewide average of 53 percent.²² The lower percentage for American Indian children appears related to longer periods of time in foster care. At two years following the initial removal, 36 percent of American Indian children were still in out-of-home placements, as compared to 20 percent of all other children. To some extent, the longer periods of time in placements may reflect cultural preferences. Some representatives from tribal child protection agencies told us that they may seek to hold cases open for long periods in hopes that reunification can occur. In some instances, tribal representatives seek transfer of cases to tribal courts so that families will not be constrained by the deadlines in state law.

Placement stays involving children from racial and ethnic groups other than American Indians ended with reunifications at rates close to or higher than the statewide reunification rate of 53 percent. Fifty-eight percent of placement stays for African American children, 55 percent for Hispanic children, 54 percent for white children, and 51 percent for children with two or more races led to reunifications within two years of the removal. Placement stays involving Asian children were much more likely to lead to reunifications within two years (64 percent).

In comparison to other states, more children in Minnesota reenter foster care after a previous placement.

The Children's Bureau of the federal Department of Health and Human Services collects information from each state on a variety of child welfare measures. One area where Minnesota differs markedly from other states is in the percentage of children reentering foster care after a prior out-of-home placement. An adjusted 12.5 percent of children entering foster care in Minnesota in federal Fiscal Year 2017 reentered care within 12 months of a prior out-of-home placement, the third highest reentry rate across

²¹ Department of Human Services, Child and Family Services, *Minnesota's Out-of-home Care and Permanency Report, 2019* (St. Paul, 2020), 26.

²² The data in this paragraph include American Indian children for whom counties were fiscally responsible, regardless of whether they were served by county or tribal child protection agencies.

all states.²³ The adjusted average national percentage was 8.1 percent. The Children’s Bureau considers lower numbers to be better performance; it finds that states with lower numbers are more effective at sending children to secure permanent placements.

Minnesota’s higher percentage could perhaps indicate that Minnesota child protection agencies are more willing to try reunifications in circumstances other states would not. Minnesota ranks in the top half of states in the percentage of foster care placements that conclude with reunifications. However, several states reunify a higher percentage of children than Minnesota does and have much lower 12-month reentry rates.

The Judicial Branch annually reports performance measures pertaining to child protection cases, but its measures focus on whether courts meet time deadlines.

The State Court Administrator’s Office issues a performance report each year in an effort to “establish core performance goals and to monitor key results that measure progress toward meeting these goals.”²⁴ The report is reviewed by the Judicial Council, the Judicial Branch’s administrative decision-making body.²⁵ All of the performance measures for courts that specifically relate to child protection cases are related to expeditious processing, including the length of time for children to reach permanency, the percentage of children reaching permanency within 18 months, the length of time to reach adoption, and the percentage of children reaching adoption within 24 months.

Under Judicial Branch policy, judicial districts are responsible for “monitoring and improving performance” on the measures related to child protection.²⁶ District court administrators are expected to take steps to improve outcomes. Several judges we spoke with told us that this reporting process creates internal pressures around permanency deadlines. Judges are expected to provide justifications for cases that persist longer than the performance benchmarks.

However, state statutes place far more responsibilities on courts than just the expeditious processing of cases. For example, courts have sole authority to authorize out-of-home placements lasting longer than 72 hours and to determine permanency outcomes. Courts must ensure the appointment of (1) guardians ad litem for all children, (2) attorneys for children aged 10 or older that desire them, and (3) attorneys

²³ To better compare across states, the Children’s Bureau adjusts state percentages to account for several factors, such as the ages of children in foster care in each state (it is generally more difficult to find permanent placements for older children). The reentry rate includes only children who exited foster care to reunite with parents, live with relatives, or live with a guardian.

²⁴ Minnesota Judicial Branch, State Court Administrator’s Office, *Performance Measures Key Results and Measures Annual Report September 2021* (St. Paul, 2021), 5.

²⁵ The Judicial Council comprises the Chief Justice, the Chief Judge of the Court of Appeals, the chief judges of each of the state’s ten judicial districts, the president of the Minnesota District Judges Association, one associate justice and five judges appointed by the Chief Justice, and six non-voting administrative staff.

²⁶ “Children’s Justice Policy,” Minnesota Judicial Branch Policy 601, https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/600/601-Children%e2%80%99s-Justice-Policy.pdf?ext=.pdf, accessed March 2, 2021.

for parents when appropriate.²⁷ Courts are also required to ensure that child protection agencies have made reasonable efforts to avoid removal of the child from the home, conducted a thorough search for a child's relatives, developed a satisfactory out-of-home placement plan, and complied with the requirements of the Indian Child Welfare Act. Judicial branch performance metrics do not measure how judges fulfill these important functions.

The emphasis on timelines could create incentives that conflict with the intentions of state policy. For example, if a court delays a judgment in order to enable a parent to meet conditions for reunification, that action would count against the district's performance. However, doing so may best meet the state's goal of reunifying families whenever it is in the best interests of the child. Conversely, if a court prematurely orders a child placed permanently outside the home when a parent is still making an earnest effort to reunify, that action would count in favor of the district's performance.

RECOMMENDATION

The Judicial Council should consider additional performance measures that more fully reflect statutory priorities for child protection cases.

In general, we endorse the efforts of the Judicial Branch to collect performance measures as a means of promoting best practices. However, we are concerned that the focus on expediting cases may obscure other important priorities. For example, courts have not reported on the percentage of child protection hearings in which parents had attorney representation. Nor have they reported on the percentage of cases in which child protection agencies adequately demonstrate that they have conducted thorough searches for a child's relatives.

The examples above are intended to be illustrative; we do not suggest these would be the most important measures to add. However, because measurement can influence behavior, we recommend that the Judicial Council direct the State Court Administrator's Office staff to consider additional performance measures that more broadly reflect the wide range of responsibilities that the Legislature has entrusted to courts. We would expect that the development of such measures would involve substantial consultation with state and local partners.

Barriers to Reunification

Even though many parents want to reunify with their children and the state's policy is to prioritize reunification when possible, many families struggle to reunify. About one in three out-of-home placements that concluded in 2019 were resolved through permanent separations between parent and child. Further, even when reunifications do occur, parents may be separated from children for long periods of time. In this section we examine two factors that can create barriers to reunification: unclear communications between the child protection agency and the parent, and limited access to social services beyond child protection.

²⁷ Under a 2021 statutory change that takes effect in 2023, courts must appoint attorneys for all parents who want an attorney and meet financial criteria. Courts do not need to appoint guardians ad litem if the case involves only truancy or a runaway; they do not need to appoint attorneys if the case involves only truancy.

Communication

Providing clear and understandable information to parents seeking to regain custody of their children is an important responsibility for child protection agencies and courts. Parents who have had a child removed must navigate administrative and courtroom processes that can be unfamiliar and confusing.

Out-of-home placement plans describing actions parents must take to reunite with their children can be lengthy and difficult to understand.



Out-of-Home Placement Plan

Plans must be first developed within 30 days of a child's initial placement in foster care, and must be updated regularly. State law requires that each plan include:

1. A description of the foster care setting and explanation why the setting is the best available location to place the child.
2. The reasons the child was removed from the home and any changes parents must make in order to reunify (if reunification is planned).
3. Descriptions of the services the child protection agency has provided and will provide to the family, the child, and the foster home.
4. Descriptions of any services requested by the parents or child and an explanation of whether they were provided.
5. Plans for how the parent or parents will visit with the child during the foster care stay.
6. The child's educational record and plans for ensuring the child continues schooling (if the child is of school age).
7. The child's health care record and plans for ensuring that the child's ongoing or future health care needs are met.
8. If the child is aged 14 or older, plans to prepare for independent living, such as educational or employment planning.
9. If the child is aged 14 or older, a signed acknowledgement that agency staff or others have explained the child's rights to the child.
10. For cases where reunification cannot occur, plans for adoption or transfer of custodial care to a relative.

— *Minnesota Statutes 2021, 260C.212*

Within 30 days of a child's placement outside the home, the agency must complete an out-of-home placement plan for each child entering care.²⁸ In preparing the plan, the agency must seek the cooperation of the parent, the foster parent, the child (if old enough), the child's guardian ad litem, and the child's tribe (if the child is American Indian).²⁹

An out-of-home placement plan is a comprehensive document intended to ensure that the child protection agency has a complete understanding of the child's and family's needs so it can provide appropriate services. Though plans contain similar information, local child protection agencies may use their own preferred templates. In addition to the requirements for the plan detailed in state law (shown at left), many agencies include additional information and details, such as information about existing family resources.

Developing such a comprehensive document is likely a valuable planning exercise, but the end result can be a complex 15 to 30 page document. We found these documents difficult to decipher when reviewing individual case files. Parents that have had more than one child removed receive separate plans for each child, which may differ from one another.

²⁸ *Minnesota Statutes 2021, 260C.212.*

²⁹ *Minnesota Statutes 2021, 260C.212, subd. 1(b).* If a child is placed in a foster care facility instead of with a foster family, a representative of the facility participates in planning. As noted in Chapter 1, guardians ad litem are volunteers or state employees who advocate for children's best interests in juvenile and family courts.

Similarly, court orders in child protection cases are frequently long and detailed, and often include terminology that may not be understandable to those without legal training. For example, state law requires that court child protection orders “incorporate” the out-of-home placement plan “by reference,” a legal shortcut that means the findings or requirements of the out-of-home placement plan are included in the court’s order without explicitly appearing there.³⁰

Some judges and attorneys indicated to us that they recognized the extent to which agency and court documents can be overwhelming and confusing to parents. One judge noted that the value of writing a comprehensive, detailed court order is limited if the orders become too complex for parents to read. The judge emphasized the importance of speaking with parents and providing orally the same information that appears in placement plans and court orders.

RECOMMENDATION

The Legislature should direct child protection agencies to produce short, easy-to-understand summary documents for parents explaining the steps they should take to pursue reunification.

Parents dealing with the removal of a child should receive clear, simple instructions regarding the specific requirements placed upon them by the child protection agency and the court. Under current practices in at least some counties, such simplified instructions are provided only orally.³¹ We see no reason why they should not be provided in written form as well.

Without minimizing the need for comprehensive, detailed case plans, child protection agencies should also provide parents with a one-page written summary of the steps they should take in order to pursue reunification. If the child protection case involves more than one child, requirements from the different plans should be combined together into a single summary. Such a summary would make it easier for parents to understand the conditions they must meet. This summary should be provided at least as often as the out-of-home placement plan is updated, though it should also include any additional conditions mandated by the court that do not appear in the plan.

Because child protection cases differ, we recommend that the Legislature create a broad requirement that child protection agencies provide a short summary in a format approved by DHS.³² DHS would then have the flexibility to modify requirements to address differing circumstances. (For example, a strict one-page limit may be challenging for summaries that need to be printed in more than one language.) DHS could work together with counties to create summary templates, and to determine if other information in addition to reunification steps should be added to make the summaries more useful.

³⁰ *Minnesota Statutes* 2021, 260C.201, subd. 6(c).

³¹ We did not examine the practices of every local child protection agency; it is possible that some counties already provide short written summaries without our knowledge.

³² DHS leadership has suggested that DHS could develop the requirement for a short summary administratively, without a change in the law. We do not object to DHS taking this approach in advance of legislative action, but we believe that the Legislature should statutorily emphasize the importance of providing simplified information to parents.

Access to Services

Parents seeking to reunify with their children are often required in case plans or court orders to access social services beyond child protection services, such as drug treatment services, mental health services, and housing assistance. However, obtaining such services can be challenging.

Parents seeking to reunite with their children may have difficulty accessing social services that would make reunification more likely.

Parents seeking to reunify with their children have a limited amount of time to demonstrate they are meeting the conditions set by a court. If a successful reunification has not occurred within 11 months, state law requires county child protection agencies to initiate permanency proceedings, and the court must hold a hearing within 12 months of the child's placement in foster care.³³

However, some conditions set by a court may require services that are difficult to access. In our survey of child protection administrators, 41 percent of respondents said that parents' inability to access

services required by a court order sometimes or often creates barriers to reunification. In interviews, judges and other individuals involved in the court system particularly noted three types of services that can be difficult to obtain: drug treatment, housing assistance, and mental health services.

Drug treatment is a tremendously important service because of the large number of child protection cases that stem from addiction issues. More than 95 percent of child protection administrators responding to our survey said that ongoing substance abuse issues are often or always a barrier to reunification. However, drug treatment programs in Minnesota are heavily utilized and services are sometimes difficult to obtain. According to DHS estimates, 34 of Minnesota's 87 counties have at least 1,500 people in need of substance use disorder treatment at any one time. Drawing from data collected by publicly funded drug treatment programs, nearly 10 percent of program admissions in recent years have been adults involved in child protection cases.



Available funding may occasionally delay reunification because services are not always available in our small community. Being able to get services locally depends on the availability of service providers and the county's ability to contract for a service that will be provided to a small number of people. Additionally, if the service is available in a neighboring county there are transportation issues in terms of availability and cost.

— Child protection agency administrator

³³ *Minnesota Statutes* 2021, 260C.505(a) and 260C.507(a).

Once a parent enters a drug treatment program, another challenge can be successfully completing treatment in the 12-month time period before the court must start permanency proceedings. As shown in the box at right, just under half of parents involved in child protection cases who enter drug treatment programs enroll in additional drug treatment programs within two years of their initial enrollment.

Several interviewees commented that battling drug addiction often involves relapses and reentries into treatment. Several interviewees also suggested that Minnesota’s 12-month permanency timeline does not provide some parents the time they need to successfully address their addiction issues. However, others suggested that the permanency timeline provides an important source of pressure and motivation, and noted that courts can continue permanency proceedings past the 12-month deadline if a parent appears to be making progress.

Many parents involved in child protection cases enroll in multiple drug treatment programs over time.

Additional drug treatment program enrollments within two years of first program enrollment	Percentage of individuals
None	55%
1	22
2	12
3	6
4 or more	<u>6</u>
	100%

NOTES: Table depicts 16,353 individuals enrolling in substance abuse treatment programs during fiscal years 2014-2018 who indicated they had children involved in a child protection matter. We excluded individuals who indicated child protection involvement during an earlier program enrollment (prior to Fiscal Year 2014). Individuals could include both custodial and noncustodial parents. Due to data limitations, we are likely undercounting individuals with more than one program enrollment. Percentages do not sum to 100 due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of DHS Drug and Alcohol Abuse Normative Evaluation System data.

Another common reunification condition imposed by courts is for parents to obtain or maintain stable housing. However, limited affordable housing can make meeting this condition a challenge. In our survey of child protection administrators, 80 percent of respondents said that inadequate housing sometimes or often created a barrier to reunifications.



The ability to support families in accessing affordable housing is a barrier [to reunification]. The agency often provides funding to families to support first month’s rent and deposit but not ongoing costs. The ability to identify, access and fund culturally specific resources to families is a significant gap/challenge in our system. In addition, the ability to access and or fund other resources to support reunification at the earliest point possible can be a challenge.

— Child protection agency administrator

Families involved in the child protection system frequently have low incomes, and households with low incomes often struggle with housing in Minnesota. Conventionally, housing costs that exceed 30 percent of income are considered a threat to affordability. In a 2019 report, Minnesota Housing reported that 58 percent of Minnesotan households with incomes under \$50,000—a total of 434,000 households—spend more than 30 percent of their incomes on housing.³⁴ In the Twin Cities metropolitan area, one-third of individuals seeking housing in 2017 using a housing choice voucher from the Metropolitan Council’s Housing and

³⁴ Minnesota Housing, “Key Issues and Trends in Housing” (St. Paul, 2019), p. 6, <https://www.mnhousing.gov/sites/np/research>, accessed March 2, 2021.

Redevelopment Authority were unable to find a unit to rent during the time period allowed.³⁵

We did not ask about mental health services in our survey, but some child protection administrators and judges we interviewed cited the limited availability of mental health services as a challenge for families seeking to reunify.

Parents that have children removed from their homes may lose eligibility for some public assistance programs, making reunification more difficult.

Some public assistance programs, particularly the Minnesota Family Investment Program (MFIP), are tied to the presence of children in the household. When families depend on MFIP for a significant portion of their income, the removal of children from the home can create financial hardship. When children no longer live in the home due to a child protection removal, the family loses its eligibility for MFIP and stops receiving income from the program. MFIP payments may stop as soon as the month following the child's removal from the home.

The sudden loss of income can make it difficult for parents to meet the conditions set by a court for reunification. For example, some families rely on MFIP for rental income. Loss of that income means that a child removal may be followed rapidly by the loss of stable housing. The lack of housing then becomes a barrier to reunification.

Other public assistance benefits may also have to be recalculated due to the absence of children from the home. For example, some federal housing programs provide a rent deduction for each child in the home. When children are removed from the home, this rental deduction no longer applies and a family's rent could increase.³⁶

RECOMMENDATION

The Department of Human Services should form a working group to examine how the state can better address broader social services needs for families confronting child protection issues.

Our evaluation was limited to child protection services provided by county human services agencies, law enforcement agencies, and the court system. Examining drug treatment programs, housing programs, mental health programs, and other social services was beyond the scope of our project. However, it became clear in the course of our research that many families involved in the child protection system are also dealing

³⁵ Minnesota Housing, "Key Issues and Trends in Housing" (St. Paul, 2019), p. 16, <https://www.mnhousing.gov/sites/np/research>, accessed March 2, 2021. Housing choice vouchers (sometimes called "Section 8 vouchers") are a form of federal rental housing assistance provided to households seeking homes in the private market. The local public housing agency pays the amount of the voucher to the landlord directly, and the family pays the difference in rent.

³⁶ Specific circumstances vary. For federal housing programs, rent is based on income. If the parent's income decreases because they stop receiving MFIP or other income support, then the rent recalculation would take into account both an increase due to lack of children in the home and a decrease due to lower income.

with other challenges that child protection programs are not designed to address. Those challenges can affect whether children are removed from homes and whether they are reunified again with their families. The 2019 Legislature took a step in the direction of combining social services programs by authorizing a special form of foster care in which parents needing both child protection services and substance abuse treatment enter residential treatment programs together with their children.³⁷

We recommend that DHS form a working group to examine the interrelationships among child protection and other social services, and to determine how increasing or changing the integration of social services might promote better child protection outcomes. Since examining these questions requires a broad social service lens and an understanding of the different issues faced in different parts of the state, DHS should draw upon the expertise of specialists in many different social service areas, both at the state and local level.

³⁷ *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 1, secs. 26 and 31, codified in *Minnesota Statutes* 2021, 260C.190 and 260C.228. Federal reimbursement for such care was authorized in 2018 as part of the Family First Prevention Services Act. See Title VII of the Bipartisan Budget Act of 2018, Public Law 115-123, sec. 50712, February 9, 2018, codified in 42 *U.S. Code*, sec. 672(j) (2020).

List of Recommendations

- The Department of Human Services (DHS) should track which entities place law enforcement emergency holds. (p. 32)
- DHS should convene a working group to make recommendations to the Legislature regarding training of law enforcement officers in child protection removals. (p. 38)
- DHS and the Judicial Branch should continue their efforts to improve the provision and documentation of services offered to families to prevent child removals. (p. 46)
- The Judicial Council should consider additional performance measures that more fully reflect statutory priorities for child protection cases. (p. 56)
- The Legislature should direct child protection agencies to produce short, easy-to-understand summary documents for parents explaining the steps they should take to pursue reunification. (p. 58)
- DHS should form a working group to examine how the state can better address broader social services needs for families confronting child protection issues. (p. 61)



OLA



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June 15, 2022

Judy Randall, Legislative Auditor
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Dear Ms. Randall:

Thank you for the opportunity to review and comment on the draft report issued by your office, titled *Child Protection Removals and Reunifications*. We appreciate the thoughtful evaluation of this important issue and agree with the report's recommendations for the Department of Human Services (DHS).

The report clearly identifies key considerations and recommendations that could lead to greater efficiency and equity in the process of child removals and support efforts to reunite more children with their families, all of which aligns with DHS' goal of improving the child protection system in Minnesota.

In particular, we will begin working to address the recommendations for DHS to:

- Track which entities place law enforcement emergency holds;
- Convene a working group to make recommendations to the Legislature regarding training of law enforcement officers in child protection removals;
- Continue efforts to improve the provision and documentation of services offered to families to prevent child removals; and
- Form a working group to examine how the state can better address broader social services needs for families confronting child protection issues.

Overall, this report supports our efforts to strengthen child protection in Minnesota. One promising example is the work we are doing to implement the federal Family First Prevention Services Act, with its emphasis on providing prevention to limit the number of children entering foster care.

Thank you again for your staff's professionalism and dedicated efforts during this audit. Our policy and practice is to follow up on all audit findings to evaluate our progress toward resolution. If you have further questions, please contact Gary L. Johnson, Internal Audits Office director, at (651) 431-3623.

Sincerely,

A handwritten signature in black ink that reads 'Jodi Harpstead'.

Jodi Harpstead
Commissioner



OLA



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June 17, 2022

Dear Ms. Randall,

Thank you for providing my office with your final report titled *Child Protection Removals and Reunifications*. As noted in the report, Minnesota District Court Judges and staff from my office provided feedback and context to help answer the two questions from the Legislative Audit Commission on the removal of children from the home, and reunification of children with their families. My office also provided the OLA with bulk data on juvenile protection cases for this evaluation. As requested, I am responding with this letter for inclusion in the report to provide the State Court Administrator's Office reaction to the report.

The report recommends that DHS and the Minnesota Judicial Branch continue their efforts to improve provision and documentation of services offered to families to prevent child removals. As noted in the report, the Judicial Branch currently has efforts underway related to reasonable and active efforts findings in court orders, including a judicial officer training on this specific issue scheduled for early 2023, templates to assist judges with the drafting of orders, and regular discussions by Children's Justice Initiative groups involving judges, attorneys and other interested parties. My office will continue working on these efforts.

The report also recommends that the Minnesota Judicial Council consider additional performance measures that more fully reflect statutory priorities for child protection cases. My office will take this recommendation to Judicial Council for consideration.

Thank you for the opportunity to review and respond to your audit report.

Sincerely,

A handwritten signature in black ink that reads "Jeff Shorba".

Jeff Shorba
State Court Administrator



OLA

Recent OLA Evaluations

Agriculture

Pesticide Regulation, March 2020
Agricultural Utilization Research Institute (AURI),
May 2016
Agricultural Commodity Councils, March 2014

Criminal Justice and Public Safety

Driver Examination Stations, March 2021
Safety in State Correctional Facilities, February 2020
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Minnesota Research Tax Credit, February 2017
Iron Range Resources and Rehabilitation Board (IRRRB),
March 2016

Education (Preschool, K-12, and Postsecondary)

*Minnesota Department of Education's Role in Addressing
the Achievement Gap*, March 2022
*Collaborative Urban and Greater Minnesota Educators
of Color (CUGMEC) Grant Program*, March 2021
Compensatory Education Revenue, March 2020
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Early Childhood Programs, April 2018
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Standardized Student Testing, March 2017
Minnesota State High School League, April 2017
Minnesota Teacher Licensure, March 2016
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*Public Facilities Authority: Wastewater Infrastructure
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Clean Water Fund Outcomes, March 2017
*Department of Natural Resources: Deer Population
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DNR Forest Management, August 2014
Conservation Easements, February 2013
Sustainable Forest Incentive Program, November 2013

Financial Institutions, Insurance, and Regulated Industries

*Department of Commerce's Civil Insurance Complaint
Investigations*, February 2022

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*Office of Minnesota Information Technology Services
(MNIT)*, February 2019
Mineral Taxation, April 2015
*Councils on Asian-Pacific Minnesotans, Black
Minnesotans, Chicano/Latino People, and Indian
Affairs*, March 2014

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Emergency Ambulance Services, February 2022
Office of Health Facility Complaints, March 2018
*Minnesota Department of Health Oversight of HMO
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Minnesota Health Insurance Exchange (MNSure),
February 2015
*Minnesota Board of Nursing: Complaint Resolution
Process*, March 2015

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*Home- and Community-Based Services: Financial
Oversight*, February 2017
Managed Care Organizations' Administrative Expenses,
March 2015
State-Operated Human Services, February 2013
Medical Assistance Payment Rates for Dental Services,
March 2013

Jobs, Training, and Labor

*Unemployment Insurance Program: Efforts to Prevent
and Detect the Use of Stolen Identities*, March 2022
State Protections for Meatpacking Workers, 2015
State Employee Union Fair Share Fee Calculations,
July 2013

Miscellaneous

Board of Cosmetology Licensing, May 2021
*Minnesota Department of Human Rights: Complaint
Resolution Process*, February 2020
*Public Utilities Commission's Public Participation
Processes*, July 2020
Economic Development and Housing Challenge Program,
February 2019
Minnesota State Arts Board Grant Administration,
February 2019
*Board of Animal Health's Oversight of Deer and
Elk Farms*, April 2018
Voter Registration, March 2018
Minnesota Film and TV Board, April 2015

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MnDOT Workforce and Contracting Goals, May 2021
MnDOT Measures of Financial Effectiveness,
March 2019
MnDOT Highway Project Selection, March 2016
*MnDOT Selection of Pavement Surface for Road
Rehabilitation*, March 2014
MnDOT Noise Barriers, October 2013



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