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COMMUNITY DISPUTE RESOLUTION
GUIDELINES REPORT

Prepared by
Mary Kearney
State Court Administration
40 North Milton, #201
St. Paul, Minnesota 55104
(612) 296-6282

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INTRODUCTION

Minnesota Statutes Chapter 494 (1984)

Minn. Stat. Chap. 494 establishes a community dispute resolution program to be administered by the State Court Administrator. The statute mandates that the State Court Administrator develop guidelines for use by community dispute resolution programs and training programs for mediators and arbitrators for those programs. The heart of the enabling legislation provides that the guidelines include program certification criteria which must be met in order for the programs to receive court referrals. (See Addendum A.) Pursuant to the legislation, the guidelines were submitted to the chairmen of the Senate and House Judiciary Committees on February 1, 1985. The following report describes the development of the guidelines.

Background

Community-based conflict resolution centers essentially aim to provide disputing neighbors, relatives and other members of the community with a forum, less formal and costly than the legal system, for resolving minor criminal or civil disputes. Although these centers exist in many forms throughout the country, most employ a dispute resolution method whereby parties to the dispute are brought together by a neutral third party who, through conciliation, facilitation or mediation, helps them resolve the dispute. A few centers in the country also use a conflict resolution method where the neutral issues a third-party decision after the parties have failed on their own to reach a settlement. This process more closely resembles arbitration than conciliation or mediation since it is the neutral, and not the parties, who decides the controversy.

Although the concept of resolving local conflict by informal means is not new, community-based dispute resolution has recently become more organized. Consequently, it is now more frequently looked to as an alternative method for settling disputes which are ill-suited for formal adjudication. In 1978 the trend toward alternative resolution of community-based disputes gained substantial momentum when the U.S. Department of Justice issued grants to three major cities to establish community dispute resolution centers known as "Neighborhood Justice Centers." These centers were experiments in developing alternatives to the courts for resolving community disputes. Knowledge gained from the experiences of these centers has probably been the most significant factor leading to the recent widespread growth of community conflict resolution programs.

Minnesota's organized involvement with this effort began in 1981, when the legislature allocated \$100,000 to the Judicial Planning Committee to implement pilot community conflict resolution programs. Subsequently, the Judicial Planning Committee funded the Dispute Resolution Center in St. Paul and a juvenile project in St. Louis Park. The subject legislation represents the state's most recent formal involvement with community dispute resolution. Presently, the 1984-85 Minnesota State Bar Association Directory lists 39 alternative dispute resolution programs operating within the state, 13 of which resolve community-based conflict.

Methodology

The Judicial Planning Committee was designated as the oversight body for the development of the guidelines. In the summer of 1984, a Subcommittee of the Judicial Planning Committee, the Community Dispute Resolution Subcommittee, was appointed to develop the guidelines. The Subcommittee consists of Judicial Planning Committee members and persons who represent various perspectives and concerns relevant to court referral of disputes to community dispute resolution centers. The perspectives represented include court administration, legal services, corrections, and professional mediation and arbitration. Further, the Subcommittee consists of a number of individuals with "hands-on" experience in community dispute resolution centers.

Since the work of the Subcommittee was to be completed in a short period of time, the Subcommittee was divided into four Task Forces: Case Criteria and Intake, Resolution Techniques and Procedures, Training and Certification Process. As indicated by the titles, each Task Force was responsible for drafting a major portion of the guidelines. Between September, 1984 and January, 1985, the Subcommittee met once a month to review and accept proposed guidelines from the respective Task Forces which met frequently between Subcommittee meetings.

In the initial stages of its work the Subcommittee relied on the experiences of other jurisdictions with community dispute resolution programs. New York's experience was most relevant since it is the only state, other than Minnesota, which has approached community-based conflict resolution on a statewide basis. The New York Community Dispute Resolution Program was established in 1981 and is administered by the New York State Court Administrator's Office. Under this program, New York partially funds approximately 40 dispute resolution programs located throughout the state. Other regions in the nation from which the Subcommittee sought guidance include Florida, California, counties in Kentucky--which have instituted a referral system from within the county courts, Boston, Atlanta, Kansas City, and Columbus, Ohio. As the work progressed, the Subcommittee focused more on the experiences of community dispute resolution centers in Minnesota, and extensively drew from the day-to-day experience of the members who work with these centers.

On January 4, 1985, the Subcommittee submitted the proposed guidelines to the Judicial Planning Committee for its approval and review. The guidelines, as amended and approved by the Judicial Planning Committee, are attached to this report (Addendum B). On January 11, 1985, the Subcommittee conducted a hearing to solicit comments from the public. A synopsis of that hearing is included herein.

Terminology

The subject statute and the guidelines use the terms "mediation" and "arbitration." It is important to note that in the context of community dispute resolution these terms are used to describe many different alternative dispute resolution processes and they are not necessarily confined to conventional definitions.

DELIBERATIONS

The following summarizes major issues explored by the Community Dispute Resolution Subcommittee and the Judicial Planning Committee and indicates the findings of the Subcommittee related to the respective issues. (The working papers of the Subcommittee as well as the minutes of all Subcommittee and relevant Judicial Planning Committee meetings are on file in the Judicial Planning Committee Office and are available for review upon request.)

Legislative Intent

A review of the history of the legislation reveals that because it was initially constructed to contain a provision for funding of nonprofit community dispute resolution centers, but in its current form does not, certain aspects of Chapter 494, Community Dispute Resolution Program, are not clear. In light of this, the Subcommittee determined that it was necessary to identify the intent underlying the legislation to best develop guidelines consistent with the legislative purpose. Examination of the legislative history disclosed that the law was intended to require the establishment of standards only for those community dispute resolution programs which rely on volunteers and it was not meant to apply to the professions of mediation and arbitration. Further, by providing a mechanism in the statute to assure that community dispute resolution centers meet certain standards to become eligible to receive court-referred disputes, the Subcommittee concluded that the authors intended to effectively encourage courts to refer disputes to these centers and, therefore, the legislation was not designed to limit a court's right to refer.

Structure of the Guidelines

Alternative dispute resolution in general and community-based dispute resolution in particular are fast-evolving concepts. Consequently, little definitive research is available on practices within these fields and established procedures and methods are neither universally accepted nor employed. To appropriately respond to this developmental state the guidelines were constructed to allow for diversity of practices and to encourage continued experimentation.

Community-based conflict resolution programs are "local" by definition and customarily reflect the particular area or neighborhood in which they are located. To preserve this local character, centers have an interest in maintaining control and discretion over their procedures, practices and policies. Concurrently, as demonstrated by Chap. 494, the state holds an interest in assuring that all centers, regardless of location, meet certain standards and in accumulating information for future program development. In recognition of these contrasting interests, the guidelines, while containing mandatory provisions, are structured to allow each center as much discretion as possible over its internal operations, but at the same time require each center to report specified information to the state and to record all practices, policies and procedures in writing. Under the guidelines, the state reserves the right to review the written and actual operations of a center. This affords the state the opportunity to assure that a center does meet the required standards, while minimizing the intrusion by the state into the activities of the center.

Meaning of Court Referral

Chapter 494 refers to "court referrals" of disputes. The guidelines broadly define court referral to cover any action by a court or by any part of the criminal justice system suggesting the use of a center. Besides the courts, the criminal justice system includes law enforcement, the prosecution and the defense, and corrections. The Subcommittee determined that a comprehensive definition of court referral is consistent with legislative intent.

Type of Disputes and Exclusions

Legislative history discloses that the intent of Chap. 494 is that any community dispute resolution center which relies on the use of volunteers may not process any dispute that falls under the exclusions, regardless of whether it was referred from the criminal justice system or elsewhere, if that center is certified pursuant to the statute. Disputes excluded under section 494.03 include those involving violence against persons, incidents arising out of situations that would support charges of criminal sexual conduct, intrafamilial sexual abuse or incest; any matter relating to guardianship, conservatorship, civil commitment, dependency, maltreatment of vulnerable adults; any matter involving patients and residents of health care facilities bill of rights, marriage dissolution, or domestic abuse and any dispute arising under the uniform child custody jurisdiction act or the revised uniform reciprocal enforcement of support act.

The exclusions represent concerns about the inappropriateness of mediation as a method for resolving the disputes listed. Proponents for excluding these matters assert that mediation is not more advantageous than traditional adjudication if there is a severe power imbalance between the parties and the parties are involved in an ongoing relationship or where abuse has occurred in the relationship. This criticism especially applies where the neutrals are volunteer nonprofessionals, as most neutrals are at community dispute resolution centers. Also, there is a significant percentage of critics who believe that certain of these matters, disputes involving violence, for example, should never be mediated, even where the mediator is a professional. Critics further claim that it has taken many years for advocates to convince officials that domestic abuse and related matters should be classified as crimes. They view the diversion of these matters from the criminal justice system as controverting these gains.

In addition to the exclusions mandated by law, the guidelines exclude public assistance eligibility disputes. The Judicial Planning Committee added this item because, among other reasons, a mechanism for adequately resolving these matters is already in place and public assistance eligibility disputes are poorly suited for the give and take process necessary to mediation.

The substantial number of disputes which are excluded under section 494.03 is a manifestation of the existent tension between those who want to assure that certain categories of disputes are not diverted from the traditional legal system and those who want to encourage courts and other elements of the legal system to use alternatives to formal adjudication. This

tension underscores what are perhaps the most controversial questions surrounding the growth of community-based conflict resolution. This controversy is explained more fully in the synopsis of the public hearing which follows below. It is important to note that community dispute resolution programs in Minnesota and throughout the country customarily resolve some of the disputes which are excluded by the Minnesota statute. However, the evaluative research available on the experiences of these centers is sparse and in its absence both those in favor of centers processing these disputes and those opposed make drastic claims to support their respective positions.

Criminal Disputes

Surprisingly to some, many community dispute resolution centers process criminal disputes. In fact, some of the programs which have served as forerunners in the community-based conflict resolution movement, most notably the Columbus, Ohio Night Prosecutor Program and the Neighborhood Justice Centers funded by the Justice Department, focus on the resolution of criminal rather than civil disputes.

Court referral to centers of disputes involving possible criminal activity raises an array of special concerns relating to the protection of rights of defendants and victims and the procedural requirements of the criminal justice system. Additionally, the concerns may vary with each judicial district. Research of centers which have historically processed criminal disputes discloses that in most instances the procedures governing the referral of criminal disputes were developed by individuals working within the criminal justice system itself, judges and corrections personnel for example, or, alternatively, by center personnel working together with individuals from within the criminal justice system.

In light of this, the Subcommittee developed Guideline 2.02 which essentially requires that a center which receives referrals of criminal matters mutually develop all procedures for processing these referrals with appropriate representatives from within the criminal justice system. Further, the procedures and program of referral must be approved by the appropriate criminal justice authorities. The desired effect of this guideline is to assure that all concerns about the diversion of criminal matters from the legal system, whether they are peculiar to a particular jurisdiction or not, are satisfactorily resolved.

Voluntary Participation

Section 494.03 states that "the guidelines shall provide a method for ensuring that participation in dispute resolution is voluntary." Voluntary participation in dispute resolution is often regarded as critical to achieving a successful result. In addition, the issue has constitutional significance. In both criminal and civil settings the disputants have the right to a jury trial. If entry into the process is coerced, it could mean that this right has been impermissibly waived. Guideline 2.01 instructs the centers to inform the parties at the various stages in the process that their participation is voluntary and that, unless the parties themselves agree otherwise, they may withdraw at any time. This instruction is to be given orally and in writing.

Confidentiality

Section 494.02 states:

Any communication relating to the subject matter of the dispute by any participant during dispute resolution shall not be used as evidence against a participant in a judicial or administrative proceeding. This shall not preclude the use of evidence obtained by other independent investigation.

This language, which is reiterated in the guidelines, embodies the generally recognized principle of mediation that the parties, in order to effectively participate in the process, must be free to openly discuss matters relating to the controversy without the fear that what they say may be used against them in a subsequent proceeding.

Although this language is clear, a possible conflict arises when it is contrasted with Minn. Stat. Section 595.02, subd. 1(k) (1984), a provision passed in conjunction with the Minnesota Civil Mediation Act, Minn. Stat. Section 572.31 (1984), which allows parties in the dispute, who have applied to a court to have a mediated settlement agreement set aside or reformed, to be examined concerning communications made in the course of the mediation. The Subcommittee determined that this language would come into effect rarely, that is, only after parties involved in a civil dispute first entered an "agreement to mediate" as defined by the Minnesota Civil Mediation Act, and then entered a binding mediated settlement agreement which one or both of the parties subsequently petitioned the court to set aside or reform. Moreover, the Subcommittee decided, based primarily on rules of statutory construction, that the provision in question does not apply to community dispute resolution programs certified pursuant to Chapter 494.

Enforceability

An examination of community dispute resolution programs throughout the country reveals a divergence of views regarding the effect of settlement agreements.^[1] In New York and other parts of the East Coast, for example, settlement agreements are normally binding but in the numerous community dispute resolution centers located in Florida, the agreements are non-binding. In California, the effect given agreements varies from program to program.

In general, programs with a close connection to the legal system want enforcement mechanisms established and available. Programs which offer binding agreements claim that the process is more effective if the parties know from the beginning that a breached agreement can be enforced. On the other hand, centers which offer nonbinding agreements contend that the absence of externally-imposed enforcement measures is more consistent with the concept behind community-based conflict resolution. The belief is that

[1]The Subcommittee relied heavily on the research done by Lawrence Freedman, of the American Bar Association's Special Committee on Dispute Resolution. See, for example, "Are Mediation Agreements Enforceable?," an American Bar Association Research Paper.

individuals should be given more responsibility over decisions which directly impact their lives and, accordingly, if an agreement is breached, the affected party should have the choice as to what action, if any, to pursue. It is significant to note that regardless of whether the agreements are binding or nonbinding, most centers first attempt to remediate the dispute before any further action is taken. Moreover, there is apparently little current information available which compares or indicates the respective compliance rates of binding and nonbinding agreements.

In light of the above, the Subcommittee concluded that the decision as to whether settlement agreements should be binding or not should be left, for now, to each center. Meanwhile, the State Court Administrator will monitor the experiences of the various centers and, at a later time, re-examine this conclusion based on what that experience indicates.

Training

Since community dispute resolution methods vary considerably, no single training program for community dispute resolution neutrals is generally recognized. The Subcommittee, therefore, worked from the premise that currently no consensus exists concerning what constitutes good training, and developed a set of training guidelines designed for flexibility and with the intent that the guidelines be re-evaluated as more reliable research develops. (See section 7.00 of the guidelines.)

The training guidelines outline a curriculum which each center must include in the training it provides for volunteer neutrals and intake workers. In developing this curriculum, the Subcommittee used as a basis the New York Community Dispute Resolution Program training guidelines, since these have been applied statewide in New York for three years to a variety of programs. The guidelines under section 7.00 require that each neutral and intake worker be given at least 25 hours of basic training, including an apprenticeship phase, and an additional minimum of 8 hours of ongoing training each year. During basic training, trainees must be given at least one hour of instruction on the techniques employed to recognize, handle, and refer controversies which involve violence against a person. Section 494.01, subd. 3 of the statute mandates that the guidelines include standards for training neutrals to recognize these matters. Even though the statute prohibits a center from processing these disputes, it is imperative that volunteers be educated on how to identify them since victims or perpetrators of violence often do not readily admit that violence has occurred. Once violence is identified, the center can refer the parties to more appropriate services.

In designing the requirements for training community arbitrators the Subcommittee drew from the experiences of the handful of community arbitration programs operating in the country and determined that an arbitrator-trainee must be trained first as a mediator, and then be given 8 hours more of specialized arbitration training. Most of the community arbitration programs use only experienced mediators as arbitrators. This is fitting because these programs use a hybrid of arbitration which is more closely related to "med-arb" than it is to conventional arbitration. First, the

neutral attempts to reach a settlement through mediation. If this fails and the parties agree, the neutral then changes roles, from mediator to arbitrator, and renders a decision on the unresolved issues.

Lastly, because there is no recognized standard as to what constitutes good training, the Subcommittee decided that it is inappropriate at this time for the state to certify trainers of community dispute resolution neutrals. The scheme implicit in the guidelines is that each center maintain the discretion to contract with outside trainers of choice or alternatively, to conduct its own training. Regardless of who offers the training, however, the training must contain the required curriculum. In addition, the guidelines require each center to record in writing the training schedules used, a description of the contents of the training, a description of the materials used and the names and qualifications of the trainers, as well as the criteria used to select them. This requirement enables the State Court Administrator to evaluate the adequacy of the training.

PUBLIC HEARING

On January 11, 1985, the Subcommittee held a public hearing to solicit response to the guidelines. Both oral and written testimony was introduced. Participants and attendees at the hearing included volunteers and employees at community dispute resolution centers, advocates for the concerns of battered women, and others more generally involved with alternative dispute resolution issues. Due to scheduling problems the hearing was held after the guidelines had been approved. However, the following, which identifies and summarizes the major criticisms raised at the hearing, is offered for consideration.

Violence Against Persons

A difference of opinion emerged at the hearing concerning Guideline 5.01 which provides:

A center shall not accept the following disputes for resolution: 5.01 Any matter involving violence against persons.

Commentary: "Violence against persons" means physical violence.

Section 494.03 specifically excludes disputes involving violence against persons from the guidelines. The Subcommittee determined, however, that a strict interpretation of this language would prohibit community dispute resolution centers from processing precisely the kind of dispute they typically receive, such as yelling matches between neighbors or a situation where a rock or ball has been thrown through a neighbor's window. To avoid this result the Subcommittee added the Commentary. It is significant, however, that Guideline 5.13, which also arises from Chapter 494, excludes any dispute involving domestic abuse (Minn. Stat. Section 518B, 1984) and does not contain a limitation like the one in the 5.01 Commentary. The Subcommittee added the limitation to 5.01 on the condition that 5.13 exists without such limitation. This action was taken to respond to the special nature of domestic abuse controversies wherein threats of violence, as well as acts of violence can have a seriously negative effect on the victim of the threats.

One view expressed at the hearing primarily by persons associated with community dispute resolution centers, is that Guideline 5.01 excessively restricts the work performed by centers and the exclusion should be eliminated or modified. Proponents of this position claim that centers are now successfully processing controversies involving violence which are referred from the criminal justice system and elsewhere. They assert that to preclude them from handling these matters may preclude their involvement with the Community Dispute Resolution Program established by Chapter 494. They emphasize that if they are prohibited from receiving referrals of these controversies it will be difficult to maintain sufficient caseloads and to adequately respond to the needs of the respective communities. They point out that many controversies involving violence are not formally processed by the criminal justice system and in these cases centers offer disputants a forum for resolving the disagreement before it worsens and legal system involvement becomes necessary.

An opposing view, voiced mostly from advocates for the interests of battered women, is that 5.01 should remain as an exclusion and that the Commentary should be eliminated because the legislature intended the exclusion to apply to disputes involving assault. Assault is defined in Minn. Stat. Section 609.02, subd. 10 as:

- (1) An act done with intent to cause fear in another of immediate bodily harm or death; or
- (2) The intentional infliction of or attempt to inflict bodily harm upon another.

Underlying this view is the belief that controversies involving violence should not be resolved through informal structures, such as those available at community dispute resolution centers, because formal adjudicatory proceedings better protect the rights of the victim or "weaker" party, and may more effectively deter criminal conduct. These advocates further contend that before and during a mediation between persons where abuse has occurred, intimidation may play a hidden but coercive role, and once the mediation terminates the victimized party has no protection from continued or retaliatory abuse. Lastly, they assert that the message to perpetrators should be that violence is unacceptable, but when the violent conduct is thrown onto the table as just one item among many to be negotiated this effectively diminishes the significance of the violence and tacitly gives it legitimacy.

Training

The guidelines on training were also questioned. It was asserted that certain aspects of the training curriculum are too academically oriented to meet the needs of some centers and that in general, the guidelines are too restrictive in that they do not sufficiently complement the training offered by certain programs.

Measuring Success

Under Guideline 8.00, Reporting Requirements, centers are asked to periodically submit information including "the number of disputes resolved." The Subcommittee and State Court Administrator were cautioned to carefully fashion the definition of "resolved." It was pointed out that this is the

basis analysts will use to measure the success of community dispute resolution programs, and that the question of how to measure this success is the subject of strenuous debate in the community conflict resolution movement.

CONCLUSION

Pursuant to Section 494.01 the Guidelines were submitted to the chairmen of the judiciary committees in the House and Senate on February 1, 1985. Section 494.01 also states in part:

The guidelines shall not constitute a rule nor shall they be a substantive or procedural law nor shall they take effect until the guidelines are enacted by the legislature.

Accordingly, the guidelines will be submitted in bill form during the 1985 legislative session.

SUBCOMMITTEE RECOMMENDATIONS

In addition to what appears in this report, the Subcommittee, with approval of the Judicial Planning Committee, recommends that Chapter 494 be amended to reflect two changes. The first recommendation is that section 494.03(1) be modified to:

Any matter involving violence against persons where serious injury to a person has been caused by the violence or where the violence has involved the use of weapons. (Underscoring denotes recommended language.)

The definitions contained in Minn. Stat. 609.02, subdivisions 7-8 for bodily harm, substantial bodily harm, and great bodily harm shall apply to "serious injury."

This modification is recommended because the Subcommittee determined that the exclusion currently contained in Section 494.03(1), "any dispute involving violence against persons. . ." restricts centers from processing disputes involving simple assault which they would normally handle, such as shoving matches and "minor" fights between neighbors. This recommendation is made on the basis that section 494.03(4) excludes any dispute subject to Chapter 518B, the statute governing instances of domestic abuse. Under 518B, the definition of domestic abuse includes not only physical harm and bodily injury but also assault or the infliction of fear of imminent physical harm, etc. The recommended modification would not apply to these or other matters additionally excluded by the statute.

At the public hearing the Subcommittee received pro and con responses to this recommendation. Persons from community dispute resolution centers spoke in favor of it because of reasons noted previously. However, advocates for the concerns of battered women spoke in opposition to it. Their criticism centered on the concern that Chapter 518B does not cover instances

of abuse between some classes of "boyfriend and girlfriend"[2]. Consequently, the suggested modifications would apply to these controversies. These advocates argue that threats of violence or "minor" acts of violence have the same significantly negative effect on victims in some boyfriend and girlfriend relationships as they do in other domestic situations.

Secondly, the Subcommittee recommends that section 494.02 be amended to read:

Any communication relating to the subject matter of the dispute by any participant during dispute resolution shall not be used as evidence against a participant in a judicial or administrative proceeding. This shall not preclude the use of evidence obtained by other independent investigation. This shall not apply when a party, upon application to the court to vacate a settlement agreement, alleges that the agreement was procured by corruption, fraud, or other undue means. (Underscoring denotes recommended language.)

The Subcommittee proposes this change to prohibit a party from asserting the privilege to hide his own improper conduct in securing the settlement agreement.

[2]Chapter 518B defines family or household members to mean spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

ADDENDUM A
CHAPTER 494
COMMUNITY DISPUTE RESOLUTION PROGRAM

494.01 COMMUNITY DISPUTE RESOLUTION PROGRAM.

Subdivision 1. **Definition.** For the purposes of Laws 1984, chapter 564, article 2, section 133 to 136 "dispute resolution" means a process voluntarily entered by parties in disagreement using mediation or arbitration to reconcile the parties' differences.

Subd. 2 **Establishment; administration.** The dispute resolution program shall be established and administered by the state court administrator's office.

Subd. 3 **Guidelines.** The state court administrator shall develop guidelines for use by community dispute resolution programs and training programs for mediators and arbitrators for those community dispute resolution programs. The guidelines shall provide a method for insuring that participation in dispute resolution is voluntary and shall include procedures for case processing and program certification criteria which must be met in order to receive court referrals. The guidelines shall include standards for training mediators and arbitrators to recognize matters involving violence against a person. Any guidelines developed under this subdivision shall be submitted to the chairmen of the judiciary committees in the house of representatives and senate by February 1, 1985. The guidelines shall not constitute a rule nor shall they be a substantive or procedural law nor shall they take effect until the guidelines are enacted by the legislature. This shall not limit the existing authority of the state court administrator.

Subd. 4. **Reports.** The state court administrator shall compile statistical data regarding community dispute resolution programs, including the operation budget, the number of referrals, categories or types of cases referred, number of parties served, number of disputes resolved, nature of resolution, amount and type of awards, rate of compliance, returnees to the dispute resolution process, duration and estimated costs of proceedings, and any other pertinent information.

494.02 CONFIDENTIALITY OF COMMUNICATIONS.

Any communication relating to the subject matter of the dispute by any participant during dispute resolution shall not be used as evidence against a participant in a judicial or administrative proceeding. This shall not preclude the use of evidence obtained by other independent investigation.

494.03 EXCLUSIONS.

The guidelines shall exclude:

(1) any dispute involving violence against persons, including incidents arising out of situations that would support charges under sections 609.342 to 609.345, 609.3641 to 609.3644, or 609.365;

(2) any matter involving a person who has been adjudicated incompetent or relating to guardianship, conservatorship, or civil commitment.

(3) any matter involving neglect or dependency, or involving termination of parental rights arising under sections 260.221 to 260.245; and

(4) any matter arising under section 626.557 or sections 144.651 to 144.652, or any dispute subject to chapters 518, 518A, 518B, and 518C, whether or not an action is pending. This shall not restrict the present authority of the court or departments of the court from accepting for resolution a dispute arising under chapters 518, 518A, and 518C, or from referring disputes arising under chapters 518, and 518A to for-profit mediation.

ADDENDUM B
COMMUNITY DISPUTE RESOLUTION PROGRAMS
OPERATIONAL GUIDELINES

The Community Dispute Resolution Program is an effort to utilize, when appropriate, voluntary dispute resolution processes instead of traditional and formal judicial processes for disputes of the kind that are common in neighborhoods, such as those involving neighbors, relatives, landlords and tenants, consumers and like disputes concerning relations within a community.

The qualifications of mediators and arbitrators are designed with the assumption that volunteers will serve as neutrals for these limited categories of disputes. Centers are encouraged to select volunteers who represent the diversity within communities and who come from a wide range of cultural, educational and employment backgrounds. It is recognized that voluntary dispute resolution may be appropriate for many other categories of disputes and separate development of that potential by other programs, both public and private is encouraged.

1.00 DEFINITIONS

- 1.01 Center - Community dispute resolution center which emphasizes the use of volunteer neutrals in providing dispute resolution services and does not attempt to resolve disputes which are identified as exclusions in Minnesota Statutes 1984, Section 494.03 and in Section 5.01 of these Guidelines.
- 1.02 Mediator - Impartial person or persons who facilitate the voluntary resolution of a dispute.
- 1.03 Settlement Agreement - A written document which sets forth the settlement of the issues and the future responsibilities, if any, of each party.
- 1.04 Dispute Resolution - A process voluntarily entered by the parties to a dispute to resolve the dispute through agreement or a third-party decision.
- 1.05 Certification - The process through which a Center becomes eligible to receive court referrals in accordance with Minnesota Statute 1984, Section 494.01, etc. (Community Dispute Resolution Program), and these Guidelines.
- 1.06 Court Referral - Any action by a court or by any part of the criminal justice system suggesting use of the services of a Center.
- 1.07 Criminal Justice System - This includes law enforcement, the prosecution and the defense, the courts, and corrections.

2.00 GENERAL PROVISIONS

To be certified a Center must comply with the following provisions:

- 2.01 Provide dispute resolution processes when the participants voluntarily agree.

Commentary: A Center must make every effort to ensure that participation is voluntary in order to preserve the legal rights of the parties to the dispute and to enhance the opportunity for a successful settlement. During the initial interview and in the introductory letters to the parties it shall be stressed that participation is voluntary, and unless the parties agree otherwise, either party can withdraw from the process at any time. Each party should be informed that the dispute resolution process will not replace the judicial process, but that it is an attempt to settle the dispute out of court and, if no mediation or arbitration agreement is reached or if a subsequent need arises, either party may return to court.

- 2.02 Provide dispute resolution in a simple, informal format for a prompt resolution of certain civil or criminal matters. If a Center receives referrals of criminal cases, the program must have the approval of appropriate criminal justice authorities and it must meet with appropriate representatives from within that system and mutually develop and agree to written rules of procedure which govern all aspects of the dispute resolution process, from referral and intake through the enforcement of the settlement agreement. The rules must ensure that the legal rights of defendants or potential defendants are protected and that agreement to participate is voluntary and has been secured in a noncoercive atmosphere. The rules must also ensure that the requirements of the criminal justice system are met and that the legal rights of victims are protected.

Commentary: The requirements of the criminal justice system will vary depending on when the dispute is referred. If referred after a complaint is filed, for example, the system will have different procedural requirements than if the dispute is referred to a Center before a complaint has been filed. Such variations should be contemplated in the development of the rules.

- 2.03. Provide dispute resolution at a convenient and neutral place and at a time as convenient as possible for the parties, including nights and weekends.
- 2.04. Respond to the particular needs of the participants, including but not limited to, offering dispute resolution in languages other than English and offering facilities accessible to handicapped participants.

Commentary: For example, if the facilities at a Center are not accessible to a person with a disability, the Center shall accommodate that person by scheduling sessions, etc., at a facility which is accessible.

- 2.05 Provide dispute resolution for all clients regardless of the ability to pay.

Commentary: A Center is not prohibited from charging a fee to participants when appropriate. However, services must be provided to indigent parties without cost. A Center will define "indigency" using Federal legal assistance income and family-size guidelines. If a Center charges a fee its fee policy shall be written and provided to the parties to the dispute.

- 2.06. Provide the parties to the dispute referral information regarding non-profit entities or public agencies when the services of a Center are not appropriate.

Commentary: A list of referral entities and agencies should be available for Center personnel.

- 2.07. If a Center refers disputes to the private sector it must develop a written policy for making such referrals.

- 2.08. Provide to the parties to the dispute, in advance of the scheduled session, a written statement describing the dispute resolution process and its voluntary nature and

- (1) a brief description of the dispute;
- (2) a statement explaining that the neutral cannot be a witness in subsequent judicial or administrative proceedings and that communications during the dispute resolution process cannot be used in judicial or administrative proceedings; and
- (3) a statement explaining the binding or non-binding effect of the settlement agreement.

Commentary: A Center should ask the participants to sign a statement that they have received and understand this information. Concerning item 2.08 (2), Minnesota Statutes 1984, Section 494.02 prevents a party from testifying about any communication made during the dispute resolution process. Minnesota Statutes 1984, Section 595.02(11) does not apply to Community Dispute Resolution Programs.

- 2.09. If arbitration is the chosen dispute resolution process, in advance of the scheduled session, a Center must also provide the parties to the dispute with a written statement that they may call and examine witnesses.

Commentary: Items 2.08 and 2.09 do not imply that parties are prohibited from calling witnesses to a mediation session but, given the process of mediation, parties should not be encouraged to call witnesses to mediation.

- 2.10. Provide impartial, trained neutrals who shall seek informally to facilitate negotiations by the parties themselves to achieve a voluntary resolution of the issues or who issue a third-party decision when the parties agree it is appropriate to do so. A neutral must disclose to the parties to the dispute any conflict of interest of which he is aware and he shall not participate if the parties object.

- 2.11. Develop written procedures and policies governing the methods of dispute resolution it provides.

Commentary: If mediation is offered the Center should ensure that it is conducted informally. Although it is not customary to present witnesses the parties should be allowed to present documents or records. It is recommended that direct involvement of attorneys be discouraged, although no party should be denied the right to have an attorney present or to consult with an attorney.

If arbitration is offered, the formalities should be kept to a minimum and strict rules of evidence should not be followed. Hearings should be conducted by the arbitrator in a manner that permits a fair and complete presentation by the parties. Usually the complaining party presents its case first, although the burden of proof should not be on one side more than the other. Witnesses may be presented and cross-examined.

- 2.12. Provide to the parties to the dispute during or at the conclusion of the dispute resolution process, a written agreement or decision, signed by the parties and dated, setting forth the settlement of the issues and future responsibilities of each party. The written agreement at the end of a mediated dispute will indicate the agreement of the parties as to the binding effect of the agreement. The written agreement to arbitrate executed by the parties prior to entering into arbitration will contain the agreement of the parties as to the binding effect of the arbitrator's decision.

Commentary: To preserve the confidentiality of the process the settlement agreement should specifically relate to the above and it should not contain surplus information that arose during the process.

- 2.13. Not indicate or state in its advertisements or promotions to the general public that it has received certification from the State and a neutral shall not make any reference to State certification.

3.00 CONFIDENTIALITY OF COMMUNICATIONS

Any communication relating to the subject matter of the dispute by any participant during dispute resolution shall not be used as evidence against a participant in a judicial or administrative proceeding. This shall not preclude the use of evidence obtained by other independent investigation.

Commentary: This language is contained in Minnesota Statutes 1984, Section 494.02. "Any communication" does not refer to the settlement agreement itself. "During dispute resolution" shall mean from the point of the initial intake of the dispute through the completion of the dispute resolution process.

4.00 COMMUNITY DISPUTE RESOLUTION DATA

- 4.01 All files relating to a case in a community dispute resolution program are to be classified as private data on individuals, pursuant to Minnesota Statutes, Section 13.02, subd. 12, with the following exceptions:

- (1) When a party to the case has been formally charged with a criminal offense, the data are to be classified as public data on the individual, pursuant to Minnesota Statutes, Section 13.02, subd. 15.

- (2) Data relating to suspected neglect or sexual abuse of children or vulnerable adults are to be subject to the reporting requirements of Minnesota Statutes, Section 626.556 and 626.557.

4.02 A Center shall maintain files for a minimum of six years.

Commentary: A Center shall maintain files in a manner which protects the privacy of the parties to the dispute and of any other persons involved in the dispute. In most instances the maintenance of a data sheet or a summary of the case from which the Center may compile information for evaluation, along with a copy of the settlement agreement, will be sufficient.

5.00 Exclusions:

A Center shall not accept the following disputes for resolution:

5.01 Any matter involving violence against persons.

Commentary: "violence against persons" means physical violence.

5.02 Any dispute involving incidents arising out of situations that would support charges of criminal sexual conduct (Minnesota Statutes Section 609.342-609.345), or intrafamilial sexual abuse (Minnesota Statutes Section 609.3641-609.3644), or incest (Minnesota Statutes Section 609.365).

Commentary: See pages 12-16 of Appendix A for specific language from, or a summary of, the relevant law.

5.03 Any matter involving a person who has been adjudicated incompetent.

5.04 Any matter relating to guardianship.

Commentary: See pages 17-18, 20-21 of Appendix A for specific language from, or a summary of, the relevant law.

5.05 Any matter relating to conservatorship.

Commentary: See page 20 of Appendix A for specific language from, or a summary of, the relevant law.

5.06 Any matter relating to civil commitment.

Commentary: See page 21 of Appendix A for specific language from, or a summary of, the relevant law.

5.07 Any matter involving neglect or dependency.

Commentary: See pages 16-17 of Appendix A for specific language from, or a summary of, the relevant law.

5.08 Any matter involving termination of parental rights (Minnesota Statutes 1984, Sections 260.221 to 260.245).

Commentary: See pages 17-18 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.09 Any matter involving maltreatment of vulnerable adults (Minnesota Statutes, Section 626.577).

Commentary: See pages 18-19 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.10 Any matter involving the patients and residents of health care facilities bill of rights (Minnesota Statutes, Sections 144.651-144.652).

Commentary: See page 19 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.11 Any dispute involving marriage dissolution (Minnesota Statutes Chap. 518), whether or not an action is pending.

Commentary: See page 19 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.12 Any dispute arising under the uniform child custody jurisdiction act (Minnesota Statutes Chap. 518A), whether or not an action is pending.

Commentary: See page 19 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.13 Any dispute involving domestic abuse (Minnesota Statutes Chap. 518B), whether or not an action is pending.

Commentary: See page 20 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.14 Any dispute arising under the revised uniform reciprocal enforcement of support act (Minnesota Statutes Chap. 518C), whether or not an action is pending.

Commentary: See page 20 of Appendix A for specific language from, or a summary of, the relevant law.

- 5.15 Any dispute involving public assistance eligibility.

These exclusions shall not restrict the present authority of the court or departments of the court from accepting for resolution a dispute arising under the marriage dissolution statute (Minnesota Statutes 1984, Chapter 518), the uniform child custody jurisdiction act (Minnesota Statutes 1984, Chapter 518A), and the revised uniform reciprocal enforcement of support act (Minnesota Statutes 1984, Chapter 518C).

These exclusions shall not restrict the present authority of the court or departments of the court from referring disputes arising under the marriage dissolution statute (Minnesota Statutes 1984, Chapter 518) and the uniform child custody jurisdiction act (Minnesota Statutes 1984, Chapter 518A) to for-profit mediation.

6.00 TRAINING

6.01 General Provisions

To be certified, each Center will ensure that mediators, arbitrators and intake personnel are trained in accordance with these guidelines. These guidelines apply to volunteers only and are not to be regarded as standards for the professions of mediation and arbitration.

The Project Director of each Center shall have the ultimate responsibility for selecting those volunteers who will act as mediators and arbitrators and who will perform intake functions. In evaluating and screening mediators and arbitrators the Project Director is encouraged to seek and to consider information and critiques from trainers, experienced members of the mediation and arbitration pools and parties to the dispute.

(1) Mediation

Each Center must provide neutral mediators with at least twenty-five hours of basic training in conflict resolution techniques. The Project Director can waive this basic training requirement for individuals who have been volunteers in another community mediation project, but this waiver shall not include the apprentice phase of the training program. Further, each Center must provide mediators with at least eight hours each year of ongoing training. The following curriculum is not intended to be all inclusive nor to limit the training to the identified topics. Twenty-five hours for the basic training and eight hours for the ongoing training is a minimum requirement and it is assumed that additional training will be added.

(2) Intake

Each Center must provide volunteer intake personnel with the basic training of twenty-five hours it provides for mediators under 6.01(1), except that the apprentice phase shall be specifically adapted to the training of intake personnel. Ongoing training should be provided as the Project Director deems appropriate.

(3) Arbitration

Each Center must ensure that arbitrators have satisfactorily completed the mediator training requirements as provided under 6.01(1) and have had sufficient experience as a community mediator. Further, the Center must provide arbitrators with an additional eight hours of training which specifically concerns the Community Dispute Resolution Program Guidelines which relate to arbitration, the role of the arbitrator, the conduct and procedures of the arbitration hearing, the decision-making process, the arbitration award and other aspects of the dispute resolution process which are unique to arbitration.

6.02 Training Curriculum Content

The primary emphasis of the training curriculum should be on 6.02(5)-(10) below.

- (1) The Required Training Curriculum for the Community Dispute Resolution Program shall include a history of dispute resolution as a problem solving technique.

Commentary: This material should include international, national, Minnesota and local Centers' history of the use of dispute resolution processes.

- (2) The Required Training Curriculum for the Community Dispute Resolution Program shall include a review of the Community Dispute Resolution Program Guidelines.

Commentary: All details of the guidelines must be discussed with specific emphasis on confidentiality of communications, data privacy requirements, reporting requirements of suspected neglect or abuse, and dispute exclusions.

- (3) The Required Training Curriculum for the Community Dispute Resolution Program shall include a description of the justice system as it relates to a dispute resolution centers program.

Commentary: This material should include the role of the dispute resolution center and the Minnesota Court System. It should describe the referral process between the Center and the court, county attorney's office, law enforcement, attorneys and other referral agencies.

- (4) The Required Training Curriculum for the Community Dispute Resolution Program shall include definitions and distinctions of the varying roles of a neutral. (For example, conciliator, mediator, arbitrator.)

Commentary: This material should describe the distinctions among the various types of dispute resolution. It should define the respective roles of the neutral and discuss impartiality, ethics, awareness of potential individual biases and values clarification.

- (5) The Required Training Curriculum for the Community Dispute Resolution Program shall include a description of all intake procedures.

Commentary: This material should include all written forms used in the mediation process, intake criteria, the nature and types of disputes, legal issues and a knowledge of all available referral resources.

- (6) The Required Training Curriculum for the Community Dispute Resolution Program shall include the necessary elements of the actual dispute resolution process.

Commentary: This material should include but not be limited to the following: structure of the mediation process (such as information sharing and clarification of issues), building trust, framing the issues, note taking, the caucus, empowerment techniques, listening skills, clarification skills, common ground, causes of conflict, conflict management, communication skills (verbal and non-verbal), reducing defensive communication, ways to handle anger, special

issues (e.g. alcohol problems, domestic violence, child abuse), negotiating techniques, decision making, role of witnesses and attorneys, agreement building, writing formal agreements, follow-up procedures and mediator evaluation.

- (7) The Required Training Curriculum for the Community Dispute Resolution Program shall include at least one hour of training which concerns disputes involving violence against a person and the techniques and procedures used for recognizing, handling and referring these matters.

Commentary: Minnesota Statute 494.01(3) states that these guidelines shall include standards for training neutrals to recognize matters involving violence against a person. The reporting requirements of Minnesota Statutes, Sections 626.556 and 626.557 must be included in the training (see Appendix B). A Center is encouraged to identify individuals and organizations who are highly experienced with these matters and who would be available to provide assistance and expertise to the Center for use in its initial and ongoing training.

- (8) The Required Training Curriculum for the Community Dispute Resolution Program shall include the use of written and most current audio visual material in the field of dispute resolution and role playing.

Commentary: Training should include the use of videotape and playback whenever possible, relevant films, slides, tapes and written material in the field of dispute resolution. Each mediator should have the opportunity to role play a simulated dispute.

- (9) The Required Training Curriculum for the Community Dispute Resolution Program shall include an apprentice phase for each mediator. As a minimum this phase shall include: 1) Observing one mediation session; 2) mediating with an experienced mediator in one session, and after 1) and 2) have been completed; 3) acting as primary mediator in one session, under the observation of an experienced mediator.
- (10) The Required Training Curriculum for the Community Dispute Resolution Program shall include an evaluation by the participants after the training experience. A list of trainees who have successfully completed the training must be compiled and signed by the primary trainers and the Project Director.

- (11) Each Center shall develop or record in writing:

- (a) A schedule for training all volunteer intake personnel, mediators and arbitrators;
- (b) A description of the contents of each segment of the training programs offered pursuant to these guidelines;
- (c) A description of the written, audio visual, and all other materials used in the training;
- (d) The names and qualifications of the presenters of the training and the criteria and procedures used to select them.

7.00 THE CERTIFICATION PROCESS

7.01 Application

A Center shall notify the State Court Administrator in writing of its desire to apply for certification under Minnesota Statutes 1984, Section 494.01 etc., and these Guidelines. The State Court Administrator shall then provide a Center with the necessary information, assistance and forms to make such application.

7.02 Review and Certification

- (1) The State Court Administrator's Office shall review a Center's application and any other information it has requested the Center provide. This review may require that the State Court Administrator meet with the representatives of the Center either at the Center or at the State Court Administrator's Office.
- (2) The State Court Administrator shall:
 - (a) Inform the Center in writing that it has been granted certification for a period of one year and thereafter until revoked by the State Court Administrator; or
 - (b) Identify deficiencies in the Center's submissions, recommend in writing the actions necessary to correct the deficiencies and grant a reasonable amount of time to make the corrections; or
 - (c) After a reasonable amount of time has been granted and the Center has failed to correct the deficiencies, inform the Center in writing that certification has been denied and that the Center may not reapply for certification for six months from the date of the denial.

Commentary: To be granted certification a Center will be required, as a minimum, to show that it is in compliance with these Guidelines. All procedures, policies, etc. which are required by these Guidelines to be recorded and developed in writing shall be contained in a procedures and policies manual which shall be maintained at the Center and the Center shall make a copy available to the State Court Administrator and the public upon request.

Once a Center has been granted certification, the State Court Administrator shall inform the appropriate courts that a Center has been certified and is entitled to receive court referrals pursuant to Minnesota Statutes 1984, Section 494.01, etc.

8.00 REPORTING REQUIREMENTS

- 8.01 Each Center shall provide the following information to the State Court Administrator every six months:
 - (1) Operation Budget
 - (2) Number of parties who contact the Center for service, and the referral source.

- (3) Categories or types of cases referred
- (4) Number of parties served
- (5) Number of disputes resolved
- (6) Nature of resolution
- (7) Amount and types of awards

The State Court Administrator shall provide the forms to be used to submit such data.

Commentary: See Minnesota Statutes 1984, Section 494.01, subdivision 1.

- 8.02 Each Center shall, upon request, make available to the State Court Administrator any other pertinent information required for research, evaluation or other purposes.

NOTE: The following is for "quick reference" and should not replace a review and update of the respective laws.

CRIMINAL SEXUAL CONDUCT (Sections 609.342-609.345 of the Minnesota Criminal Code)

§ 609.342 Criminal Sexual Conduct in the First Degree

A person is guilty of criminal sexual conduct in the first degree if he engages in sexual penetration with another person and if any of the following circumstances exist:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor used force or coercion to accomplish sexual penetration; or

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices and either of the following circumstances exists:

(i) An accomplice used force or coercion to cause the complainant to submit; or

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the complainant to submit.

§ 609.343 Criminal Sexual Conduct in the Second Degree

A person is guilty of criminal sexual conduct in the second degree if he engages in sexual contact with another person and if any of the following circumstances exist:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the dangerous weapon to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor uses force or coercion to accomplish the sexual contact;
or

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices and either of the following circumstances exists:

(i) An accomplice used force or coercion to cause the complainant to submit; or

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the complainant to submit.

§ 609.344 Criminal Sexual Conduct in the Third Degree

A person is guilty of criminal sexual conduct in the third degree if he engages in sexual penetration with another person and any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. Consent by the complainant is not a defense; or

(c) The actor uses force or coercion to accomplish the penetration; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(e) The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

§ 609.345 Criminal Sexual Conduct in the Fourth Degree

A person is guilty of criminal sexual conduct in the fourth degree if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant and uses this authority to cause the complainant to submit; or

(c) The actor uses force or coercion to accomplish the sexual contact; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(e) The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

INTRAFAMILIAL SEXUAL ABUSE

(Sections 609.3641-609.3644 of the Minnesota Criminal Code)

§ 609.3641 Intrafamilial Sexual Abuse in the First Degree

A person is guilty of intrafamilial sexual abuse in the first degree if:

(a) He has a familial relationship to and engages in sexual penetration with a child; or

(b) He has a familial relationship to and engages in sexual penetration with a child and

(i) The actor or an accomplice used force or coercion to accomplish the penetration;

(ii) The actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon.

(iii) Circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) The complainant suffered personal injury; or

(v) The intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

§ 609.3642 Intrafamilial Sexual Abuse in the Second Degree

A person is guilty of intrafamilial sexual abuse in the second degree if:

(a) He has a familial relationship to and engages in sexual contact with a child; or

(b) He has a familial relationship to and engages in sexual contact with a child and:

(i) The actor or an accomplice used force or coercion to accomplish the contact;

(ii) The actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) Circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) The complainant suffered personal injury; or

(v) The intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

§ 609.3643 Intrafamilial Sexual Abuse in the Third Degree

A person is guilty of intrafamilial sexual abuse in the third degree if:

(a) He has a familial relationship to and engages in sexual penetration with a minor; or

(b) He has a familial relationship to and engages in sexual penetration with a minor and:

(i) The actor or an accomplice used force or coercion to accomplish the penetration;

(ii) The actor or accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) Circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) The complainant suffered personal injury; or

(v) The intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

§ 609.3644 Intrafamilial Sexual Abuse in the Fourth Degree

A person is guilty of intrafamilial sexual abuse in the fourth degree if:

(a) He has a familial relationship to and engages in sexual contact with a minor; or

(b) He has a familial relationship to and engages in sexual contact with a minor and:

(i) The actor or an accomplice used force or coercion to accomplish the contact;

(ii) The actor or accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably

believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) Circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) The complainant suffered personal injury; or

(v) The Intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

INCEST (Section 609.365 of the Minnesota Criminal Code)

Whoever has sexual intercourse with another nearer of kin to him than first cousin whether of the half or whole blood, with knowledge of the relationship, is guilty of incest.

NEGLECT (Section 260.015 of the Minnesota Juvenile Code)

Neglected child means a child:

(a) Who is abandoned by his parent, guardian, or other custodian; or

(b) Who is without proper parental care because of the faults or habits of his parent, guardian, or other custodian; or

(c) Who is without necessary subsistence, education or other care necessary for his physical or mental health or morals because his parent, guardian or other custodian neglects or refuses to provide it; or

(d) Who is without the special care made necessary by his physical or mental condition because his parent, guardian, or other custodian neglects or refuses to provide it; or

(e) Whose occupation, behavior, condition, environment or associations are such as to be injurious or dangerous to himself or others; or

(f) Who is living in a facility for foster care which is not licensed as required by law, unless the child is living in the facility under court order; or

(g) Whose parent, guardian, or custodian has made arrangements for his placement in a manner detrimental to the welfare of the child or in violation of law; or

(h) Who performs a delinquent act but whose conduct results in whole or in part from parental neglect.

DEPENDENCY (Section 260.015 of the Minnesota Juvenile Code)

Dependent child means a child:

(a) Who is without a parent, guardian, or other custodian; or

(b) Who is in need of special care and treatment required by his physical or mental condition and whose parent, guardian, or other custodian is unable to provide it; or

(c) Whose parent, guardian, or other custodian for good cause desires to be relieved of his care and custody; or

(d) Who is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of his parent, guardian, or other custodian.

TERMINATION OF PARENTAL RIGHTS

(Sections 260.221 to 260.245 of the Minnesota Juvenile Code)

§ 260.221 Termination

Parental rights may be terminated by the juvenile court in the following cases:

(a) With the written consent of a parent who desires to terminate his parental rights; or

(b) If it finds that one or more of the following conditions exist:

(i) That the parent has abandoned the child; or

(ii) That the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental or emotional health and development, if the parent is physically and financially able; or

(iii) That a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause;

(iv) That a parent is obviously unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be permanently detrimental to the physical or mental health of the child; or

(v) That following upon a determination of neglect or dependency, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination; or

(vi) That in the case of an illegitimate child the person is not entitled to notice of an adoption hearing and either the person has not filed a notice of his intention to retain parental rights or that such notice has been successfully challenged; or

(vii) That the child is neglected and in foster care.

§ 260.242 Guardian

If the court terminates parental rights of both parents or of the only known living parents, the court shall order the guardianship and the legal custody of the child transferred to:

(a) The commissioner of public welfare; or

(b) A licensed child placing agency; or

(c) An individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

A court appointed guardian has legal custody of his ward unless the court which appoints him gives legal custody to some other person. If the court awards custody to a person other than the guardian, the guardian nonetheless has the right and responsibility of reasonable visitation, except as limited by court order.

The guardian may make major decisions affecting the person of his ward, including but not limited to giving consent (when consent is legally required) to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment, or adoption of the ward. When the commissioner of public welfare is appointed guardian, he may delegate to the welfare board of the county in which, after the appointment, the ward resides, the authority to act for him in decisions affecting the person of his ward, including but not limited to giving consent to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment of the ward.

A guardian shall not of itself include the guardianship of the estate of the ward.

§ 260.245 Change or Termination of Guardianship

The juvenile court may, after notice to the parties and a hearing, remove the guardian approved by the juvenile court and appoint a new guardian. Upon a showing that the child is emancipated, the court may discharge the guardianship. The authority of a court appointed guardian terminates when the individual under guardianship is no longer a minor or when guardianship is otherwise discharged.

MALTREATMENT OF VULNERABLE ADULTS (Section 626.557 of the Minnesota Statutes)

Vulnerable adult means any person 18 years of age or older:

- (a) Who is a resident or patient of a facility;
- (b) Who receives services at or from a facility required to be licensed pursuant to the Public Welfare Licensing Act; or
- (c) Who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

Facility means a hospital, sanatorium or other institution for the hospitalization or care of human beings; a nursing home; an agency which provides social or counseling services for persons living at home or placement services; a daycare facility; a residential facility; a mental health program receiving county grants; or any entity required to be certified for participation in Titles XVII or XIX of the Social Security Act, 42 U.S.C. 1395 et seq.

Abuse means:

- (a) Any act which constitutes solicitation, inducement and promotion of prostitution, or criminal sexual conduct in the first through fourth degree; or
- (b) The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

Neglect means failure, by an individual or facility who has responsibility for the care of a vulnerable adult, to supply the vulnerable adult with necessary food, clothing, shelter, health care or supervision.

Required Reporting - The state requires the reporting of suspected abuse or neglect of vulnerable adults by a professional or his delegate who is engaged in the care of vulnerable adults, education, law enforcement, agency responsible for credentialing human services occupations or a health related licensing board. A person not required to report may voluntarily report suspected abuse or neglect.

PATIENTS AND RESIDENTS OF HEALTH CARE FACILITIES BILL OF RIGHTS
(Sections 144.651-144.652 of the Minnesota Statutes)

The Bill of Rights protects the interests and well being of the patients and residents of health care facilities. No health care facility may require a patient or resident to waive these rights as a condition of admission to the facility. Any guardian or conservator of a patient or resident or, in the absence of a guardian or conservator, an interested person, may seek enforcement of the rights on behalf of a patient or resident. The intent of the Bill of Rights is that every patient's civil and religious liberties, including the right of independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist in the fullest possible exercise of these rights.

MARRIAGE DISSOLUTION (Chapter 518 of the Minnesota Statutes)

Chapter 518 sets out the grounds and procedures for obtaining a marriage annulment, legal separation, and marriage dissolution (divorce), and this chapter also governs the issuance of:

(a) Temporary orders including custody, visitation rights, maintenance, and child support; and

(b) Restraining orders.

Issues of child custody, visitation, maintenance, support and property distribution as they relate to the final decree are also governed by this chapter.

UNIFORM CHILD CUSTODY JURISDICTION ACT (Chapter 518A of the Minnesota Statutes)

The general purposes of this Chapter are to:

(a) Avoid jurisdictional competition and conflicts with other courts of other states in matters of child custody. This chapter governs the procedures to be followed when the parents live in different states and custody issues arise.

(b) Avoid relitigation of custody decisions of other states in this state insofar as feasible;

(c) Facilitate the enforcement of custody decrees of other states; and

(d) To deter abductions and other unilateral removals of children undertaken to obtain custody awards.

DOMESTIC ABUSE (Chapter 518B of the Minnesota Statutes)

Domestic abuse means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between family or household members; or

(b) Criminal sexual conduct, in the first through fourth degree, committed against a minor family or household member.

Family or household members means spouses, parents and children, persons related by blood, and persons residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

This Chapter also governs the procedures for obtaining an order for protection.

REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT
(Chapter 518C of the Minnesota Statutes)

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of the duties of support. All duties of support, including the duty to pay arrearages, are enforceable under this chapter.

A foreign support order (from another state) registered with a court in this state shall be treated in the same manner as a support order issued by a court of this state.

GUARDIANSHIP AND CONSERVATORSHIP
(Section 525.539 to 525.6198 of the Minnesota Statutes)

Guardian means a person who is appointed by the court to exercise certain powers and duties for the care of an incapacitated person or his estate, or both.

Conservator means a person who is appointed by the court to exercise limited powers and duties for the care of an incapacitated person or his estate, or both.

Incapacitated person means, in the case of guardianship or conservatorship of the person, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, and who has demonstrated deficits in behavior which evidence his inability to meet his needs for medical care, nutrition, clothing, shelter, or safety.

Incapacitated person means, in the case of guardianship or conservatorship of the estate of an adult, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his estate or financial affairs, and who has demonstrated deficits in behavior which evidence his inability to manage his estate, or who is unable to manage his estate or financial affairs effectively by reason of detention by a foreign power or disappearance.

§ 525.615-525.6198 Guardianship of Minors

The parent of a minor may appoint by will a guardian of an unmarried minor.

The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by prior court order.

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor, except that a guardian is not legally obliged to provide from his own funds for the child.

CIVIL COMMITMENT (Chapter 253B of the Minnesota Statutes)

The Minnesota Commitment Act (Chap. 253B) governs the procedures for the commitment and discharge of chemically dependent persons, mentally ill persons, mentally retarded persons, and persons mentally ill and dangerous to the public.

The Act also covers the rights of patients, informal admissions, emergency admissions, the judicial commitment procedure, and judicial appeal panels.

NOTE: The following is for "quick reference" and should not replace a review and update of the respective laws.

REPORTING OF MALTREATMENT OF MINORS
(Section 626.556 of the Minnesota Statutes)

A professional or his delegate who is engaged in the practice of healing arts, social services, hospital administration, psychology or psychiatric treatment, child care, education, or law enforcement, who has knowledge of or reasonable cause to believe a child is being neglected or sexually abused shall immediately report the information to the local welfare agency, police department or the county sheriff.

Any person not required to report may voluntarily report to the local welfare agency, police department or the county sheriff if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse.

Any person, including those voluntarily making reports, participating in good faith and exercising due care in the making of a report shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

Any person who willfully or recklessly makes a false report shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

REPORTING OF MALTREATMENT OF VULNERABLE ADULTS
(Section 626.557 of the Minnesota Statutes)

It is policy of the State to require the reporting of suspected abuse or neglect of vulnerable adults, to provide for the voluntary reporting of the abuse or neglect of vulnerable adults, to require the investigation of the reports and to provide protective and counseling sources in appropriate cases.

"Vulnerable adult" means any person 18 years of age or older:

- (1) Who is a resident or patient of a facility;
- (2) Who receives services at or from a facility required to be licensed pursuant to Minnesota Statutes Sections 245-781 to 245.812; or
- (3) Who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

Persons in certain professions who are engaged in the care of vulnerable adults, education, law enforcement, etc. and who have knowledge of the abuse or neglect of a vulnerable adult, have reasonable cause to believe that a vulnerable adult is being or has been abused or neglected or who knows that a vulnerable

adult has sustained a physical injury which is not reasonably explained by the histories of injuries provided by the caretaker of the vulnerable adult are required to immediately report the information to the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency.

Any person not required to report under this statute may voluntarily report as described above.