MINNESOTA SUPREME COURT

FOSTER CARE AND ADOPTION TASK FORCE

FINAL REPORT

January 1997

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Minnesota Supreme Court
State Court Administration
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PART I INTRODUCTION

A. ACKNOWLEDGEMENTS

This report would not have been possible without the support and cooperation of public and private agencies and organizations that are part of the Foster Care and Adoption System.

The Task Force warmly thanks those youth in foster care (and formerly in foster care), parents, foster parents, adoptive parents, relatives and other interested persons who shared their experiences, perspectives and advice with the Task Force.

The Task Force also wishes to thank the following individuals who participated in discussions or assisted in research with regard to the Representation, Open Hearings and Adoption Subcommittees:

Mark R. Anfinson, Attorney, Minneapolis
Honorable Lindsay Arthur, Retired District Court Judge
Susan Bownes, Hennepin County Juvenile and Family Courts Manager
Diane Daehlin, Executive Director, Children's Home Society
Don Gemberling, Minnesota Department of Administration
Honorable Roland Faricy, District Court Judge, Second Judicial District
Susan Gegen, Assistant Public Defender, First Judicial District
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Michael Johnson, Staff Attorney, State Court Administration
John Kane, Assistant Hennepin County Public Defender
Honorable Leslie M. Metzen, District Court Judge, First Judicial District
Andrew Mitchell, Assistant Hennepin County Attorney
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Marian Saksena, Law Clerk, Children's Law Center of Minnesota
Ted Stamos, Children's Home Society
Mark Toogood, Guardian Ad Litem, Hennepin County Guardian Ad Litem Program

Finally, the Task Force thanks Justice Sandra Gardebring, Minnesota Supreme Court, for facilitating many of the Task Force's long deliberative meetings.

B. TASK FORCE MEMBERSHIP

Chair:	Honorable Edward Toussaint, Jr. Chief Judge, Minnesota Court of Appeals
Vice-Chair:	Honorable Kathleen Blatz Justice, Minnesota Supreme Court
Supreme Court Liasion:	Honorable Sandra Gardebring, Justice, Minnesota Supreme Court
Committee Chairs:	
Due Process and Compliance:	Honorable Heidi Schellhas, District Court Judge, Fourth Judicial District
Services Committee:	Honorable Edward Toussaint, Jr. Chief Judge, Minnesota Court of Appeals
Subcommittee Chairs:	
Adoption:	Sheryl Ramstad Hvass, Rider, Bennett, Egan and Arundel, Minneapolis
Alternative Dispute Resolution:	Gary Debele, Walling and Berg, Minneapolis
Compliance:	Ann Ahlstrom, Assistant Hennepin County Attorney
	Wright Walling, Walling and Berg (past Chair), Minneapolis
Open Hearings:	Honorable Heidi Schellhas, District Court Judge, Fourth Judicial District
Representation:	Gail Chang Bohr, Executive Director, Children's Law Center of Minnesota
Reasonable Efforts and Permanency:	Honorable Kathleen Blatz, Justice, Minnesota Supreme Court
Timelines Research:	Representative Wes Skoglund, Minnesota House of Representatives

Tribal Courts:	Mark Fiddler, Executive Director, Indian Child Welfare Law Center

Members:

Gail D. Baker, Assistant Public Defender, Third Judicial District
Honorable David R. Battey, District Court Judge, Seventh Judicial District
Honorable Robert Blaeser, District Court Judge, Fourth Judicial District
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C. CHARGE OF THE TASK FORCE

The Foster Care and Adoption Task Force was convened in October, 1995. Pursuant to Minnesota Supreme Court Order (C2-95-1476), the Task Force was charged to address the following:

A. Identify court rules, standards, procedures, and policies and state and federal laws designed to achieve safe, timely, and permanent placements for abused and neglected children;

B. Evaluate performance of the judicial system in delivering the services provided in the identified rules, standards, procedures, policies, and laws;

C. Assess the quality and adequacy of the information available to courts in child welfare cases;

D. Assess the extent to which existing rules, standards, procedures, policies and laws facilitate or impede achievement of permanent and safe placement of children and the extent to which requirements imposed on the courts impose significant administrative burdens on the courts; and

E. Examine the cooperation between state court system and tribal court systems and compliance to the Indian Child Welfare Act.

The Task Force also took on the following charge:

F. Assess whether open hearings in juvenile court matters (other than delinquency) are desirable and suggest models for these hearings.

D. OVERVIEW OF TASK FORCE ORGANIZATIONAL STRUCTURE AND DELIBERATIONS

The Task Force was comprised of 31 members and a number of unofficial adjunct members. The Task Force divided itself into two committees and eight subcommittees:

1. Due Process & Compliance Committee
    a. Adoption Subcommittee
    b. Alternative Dispute Resolution Subcommittee
    c. Compliance Subcommittee
    d. Open Hearings Subcommittee
    e. Representation Subcommittee
    f. Reasonable Efforts & Permanency Subcommittee
    g. Timelines Research Subcommittee
2. Services Committee
    a. Tribal Courts Subcommittee

Each group met throughout the year and undertook the challenge of drafting recommendations relating to the focus of its subcommittee. In addition, the Task Force sought broad based input through focus group meetings, public hearings, a site visit and expert presentations.[1] Additional data collection efforts undertaken included the distribution of attitudinal surveys to judicial officers, county social services agencies, county attorneys, public defenders, tribal social service agencies, and tribal attorneys; a file review of CHIPS cases in 6 counties; and a statistical analysis of information contained in the State Judicial Information System.[2]

In September, 1996, the full Task Force commenced discussions regarding the format and content of the proposed recommendations. A tentative draft of the proposed recommendations was distributed for review and comment to over 600 individuals across the state, including all trial court judges, court administrators, district administrators, public defenders, social service agency directors, county attorneys, participants in the Task Force focus groups, as well as over 100 interested individuals, agencies and interest groups. A public hearing was held on December 10, 1996. Following review of the written and oral comments received, the final recommendations of the Task Force were developed and are contained within this report.

[1] See infra Appendix A.

[2] See infra Appendix B.

PART II THEMES

VISION AND THEMES

During our year-long investigation of foster care and adoption, we discovered that our discussions kept returning to several themes. Those themes ran through the survey responses and the public testimony. They were repeated by participants in the focus groups and identified and reiterated during our monthly meetings. We would like to outline those themes before turning to the specific recommendations.

The primary objective of all our recommendations for adjustment to the system is to **put the child's interests first.** Professionals may differ on what is "best" for a particular child. We offer a definition of the factors to be considered in "best interests" determinations in juvenile court. Recognizing that time is telescoped for a child, we have tried to offer changes that build timely decision-making into the system. Understanding that each child is unique, the recommendations allow flexibility to take into consideration the needs of each child.

The system can only work in the best interests of children if the adults participating in the system are **well-trained** and **accountable** for the work they do. Thus we recommend increased and continual training for professionals working in juvenile court. We also recommend a modest review procedure for important decisions that are made with respect to providing protective services to children reported as maltreated, and a streamlined procedure for getting into juvenile court.

We offer a number of recommendations aimed at **reorganizing court policies and procedures.** In particular, we considered the importance of having one constant set of adults involved in one family's life. Therefore, we recommend the one family-one judge model and make suggestions aimed at reducing the turnover in social workers and advocates working with one family.

Finally, we recognize the **financial pressure** on counties. Protective services, particularly out of home placement, are very costly. Often, cost factors drive the permanency decision-making process. We recommend that a thorough study be undertaken by a legislative commission to determine, among other things, what change, if any, may be appropriate to equalize placement subsidies for foster care, legal custody transfers and adoption.

MINNESOTA SUPREME COURT
FOSTER CARE AND ADOPTION TASK FORCE

PART III SUMMARY OF PROPOSED RECOMMENDATIONS

The following is an executive summary of the Task Force's proposed recommendations. The full recommendations are found in Part IV of this report.

A. Entering the System: From Report of Maltreatment to "CHIPS" Petition

1. The notification police must give parents pursuant to Minnesota Statutes § 260.165, subd. 3 upon taking a child into custody should include notice that the child may be placed with relatives or a designated parent pursuant to Minnesota Statutes § 257A.

2. The Legislature should amend Minnesota Statutes § 260.015, subd. 2a to provide that grounds for CHIPS exist where a child has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile petty or traffic offender proceeding, delinquency proceeding, extended jurisdiction juvenile proceeding or certification proceeding.

B. Private CHIPS Petitions

1. There should be a uniform, simplified process throughout the state for bringing a private CHIPS petition.

C. Review of Maltreatment Determinations and Need For Child Protective Services

1. The Legislature should enact an administrative appeal process which would allow alleged perpetrators to appeal determinations of maltreatment. The legislature should appropriate funding for the Minnesota Department of Human Services, the counties and the courts to implement this recommendation.

2. There should be an internal review process for a child or anyone on behalf of a child who disagrees with either or both of the following determinations: 1) a determination that maltreatment has not occurred; and 2) a determination that child protective services are not needed. Seeking or failing to seek an internal review should not in any way affect a person's right to bring a private CHIPS petition regarding the same matter.

D. Best Interest of the Child

1. Standard for Best Interests in CHIPS and TPR Cases.

   The Legislature should amend Minnesota Statutes § 260.015 by adding a subdivision which defines "best interests of the child" as follows:

The "best interests of the child" means all relevant factors to be considered and evaluated. Relevant factors to be considered and evaluated may include, but are not limited to, the following:

(1) The child's current functioning and behaviors;
(2) The medical, education and developmental needs of the child;
(3) The child's history and past experience;
(4) The child's religious and cultural needs;
(5) The child's connection with a community, school or church;
(6) The child's interests and talents;
(7) The child's relationship to current caretakers, parents, siblings and relatives; and
(8) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

2. The Legislature should amend Minnesota Statutes § 260.011, subd. 2(b) to emphasize that the paramount consideration in all proceedings for the termination of parental rights is the best interests of the child by placing that statement at the beginning of the provision instead of near the end.

E. CHIPS Adjudications

1. A child should not be required to admit a CHIPS petition in order for the matter to proceed to adjudication without trial except where the basis for the CHIPS allegation is the child's act of omission or commission. The Minnesota Rules of Juvenile Procedure should be revised to clarify which parties in what circumstances must admit a CHIPS petition in order for the matter to proceed to adjudication without a trial.

2. Minnesota Statutes § 260.191, subd. 4 should be amended to limit the time a child may be continued without adjudication to just one period not to exceed ninety (90) days. The statute should also provide that, at the end of that period, if both the parents and child prove they have complied with the terms of the continuance, the case should be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care. Additionally, the statute should require that, if either the parents or the child have not complied with the terms of the continuance during that period, the court shall adjudicate the child in need of protection or services or neglected and in foster care. The court may only grant a continuance without adjudication at the first appearance and only if it is in the child's best interests; the best interests of the parent(s) are not a factor.

F. "Permanency Time Clock"

1. The Legislature should amend Minnesota Statute § 260.191, subd. 3b to incorporate and clarify the following concepts with regard to the Permanency Time Clock:

a. When the Permanency Time Clock Starts:

The permanency time clock is started at the earlier of 1) the first court-ordered placement of the child in a residential facility or 2) the first court-approved placement of the child (where the child has been in voluntary placement for reasons other than developmental disability or emotional handicap).

b. Within One CHIPS Petition:

During one CHIPS petition, the permanency time clock should not start over again when a child is placed in foster care after being returned home. The total time a child spends in foster care during one petition should be added together to determine when a permanent placement hearing must be held pursuant to Minnesota Statutes § 260.191, subd. 3b.

c. For Subsequent CHIPS Petitions:

When a child is placed out of the home in connection with a CHIPS petition, and the child has been placed out of the home in connection with a previous CHIPS petition or CHIPS petitions filed within the past five years, the time the child has been placed out of the home in connection with the existing CHIPS petition and all previous CHIPS petitions filed within five years of the present petition should be added together to determine the time for a permanency placement determination hearing pursuant to Minnesota Statutes § 260.191, subd. 3b. When the court determines it is in the best interests of the child, the court may extend the total time the child may continue out of the home under the current CHIPS petition up to an additional 6 months.

It is presumed that reasonable efforts under the direction of the court have failed if the child has been placed out of the home by court order for a cumulative period of more than 12 months within a five year period and the court has approved the reasonable efforts of the responsible social service agency in proceedings under chapter 260. Minnesota Statutes § 260.221, subd. 1(b)(5) should be revised to reflect this presumption.

This recommendation does not apply to voluntary placements of developmentally disabled and emotionally handicapped children.

2. The Legislature should amend statutory provisions dealing with voluntary placements of children who are not developmentally disabled or emotionally handicapped to provide as follows:

Voluntary placements of children who are not developmentally disabled or emotionally handicapped are limited to ninety (90) days. Prior to the end of the ninety (90) days, the court may 1) return the child home or 2) approve the voluntary placement and extend the placement for another ninety (90) days. The parent, legal guardian or legal custodian and child have a right to counsel (at public expense, if necessary) at the hearing to approve and extend a voluntary placement. The court's approval of the voluntary placement triggers the permanency time clock. During this second ninety (90) day period, the parent, legal guardian or legal custodian still have the right to remove the child from voluntary placement at any time. At the end of the second ninety (90) day period, the child must be returned home unless a CHIPS petition has been filed.

3. The Legislature should revise Minnesota Statutes § 260.192 (b) to require that, following the court's approval of the voluntary placement of a developmentally disabled or emotionally handicapped child at the hearing to review foster care status, subsequent reviews shall occur every twelve (12) months during the continuation of foster care.

G. Permanent Placement Dispositions

1. Proceedings for Transfer of Permanent Legal and Physical Custody to Relatives

a. Jurisdiction:

The Legislature should revise Minnesota Statutes § 260.191, subd. 3b (1) to provide that when a transfer of permanent legal and physical custody to a relative is recommended as a permanent placement, that transfer will occur as a juvenile court matter. Subsequent modifications of permanent legal and physical custody shall take place in family court. The Juvenile Rules Committee should revise the juvenile protection rules to provide for a procedure for the transfer of permanent legal and physical custody to a relative when that is the permanent placement plan.

b. Relative's Party Status; Right to Counsel at Public Expense:

Minnesota Statutes § 260.155, subd. 1a and the Rules of Juvenile Procedure should be amended to provide that when the county makes a permanent placement recommendation that permanent legal and physical custody be transferred to a relative, that relative shall be considered a party, shall have a right to notice of every hearing thereafter (including notice of the permanent placement determination hearing), and shall have the right to counsel appointed at public expense. Once the order has been entered, the relative does not have a

right to counsel appointed at public expense in actions to modify the order.

c. The Rules of Juvenile Procedure should be revised to provide that counsel for the child, counsel for the parent(s), the guardian ad litem and counsel for the guardian ad litem should continue to represent their clients through the transfer of permanent legal and physical custody to a relative when that is the permanent placement.

2. The permanent placement disposition options for runaways, truants and delinquents under age 10 should be expanded to include "foster care for a specified period of time" where 1) either truancy, running away or committing a delinquent act under age 10 was the sole basis for the CHIPS adjudication and 2) the court finds that "foster care for a specified period of time" is in the best interests of the child. The court shall review a permanent placement of "foster care for a specified period of time" every six (6) months.

H. "Reasonable Efforts" and Termination of Parental Rights ("TPR")

1. The Legislature should amend Minnesota Statutes § 260.012(b), § 260.012(c) and § 260.221, subd. 5 to comply with the holding of *In re the Welfare of S.Z.*, 547 N.W.2d 886 (Minn. 1996) which provides that, in some cases, any provision of services or further provision of services would be futile and therefore unreasonable. The Legislature should also amend Minnesota Statutes § 260.012 (b) to comply with the Child Abuse Prevention and Treatment Act Amendments of 1996 by providing that reunification of a surviving child with a parent is not required when that parent has been found by a court of competent jurisdiction

(1) to have committed murder of another child of such parent;
(2) to have committed voluntary manslaughter of another child of such parent;
(3) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or
(4) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

2. Minnesota Statutes § 260.011, subd. 2 (b) should be amended to provide that, in addition to considering the best interest of the child in termination of parental rights proceedings, the court should also consider what reasonable efforts have been made by the social service agency to reunite the child with the child's parents in a placement that is safe and permanent, bearing in mind that it may not be appropriate in all cases to provide reasonable efforts towards reunification.

3. The Legislature should amend Minnesota Statutes §§ 260.221, subd. 1(b) (6) and 260.015, subd. 29 to expand the definition of "egregious harm" as a ground

for termination of parental rights so that it includes the crimes and circumstances listed below when the parent has been found by a court of competent jurisdiction

(1) to have committed murder of another child of such parent;
(2) to have committed voluntary manslaughter of another child of such parent;
(3) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or
(4) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

4. The Legislature should modify the presumption regarding "palpable unfitness" in Minnesota Statutes § 260.221, subd. 1(b)(4) by deleting the requirement that involuntary terminations of parental rights on certain grounds may only factor into the presumption if they happened within three years immediately prior to the CHIPS adjudication of the child in question pursuant to Minnesota Statutes § 260.015, subd. 2a, clause (1), (2), (3), (5), or (8).

I. Adoption of Children under State Guardianship

1. The state should explore new strategies and incentives to facilitate recruitment of more adoptive and foster families.

2. Relative Searches Prior to Adoption and Time Frames for Completing Adoption Subsidy Agreement.

   a. A thorough relative search should be done within the first six (6) months of the time a child is first placed out of the home. The relatives identified should be given notice that a permanent placement could occur in the future and that it is their duty to keep the county social service agency informed of their current address so that they will receive notice of the permanent placement hearing. A relative who fails to keep the county social service agency apprised of his or her current address is not entitled to additional notice of the permanent placement. The notice should contain an advisory that if the relative chooses not to be a placement resource at the beginning of the case, this may affect the relative's rights to have the child placed with that relative permanently later on.

   b. Minnesota Statutes § 259.33 provides that, once a termination order is final, notice must be sent to certain interested persons inquiring about their interest in providing the child a permanent home. At the point that the county or the juvenile court determines that it is necessary to prepare for the permanent placement determination hearing or in anticipation of filing a termination of parental rights petition, the county

should send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. (Notice need not be sent to a parent whose rights to the child have been terminated.) The notice should state that a permanent home is sought for the child and that the individuals receiving the notice should indicate to the agency their interest in providing a permanent home. The notice should contain an advisory that if the relative chooses not to be a placement resource at the beginning of the case, this may affect the relative's rights to have the child placed with that relative permanently later on.

c. Those entitled to notice shall have 30 days from the mailing of the notice to respond.

d. Minnesota Statutes § 257.072, subd. 1 and Minnesota Rule 9560.0535, subpart 3 currently require social services to do a relative search for six months even though the child has been placed in foster care with a relative who is interested in being a permanent placement option. These provisions should be amended to provide that the relative search may stop if the child is placed with a relative who is interested in being a permanent placement option.

e. A maximum of thirty (30) days from the identification of the prospective adoptive family should be allowed to complete all county preparation of any documents necessary for an "adoption assistance agreement." Thereafter, a maximum of fifteen (15) days should be allowed for the Minnesota Department of Human Services to complete review of the "adoption assistance agreement."

f. County social services agency employees should receive training in the preparation of the adoption subsidy agreement.

3. When a licensed foster care provider seeks to adopt a child in that person's care, those requirements of the adoption home study which have already been completed as part of the foster care licensing process should be waived for the purposes of the adoption home study.

4. There should be continuing court jurisdiction following TPR. Where TPR has occurred and adoption is the plan, the guardian ad litem and attorney for the child shall continue on the case until the adoption is finalized. Following TPR, in-court review hearings shall be held every three (3) months to determine what progress has been made toward adoption. Where long term foster care is the permanent placement, the guardian ad litem and attorney for the child should be dismissed on the effective date of the permanent placement order.

The child, if of sufficient age, and the foster parents should be given information on how to contact the guardian ad litem program or a guardian ad litem. If the matter is returned to court, a guardian ad litem should be reappointed.

5. The following changes to court rules should be made regarding appeals in adoption matters:

   a. The Rules of Appellate Procedure and the Rules of Juvenile Procedure should be amended to provide that the Court of Appeals has jurisdiction to decide any challenges that arise in pending proceedings in which an adoptive petition, adoptive placement or both are challenged, or any proceeding challenging a final adoption decree. The Rules should also be amended to provide that the Court of Appeals shall decide these challenges within ninety (90) days, with one thirty (30) day extension allowed.

   b. The Rules of Appellate Procedure and the Rules of Juvenile Procedure should be amended to provide expedited deadlines for the filing of an appeal, submission of briefs, oral argument, and issuance of an opinion in any appeal pertaining to a contested adoptive petition, adoptive placement or final decree of adoption.

6. The Legislature should amend Minnesota Statutes § 257.071 by adding a new subdivision which provides that if a child is removed from a new placement in a pre-adoptive home or other permanent placement within the first year after the child is placed in the new placement and the child is not returned to the foster home in which the child was placed immediately preceding the child's placement in the new placement, the court shall hold a hearing within ten (10) days of the time the child was taken into custody to determine where the child should be placed. The amendment should also provide that the child shall be appointed a guardian ad litem for this hearing.

J. Adoptions and a Putative Father Registry

1. Minnesota Statutes § 259.21 should be amended to include a provision defining "putative father" as "any man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born and (2) has not established paternity of the child in a court proceeding before the filing of a petition for the adoption of the child. The term includes a male who is less than 18 years of age."

2. The list of those entitled to receive notice of an adoption hearing pursuant to Minnesota Statutes § 259.49 (and to consent to the adoption pursuant to Minnesota Statutes § 259.24) should be expanded to include the parent of a child if

a. The person has filed a paternity action within sixty (60) days after the child's birth and the action is still pending; or

b. The person and the mother of the child have signed a declaration of parentage pursuant to Minnesota Statutes § 257.34 before August 1, 1995 which has not been revoked or a recognition of parentage pursuant to Minnesota Statutes § 257.75 which has not been revoked; or

c. the person has complied with the requirements of the Putative Father Registry entitling that person to notice of the adoption hearing.

3. The Legislature should replace Minnesota Statutes § 259.51 (the "60 / 90 Day Statute") with a Putative Father Registry ("P.F.R.").

K. Open Adoptions

1. The Legislature should amend Minnesota Statutes § 257.022 and § 259.59 to provide for the legal enforceability of certain open adoption agreements.

L. Changes to the Minnesota Heritage Act

1. Minnesota should enact legislation to comply with federal law regarding adoptive and foster care placements so that Minnesota's laws do not a) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color or national origin of the person or the child involved, or b) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive parent or foster parent or the child involved.

M. Indian Child Welfare Act and Tribal Courts

1. Minnesota Statutes § 260.155, subd. 1a and the Juvenile Rules of Procedure should be amended to provide that official tribal representatives must be recognized and allowed to participate in State court ICWA proceedings.

2. The Supreme Court should create a commission to examine state court and tribal court relations.

3. The State should encourage and cooperate with tribes who desire to establish eligibility to receive direct federal reimbursement funds for foster care placement and enter into appropriate agreements.

4. Following completion of any necessary requirements and agreements which would make tribes eligible to receive federal reimbursement funds for foster care placement, the state and tribes should decide which tribe would be best suited to host a pilot project. The purpose of the pilot project would be to

develop and implement procedures for the tribe to comply with necessary Title IV-E requirements. This pilot project should be started with a combination of state, county and tribal funds to pay for the initial foster care payments to get the system up and running. Training should be provided for tribes as to the obligations that go along with accepting these federal reimbursement funds.

5. Court personnel, judges, county attorneys and public defenders should be trained on the provisions in the "Tribal / State Agreement" and the accompanying Procedural Manual when that is developed.

N. Representation and Rights of Parties

1. Representation of Children

1. Minnesota Statutes § 260.155 and the Minnesota Rules of Juvenile Procedure should be clarified as follows:

   a. The guardian ad litem represents the child's best interests. The guardian ad litem must 1) obtain first-hand, a clear understanding of the situation and needs of the child; and 2) make recommendations to the court concerning the best interests of the child. Counsel for the child shall represent the child's legal interests and the child's expressed interests (if any). Counsel for the child shall not also act as the child's guardian ad litem or represent the child's guardian ad litem because that would result in a potential conflict of interest.

   b. Pursuant to federal law and in light of the special role guardians ad litem play, a guardian ad litem must be appointed for every child in a juvenile protection proceeding. The Task Force does not, by this recommendation, mean to suggest that counties cannot also appoint an attorney to represent the child's legal interests and expressed interests (if any) as required by current statute which provides that the child "has a right to effective assistance of counsel in connection with a proceeding in juvenile court."

   c. The court may appoint separate counsel for the child's guardian ad litem, if necessary.

   d. A child has a right to be present at all hearings. The court may exclude a child from a hearing if it is in the best interests of the child to do so. Counsel for the child and the guardian ad litem may not be excluded from any hearing. The decision as to whether a child shall be excluded from any hearing shall be decided by the court on a case by case basis. To implement this

recommendation, Minnesota Rules of Juvenile Procedure, 39.01 should be repealed.

e. A child has a right to participate in all hearings. Like any other party, the child shall participate in hearings through the child's counsel. To implement this recommendation, Minnesota Rules of Juvenile Procedure 39.01 should be repealed.

2. The child's counsel and the guardian ad litem should always meet with the child.

3. The Legislature should amend Minnesota Statutes § 260.155, subd. 8(a) to provide that a parent, guardian or custodian of a child does not have the right to give any waiver or offer objections on behalf of the child. The statute should instead provide that where the child is not represented by counsel, the guardian ad litem, with the advice of counsel, shall give any waiver or offer any objection under Minnesota Statutes, Chapter 260.

4. There should also be a sufficient appropriation of funds for the appointment of guardians ad litem for children in CHIPS and TPR proceedings. There should be a sufficient appropriation of funds for the legal representation of children in CHIPS and TPR proceedings.

2. Role of the County Attorney

1. The Legislature should amend Minnesota Statutes § 260.155, subd. 3 to clarify that the role of the county attorney in all child in need of protection or services, termination of parental rights and other permanency proceedings is to represent both the social service agency and the public interest in the welfare of the child.

3. Foster Parents

1. Party Status / Participation Rights of Foster Parents

Unless permitted by the court, foster parents should not be allowed to participate as parties in a CHIPS or TPR proceeding. The foster parent should be allowed party status either 1) through the process of permissive intervention or 2) at the judge's discretion only if granting the foster parent party status would serve the best interests of the child. The Juvenile Rules Committee should determine which standard would be most appropriate. Foster parents should be allowed to be present at all hearings if it is in the best interests of the child, regardless of whether the foster parents have the right to participate. The Legislature should amend Minnesota Statutes § 260.155, subd. 1a to provide that

"legal custodians," not "lawful custodians," have a right to participate in all proceedings on a petition.

4. Representation in Voluntary Placements

1. Representation in Voluntary Placements

The Legislature should amend Minnesota Statutes § 257.353 to require that where the parent, legal custodian or legal guardian is contemplating voluntary placement of a child who is not developmentally disabled or emotionally handicapped, social services shall advise both the parent and child:

a) that each has a right to separate legal counsel before signing a voluntary placement agreement, but not to counsel appointed at public expense;

b) that the parent(s), legal custodian(s) or legal guardian(s) and the child have the right to counsel at public expense at the beginning of a case plan and the child also has the right to appointment of a guardian ad litem;

c) that they are not required to agree to the voluntary placement and that if they enter into a voluntary placement agreement, the parent(s), legal custodian(s) or legal guardian(s) may at any time request that the agency return the child to their care and the child shall be returned within twenty-four (24) hours of the receipt of the request pursuant to Minnesota Statutes § 257.353, subd. 4;

d) that if the social service agency files a petition alleging that the child is in need of protection or services or a petition seeking the termination of parental rights, the parent, legal custodian or legal guardian would have the right to appointment of separate legal counsel at public expense and the child would have a right to the appointment of counsel and a guardian ad litem as provided by law.

e) that evidence gathered during the time the child is voluntarily placed may be used at a later time as the basis for a petition alleging that the child is in need of protection or services or as the basis for a petition seeking termination of parental rights; and

f) of the effect the time spent in voluntary placement will have on the scheduling of a permanent placement

determination hearing pursuant to Minnesota Statutes § 260.191, subd. 3b.

O. Information Access

1. Statutes should be clarified to ensure that attorneys for children and attorneys for parents in proceedings under Minnesota Statutes § 260 have access to records, social services files and reports which form the bases of any recommendations. The guardian ad litem should also have statutorily mandated access to these materials. Where necessary, the court should issue protective orders to prohibit attorneys from sharing certain reports or parts of reports with their clients, except where the client is the guardian ad litem.

2. Child protection workers and foster parents should be assured access to the following information:

   - Medical data under Minnesota Statutes § 13.42;
   - Corrections and detention data under Minnesota Statutes § 13.85;
   - Health records pursuant to Minnesota Statutes § 144.335; and
   - Juvenile court records under Minnesota Statutes § 260.161.

3. Collateral Reports:

   When the agency has legal responsibility for the placement of a child, that agency should have the authority to ask for and receive all information pertaining to that child it deems necessary to appropriately carry out its duties. This information should include educational, medical, psychological, psychiatric, and social / family history data retained in any form by any individual or entity. The agency should have the authority to gather appropriate data regarding the child's parents in order to develop and implement a case plan required by Minnesota Statutes § 257.071. Upon request of the court having responsibility for overseeing the provision of services to the child and family and for implementing orders that are in the best interest of the child, the responsible county or tribal social service agency should provide appropriate written or oral reports from any individual or entity providing services to the child or family. The individual or entity should report all observations and information upon which it bases its report as well as its conclusions. When necessary to facilitate the receipt of such reports, the court should issue appropriate orders.

P. Open Hearings

1. There should be a presumption that hearings in juvenile protection matters will be open absent exceptional circumstances. To close a hearing, a party should have to delineate the circumstances justifying closure.

2. Court records in juvenile protection matters should be open to the public. However, certain information which is protected by law from public access should not be available to the public as well as other information which is of such a nature that public access to the information might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information about reporters. Statutes and court rules should be amended to specify what records within the court file would be accessible to the public.

   Court records should be open only for cases filed after a certain date.

3. There should be advance preparation and training for the media regarding open juvenile protection hearings and court records.

4. "No contest" answers should be recognized in juvenile protection proceedings. Before a judge may approve a "no contest" answer, all parties must agree to its acceptance. The agreement of the parties to its acceptance does not affect the discretion of the judge to reject a "no contest " answer.

Q. Continuity and Case Management

1. The district courts should implement case management systems to avoid the shifting of cases and families between judges. CHIPS cases should be blocked so that one judge will hear the case throughout the proceedings up to and including the implementation of a permanent placement plan and adoption, if that occurs. The court system should consider the one judge / one family model, taking into account the experience of the Ramsey County Pilot project.

2. Wherever feasible, managers and directors of social service agencies should strive to maintain continuity throughout a case and reduce delays by assigning one person to the case until its conclusion up to and including the implementation of a permanent placement plan, adoption or reunification.

3. The child should have the same guardian ad litem throughout the case. The same attorney should be legal counsel for the child throughout the proceedings.

R. Data Collection

1. Data collection efforts need to be improved in the courts, social services and the Department of Human Services.

S. Alternative Dispute Resolution

1. The Supreme Court should establish a pilot project in two counties to offer

A.D.R. services in all phases of CHIPS proceedings.

T. Services

1. The Community Social Services Act, Minnesota Statutes §256E, should be revised so that the definition of the groups of persons to be served by the Act is expanded to include adolescents and others who have been unserved or under-served.

2. The Community Social Services Act, Minnesota Statutes §256E, should be periodically reviewed to determine if it is contemporary to the needs of children and families. The services needed for children with mental health needs as delineated in the Minnesota Comprehensive Children's Mental Health Act (Minnesota Statutes §§ 245.487 to 245.4888) should be included in the Community Social Services Act.

U. General Recommendations

1. Delinquency and child protection matters should be separated in the Minnesota Statutes. The child protection statutes should be revised to clearly show the pathway to permanence. The Revisor of Statutes should be assigned this task with the goal that the reorganization will be available for the 1998 legislative session.

2. The Supreme Court Advisory Committee on the Rules of Juvenile Procedure should be reactivated to revise the juvenile protection rules.

3. The courts, prosecutor's offices and State Public Defender should encourage judges and attorneys to attend quality continuing legal education courses on all aspects of the juvenile court and particularly the foster care and adoption systems.

4. The legislature should provide additional funding to fully implement the Minnesota Child Welfare Training System, which is a comprehensive statewide training system for child welfare staff.

V. Funding Streams

1. The Legislature should create a legislative commission to examine the current funding streams that impact and influence decisions for children needing protection or services.

PART IV DELIBERATIONS

The Task Force's deliberations and resultant recommendations are set forth below.

A. ENTERING THE SYSTEM: FROM REPORT OF MALTREATMENT TO "CHIPS" PETITION

When the local social services agency, police department or county sheriff's office receives a report that a child is being neglected or physically or sexually abused, the local social services agency conducts an assessment and investigation.[3] Upon the conclusion of every assessment or investigation, the local welfare agency must make two determinations, based upon a preponderance of the evidence: first, whether maltreatment has occurred; and second, whether child protective services are needed.[4] "Maltreatment"[5] means any of the following acts or omissions committed by a person responsible for the child's care:[6] (1) physical abuse;[7] (2) neglect;[8] (3) sexual abuse;[9] or (4) mental injury.[10]

In 1994 in Minnesota, there were 17,967 reports[11] of maltreatment involving a total of

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[3]Minn. Stat. § 626.556, subd. 10 (1996).

[4]Id. at § 626.556, subd. 10e.

[5]"Maltreatment" is defined at Minn. Stat. § 626.556, subd. 10e (a) (1996).

[6]"Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching. Id. at § 626.556, subd. 2 (b).

[7]"Physical abuse" is defined at Minn. Stat. § 626.556, subd. 2 (d) (1996) and includes mental injury or threatened injury.

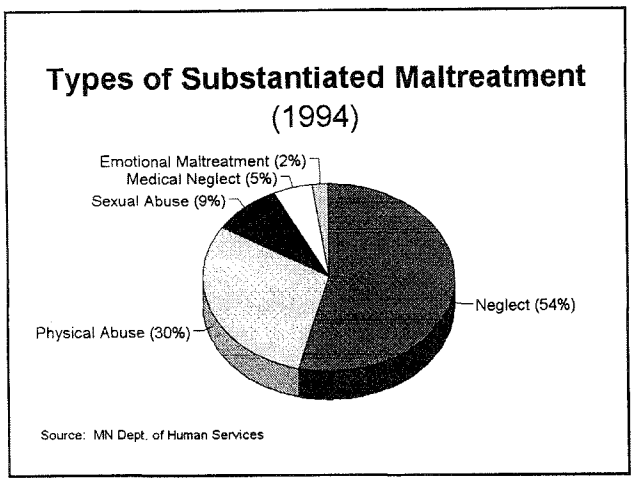
[8]"Neglect" is defined at Minn. Stat. § 626.556, subd. 2 (c) (1996).

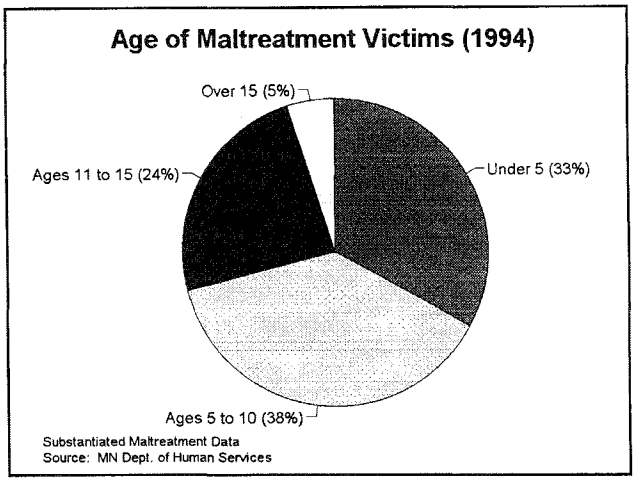
[9]"Sexual abuse" is defined at Minn. Stat. §626.556, subd. 2 (a) (1996) and included threatened sexual abuse.

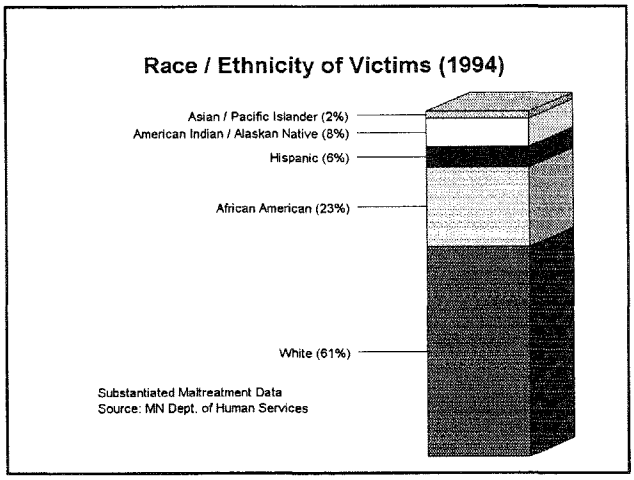
[10]"Mental injury" is defined at Minn. Stat. § 626.556, subd. 2 (k) (1996).

[11]Each report may involve several children. If several reports are made regarding one family, each report is counted. January 8, 1996 Telephone Conversation with Judy Kuck, Minnesota Dept. of Human Services.

28,286[12] children.[13] Maltreatment was substantiated with regard to about 40% of these reports (or 7,042)[14] involving 10,438 children.[15] The following graphs set forth statistics regarding age, race and types of maltreatment for victims of substantiated maltreatment in 1994.







[12]If several reports are made regarding one child, that child is counted again each time a report is made. January 8, 1996 Telephone Conversation with Judy Kuck, Minnesota Dept. of Human Services.

[13]Minnesota Dept. of Human Services, Final 1994 Data (on Maltreatment) Submitted to U.S. Dept. of Health and Human Services, National Center on Child Abuse and Neglect, 2. (Copy on file with Minnesota Supreme Court.)

[14]Id. at 4.

[15]Id. at 5.

Statewide, court actions were initiated for only about a quarter (24%) of the children for whom maltreatment was substantiated.[16] To initiate a court action, the social services agency, usually through the county attorney, files a petition with the court alleging that the child is in need of protection or services ("CHIPS").

The definition of CHIPS is actually much broader than the definition of maltreatment. Under Minnesota law, a child is in need of protection or services ("CHIPS")[17] when the child

- **Is Abandoned or Without Parent, Guardian or Custodian;**
- **Suffered Physical or Sexual Abuse**
  - has been a victim of physical or sexual abuse;
  - resides with or has resided with a victim of **domestic child abuse**[18];
  - resides with or would reside with a perpetrator of domestic child abuse or **child abuse;**[19] or
  - is a victim of **emotional maltreatment;**[20]
- **Needs Food, Clothing, Shelter and Education**
  or other required care for the child's physical health, mental health or morals because the child's parent, guardian or custodian cannot or will not provide that care;
- **Needs Special Care**

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[16] Id. at 9.

[17] "Child in need of protection or services" is defined at Minn. Stat. § 260.015, subd. 2a (1996).

[18] "Domestic child abuse" is any physical injury to a child purposefully and unaccidentally inflicted by an adult member of the household or an adult household member forcing a child to commit acts of prostitution or soliciting a prostitute (Minn. Stat. § 609.321); first, second, third or fourth degree criminal sexual conduct (Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345); or to perform in a sexual performance (Minn. Stat. § 617.246). Id. at § 260.015, subd. 24.

[19] "Child abuse" is an act of one of the following against a child: first, second or third degree assault (Minn. Stat. §§ 609.221, 609.222, 609.223); fifth degree assault (Minn. Stat. § 609.224); domestic assault (Minn. Stat. § 609.2242); soliciting, inducing or promoting a child into acts of prostitution (Minn. Stat. § 609.322); receiving profit from prostitution of a child (Minn. Stat. § 609.323); engaging in prostitution with a minor or hiring a minor for prostitution (Minn. Stat. § 609.324); first, second, third, or fourth degree criminal sexual conduct (Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345); malicious punishment of a child (Minn. Stat. § 609.377); neglect or endangerment of a child (Minn. Stat. § 609.378); or using a minor in a sexual performance (Minn. Stat. § 617.246). Id. at § 260.015, subd. 28.

[20] "Emotional maltreatment" is the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, or emotional development. It does not include reasonable training, discipline or exercise of authority. Id. at § 260.015, subd. 5a.

for a physical, mental or emotional condition because the parent, guardian or custodian cannot or will not provide the care;

- **Is Medically Neglected**
(including but not limited to withholding medically indicated treatment from a disabled infant with a life-threatening condition except an infant who, in the treating physician(s)'s medical judgment, is irreversibly comatose, and one for whom treatment would merely prolong dying, be futile or inhumane);

- **Was Illegally Placed for Adoption or Care;**

- **Is in Injurious or Dangerous Environment**
is one whose behavior, condition, or environment is injurious or dangerous to the child or others (includes exposure to criminal activity in the child's home);

- **Has Committed Delinquent Act Under Age 10;**

- **Is a Runaway;** or

- **Is a Habitual Truant;**[21]

or the child's

- **Parent, Guardian or Custodian Have Good Cause to be Relieved of Custody and Care;**

- **Parents Are Unable to Care for Child**
because the parent, guardian, or other custodian has emotional, mental or physical problems or is immature; or

- **Custodial Parent's Parental Rights to Another Child Were Terminated Within Last Five (5) Years.**[22]

In 1995, CHIPS petitions[23] were filed for 8,848 children statewide. Around half (48%

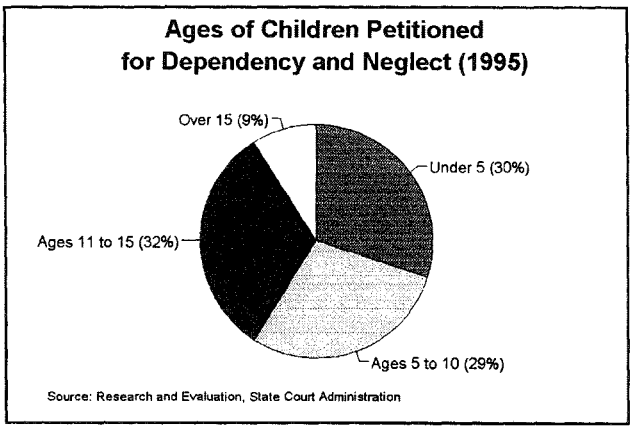
[21] Id. at § 260.015, subd. 19. A "habitual truant" is a child under age 16 who, if in elementary school student, misses school for seven days without lawful excuse or who, if in middle school, junior high school or high school, misses one or more class periods on seven school days.

[22] Id. at § 260.015, subd. 2a.

[23] Sometimes CHIPS petitions filed with the court have several children as the subject of the petition. The State Judicial Information System (SJIS) counts every child on a CHIPS petition as having a separate petition. This report uses the SJIS definition of petition--i.e., one child per petition.

or 4,259) involved allegations of "dependency or neglect."[24] Twenty-eight percent (28% or 2,494) of the children were petitioned as CHIPS because of alleged truancy; twenty-three (23% or 2,043)) were runaways. Less than 1% (or 52) of the children were delinquents under age 10.

Of those children for whom CHIPS petitions were filed in 1995[25] on the basis of dependency or neglect, approximately 30% of those children were under the age of 5 at the time of filing of the petition. Nearly the same number (29%) were between 5 and 10 years of age. Another third (32%) were between age 11 and 15 at the time of filing. Only around 9% of the children were over 15 years old at the time of the CHIPS filing. Twenty-two percent (22%) of all children who had CHIPS petitions filed with regard to them because of dependency or neglect were from Hennepin County. The number of CHIPS petitions that have been filed on the basis of dependency or neglect has almost doubled across the state since 1985, when 2,356 petitions were filed.

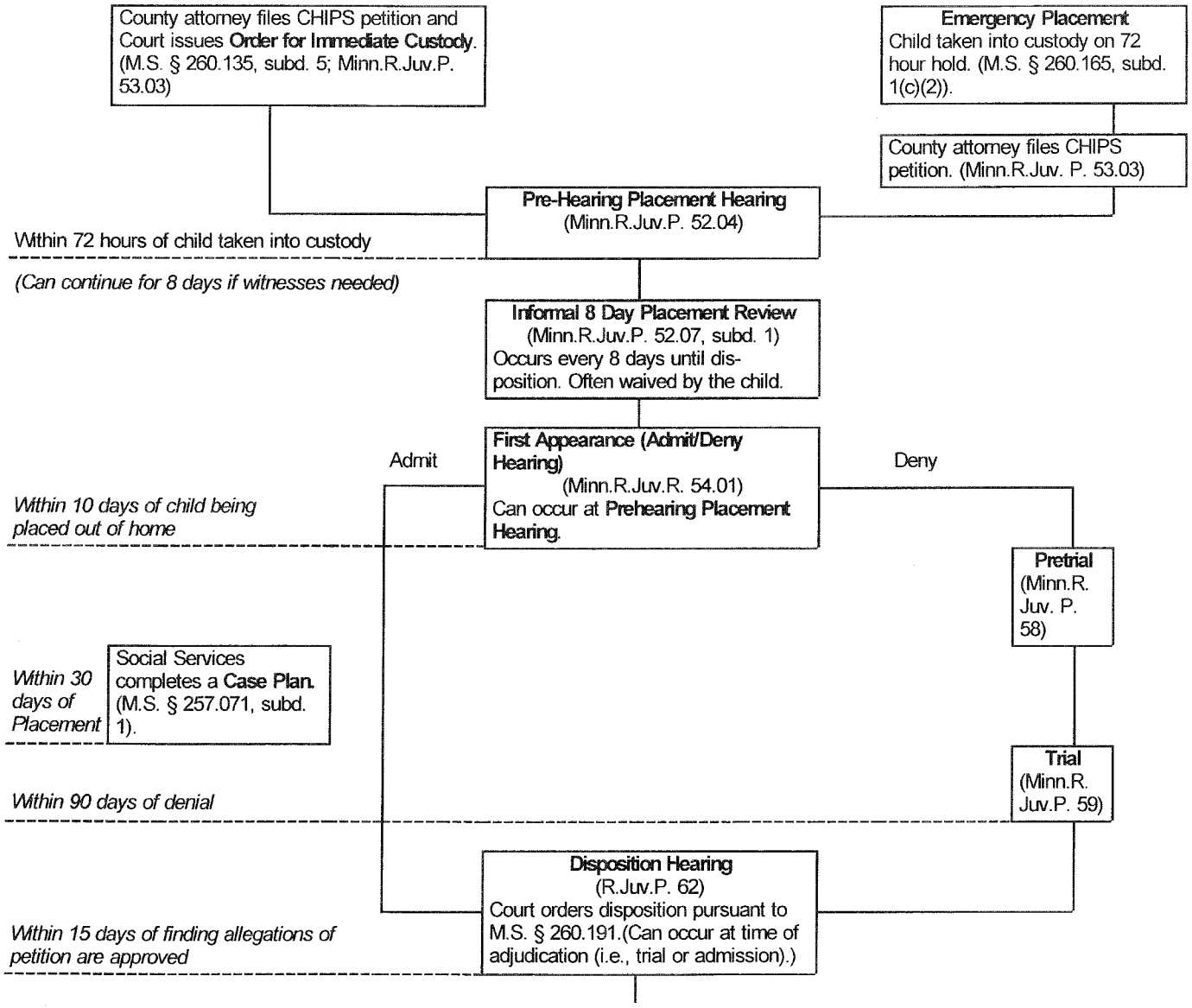


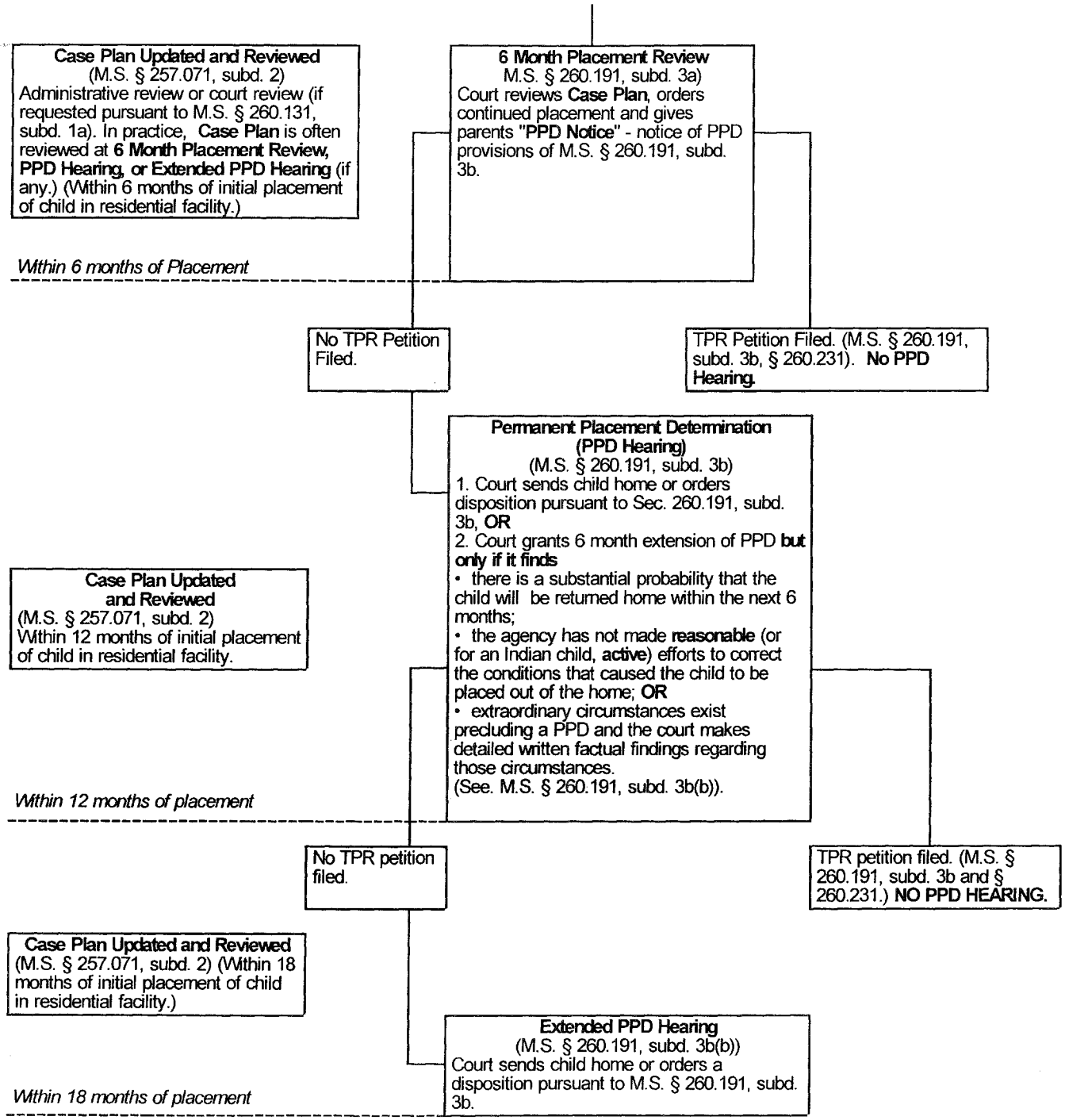
The legal process for CHIPS cases in Minnesota is diagrammed in the flow chart entitled "Minnesota's Legal Framework for CHIPS Cases" below.

[24]"Dependency and neglect" is the phrase the State Judicial Information System (SJIS) uses to describe all CHIPS cases which are not based on allegations of truancy, runaway status, or delinquent acts committed while under the age of 10. For the purposes of this report, "dependency and neglect" has the same meaning it does in SJIS.

[25]Data for 1994 is nearly identical.

Minnesota's Legal Framework for CHIPS Cases




Case Plan Updated and Reviewed
(M.S. § 257.071, subd. 2)
Administrative review or court review (if requested pursuant to M.S. § 260.131, subd. 1a). In practice, Case Plan is often reviewed at 6 Month Placement Review, PPD Hearing, or Extended PPD Hearing (if any.) (Within 6 months of initial placement of child in residential facility.)
6 Month Placement Review
M.S. § 260.191, subd. 3a)
Court reviews Case Plan, orders continued placement and gives parents "PPD Notice" - notice of PPD provisions of M.S. § 260.191, subd. 3b.
Within 6 months of Placement
No TPR Petition Filed.
TPR Petition Filed. (M.S. § 260.191, subd. 3b, § 260.231). No PPD Hearing.
Permanent Placement Determination (PPD Hearing)
(M.S. § 260.191, subd. 3b)
1. Court sends child home or orders disposition pursuant to Sec. 260.191, subd. 3b, OR
2. Court grants 6 month extension of PPD but only if it finds
• there is a substantial probability that the child will be returned home within the next 6 months;
• the agency has not made reasonable (or for an Indian child, active) efforts to correct the conditions that caused the child to be placed out of the home; OR
• extraordinary circumstances exist precluding a PPD and the court makes detailed written factual findings regarding those circumstances.
(See. M.S. § 260.191, subd. 3b(b)).
Case Plan Updated and Reviewed
(M.S. § 257.071, subd. 2)
Within 12 months of initial placement of child in residential facility.
Within 12 months of placement
No TPR petition filed.
TPR petition filed. (M.S. § 260.191, subd. 3b and § 260.231.) NO PPD HEARING.
Case Plan Updated and Reviewed
(M.S. § 257.071, subd. 2) (Within 18 months of initial placement of child in residential facility.)
Extended PPD Hearing
(M.S. § 260.191, subd. 3b(b))
Court sends child home or orders a disposition pursuant to M.S. § 260.191, subd. 3b.
Within 18 months of placement

In the areas of a child's first entry into the Child Protection System and the legal grounds for CHIPS, the Task Force developed two recommendations: 1) provide notice to parents that children may be placed with relatives during a "police hold"; and 2) add an additional ground for CHIPS providing that the child is in need of protection or services when the child has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile offender proceeding.

As to the notice provision, current law provides that when police take a child into custody pursuant to court order or because the child is in surroundings or conditions that endanger the child's health or welfare, if the child is not alleged to be delinquent, the child shall be detained in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible. Placement may be with a child's relative, a designated parent under chapter 257A, or in a shelter care facility.[26] The police must give the parent or custodian a list of names, addresses, and telephone numbers of social service agencies that offer child welfare services.[27] The Task Force recommends that in addition to this list of social service agencies, the notice should inform parents that the child may be placed with relatives or a designated parent pursuant to Minnesota Statutes § 257A. The purpose of this recommendation is to make sure parents are notified that relatives could be a placement resource, if appropriate and available.

As to the additional ground for CHIPS, the Task Force recommends that Minnesota Statutes § 260.015, subd. 2a be amended to provide that grounds for CHIPS grounds exist where a child has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile petty or traffic offender proceeding, delinquency proceeding, extended jurisdiction juvenile proceeding or certification proceedings. Minnesota Rules of Juvenile Procedure 20.01, subd. 4 and 20.02, subd. 8 provide that, under certain circumstances, where the child is found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, and the child is not currently under CHIPS or civil commitment jurisdiction, the court may, (and in some circumstances, shall) "direct that CHIPS proceedings be initiated." This is interpreted to mean that the county attorney should assess the matter to determine whether or not a CHIPS petition should be filed. Currently, if the county attorney decides to file a CHIPS petition, it is necessary to prove that the child meets one of the current grounds for CHIPS under Minnesota Statutes § 260.015, subd. 2a, necessitating an evidentiary proceeding to prove that the grounds for CHIPS are met. The Task Forces's recommendation will eliminate the need to have an evidentiary hearing on separate CHIPS grounds for these children where there has already been a judicial proceeding to determine incompetence, mental illness or mental deficiency. This change will expedite getting needed services to these children.

[26]Minn. Stat. § 260.173, subd. 2 (1996).

[27]Id. at § 260.165, subd. 3.

Recommendations:

1. The notification police must give parents pursuant to Minnesota Statutes § 260.165, subd. 3 upon taking a child into custody should include notice that the child may be placed with relatives or a designated parent pursuant to Minnesota Statutes § 257A.

2. The Legislature should amend Minnesota Statutes § 260.015, subd. 2a to provide that grounds for CHIPS exist where a child has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile petty or traffic offender proceeding, delinquency proceeding, extended jurisdiction juvenile proceeding or certification proceeding.

B. PRIVATE CHIPS PETITIONS

Petitions brought by persons other than the county attorney are usually called "private CHIPS petitions." Under current law, any reputable person may file a CHIPS petition,[28] but the procedure for bringing a private CHIPS petition is not widely known and is difficult for non-attorneys. Practice currently varies as to the bringing of a private CHIPS petition. In some counties, private CHIPS petitions are required to be reviewed by the county attorney as to form; in others, an ex parte request to the judge must be made to secure permission to file a private CHIPS petition.[29] Private CHIPS petitions appear to be filed more frequently in the Metro area than in the Greater Minnesota and Suburban Minnesota regions. One hundred percent (100%) of Metro judges surveyed reported that private CHIPS petitions are filed in their county while just under half (47-48%) of Suburban and Greater Minnesota judges reported that private CHIPS petitions are filed in their county.

The Task Force believes that private CHIPS petitions serve an important role in the protection of children. For one thing, a private CHIPS petition provides a way for a child or a person on behalf of a child "to appeal" a county determination that no maltreatment has occurred as well as a county's decision not to assess a situation at all to determine whether maltreatment has occurred. Second, the definition of "CHIPS" is broader than the definition of "maltreatment."[30] Therefore, even if the county does find maltreatment and provide services, the child may still be in need of protection or services under the definition of CHIPS.

To ensure that the children of Minnesota are better protected, the Task Force proposes making the private CHIPS petition process more uniform and accessible

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[28] Id. at260.131, subd. 1.

[29] Gary Debele, Esq., Minnesota Supreme Court Foster Care and Adoption Task Force Member.

[30] Compare Minn. Stat. § 260.015, subd. 2a (1996) (definition of "CHIPS") with Minn. Stat. § 626.556, subd. 10e (1996) (definition of "maltreatment").

similar to the process currently existing for initiating domestic abuse proceedings.[31] Because of concerns that increased access to the CHIPS process may be used by disgruntled parents in dissolution or other custody disputes, the Task Force recommends that the petitioner state on the petition whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court involving the child. The Task Force also recommends that the judge review the petition to determine whether probable cause exists that the child is in need of protection or services before the matter is scheduled for an initial hearing so that people are not called into court unnecessarily. Finally, to prevent the private CHIPS petition from becoming a means by which to bypass the county social services agency altogether, the Task Force recommends that the petition contain a statement that the petitioner has reported maltreatment to the county social services agency and that adequate protection or services were not provided to the child. A petitioner's report to Child Protection that was "screened out" as not meeting the statutory definition of "maltreatment" would satisfy this requirement.

The Task Force recognizes that, even with the requirements listed above, simplifying the private CHIPS petition process will likely increase the caseload of juvenile court. However, the Task Force considers the increased protection of children provided by the simplified private CHIPS petition process to far outweigh concerns about increased caseload.

Recommendation:

1. There should be a uniform, simplified process throughout the state for bringing a private CHIPS petition such as the following:

   Any person may bring a private CHIPS petition in juvenile court. Simplified private CHIPS petition forms should be developed (similar to the current domestic abuse petitions) to allow individuals easier access to the court. The petition should include the following: 1) a statement of facts establishing probable cause that a need for protection or services exists; 2) a statement that the petitioner has previously reported maltreatment to the county social services agency regarding the matter, but that protection or services or adequate protection or services were not provided to the child(ren) that are the subject of the petition; and 3) a statement as to whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court. The court administrator may reject the petition if the petitioner has not contacted the social services agency prior to filling out the petition. A person's right to a file a private CHIPS petition is not affected by the fact that the person is or is not seeking an internal review of the social services agency's decision. The judge shall determine whether there is probable cause that a need for protection or services exists before the matter is set on for an initial hearing. If there is no probable cause, the matter shall be dismissed. When the matter is set on for initial hearing, the court administrator shall notify social services by sending notice to the county attorney.

[31] See generally, Minn. Stat. § 518B (1996).

C. REVIEW OF MALTREATMENT DETERMINATIONS AND NEED FOR CHILD PROTECTIVE SERVICES

Currently, the only way for an alleged perpetrator or the child victim to appeal a determination of maltreatment is through the Minnesota Data Privacy Act under Minnesota Statutes § 13.04, subd. 4[32] which provides that "[a]n individual subject of the data may contest the accuracy[33] or completeness[34] of public[35] or private[36] data." The Task Force believes that this review process is flawed and inadequate because the review under the Minnesota Data Privacy Act addresses only the accuracy and completeness of the data the agency has collected and NOT whether the information is correct AND constitutes maltreatment pursuant to Minn. Stat. § 626.556, subd. 10e (a).

The Child Abuse Prevention and Treatment Act Amendments of 1996 ("CAPTA Amendments of 1996") requires states to comply with specific requirements before they are eligible for certain federal grants for services for children. One of those requirements is that, by October 3, 1998, provisions, procedures, and mechanisms should be enacted "by which individuals who disagree with an official finding of abuse or neglect can appeal such finding."[37]

The Task Force addressed this review process question from two perspectives: 1) the appeal rights of the alleged perpetrator and 2) the appeal rights of the child or someone on behalf of the child.

Unlike the appeal process currently available under the Minnesota Data Practices Act, the Task Force's recommended process for appeals by alleged perpetrators of

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[32]Minn. Rules Ch. 1205.1600 (1995) provides the procedure for this appeal under Minn. Stat. § 13.04, subd. 4.

[33]"Accurate" means that "the data in question is reasonably correct and free from error." Minn. Rules Ch. 1205.1500, subd. 2. A. (1995).

[34]"Complete" means that "the data in question reasonably reflects the history of an individual's transactions with the particular entity." Minn. Rules Ch. 1205.1500, subd. 2. B. (1995). Omissions in an individual's history that place the individual in a false light are not permitted. Id.

[35]"Public data on individuals" means data which is accessible to the public in accordance with the provisions of Minn. Stat. § 13.03 (1996). "Public data" is also defined at Minn. Rules Ch. 1205.0200, subp. 10 (1995) as "data on individuals," not classified by state statute, including Minnesota Statutes, section 13.06, or federal law as private or confidential data.

[36]"Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data. Minn. Stat. §13.03, subd. 12 (1996). See also Minn. Rules Ch. 1205.0200, subp. 9 (1995). Compare the definition of "private data on individuals" with the definition of "confidential data on individuals." "Confidential data on individuals" means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of the data. Minn. Stat. § 13.02, subd. 3 (1996). See also Minn. Rules Ch. 1205.0200, subp. 3 (1995).

[37]110 Stat. 3063, § 107 (b) (2) (A) (xi) (II).

determinations of maltreatment requires the focus of the review to be whether the information is correct and whether a finding of maltreatment was justified under the law. As a model for its recommendations, the Task Force used the review process for any individual or facility deemed to have maltreated a vulnerable adult as set forth in Minnesota Statutes § 256.045. The Task Force modified that model in three significant ways.

First, before the Minnesota Department of Human Services may review the maltreatment determination, the alleged perpetrator must request and receive a review at the county level. Second, because maltreatment determinations involve discretionary decisions by the county, the Task Force rejected the de novo standard of review for review of maltreatment determinations with regard to vulnerable adults[38] in favor of a standard it deemed more appropriate because it gives deference to the county's discretionary decision. The Task Force recommendation requires the county social service agency to prove that it had "reasonable cause" to make the maltreatment determination. If the county social service agency sustains that burden of proof, the burden switches to the alleged perpetrator to prove by a preponderance of the evidence that the maltreatment determination was incorrect. This is the same standard used for review of decisions to suspend or revoke a foster care or family day care license under Minnesota Statutes § 245A.08, subd. 3 (a). Finally, in order to minimize the trauma to the child from testifying, the alleged child victim cannot be called as a witness at the hearing absent a showing of good cause.

With regard to a child or someone on behalf of a child seeking a review of a determination of maltreatment or a determination that no services are required, the Task Force recommends that each county develop its own internal review process. This recommendation reflects a compromise of several proposals brought forth by Task Force members. One proposal involved a fair hearings-type process similar to the recommended review process for alleged perpetrators. There were three main concerns with that proposal. First, with regard to appeals of determinations that child protective services are not needed, the Department of Human Services does not have statutory authority to order counties to provide services with regard to particular child protection cases. Additionally, the fair hearings process contemplates the appeal of denial of services (or adequate services) that must be provided pursuant to federal law on a non-discretionary basis, such as social security benefits. However, it is in each county's discretion to determine what protective services a child needs or receives. Second, with regard to appeals of determinations that no maltreatment has occurred, the fair hearings process contemplates appeals of denials, revocation and suspension of licensure. A determination that maltreatment has occurred may affect whether an individual may be licensed for certain occupations.[39] An appeal by a child from a finding of no maltreatment would not implicate the same type of concerns; it would, in essence be an appeal of the determination that no child protective services were needed. Another proposal envisioned a review at the

[38] See Minn. Stat. § 256.045, subd. 3b (1996) ("[t]he state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under section 626.557").

[39] See e.g., Minn. Stat. § 245A.04, subd. 3b (c) (3) (1996) (regarding maltreatment determinations and licensing for foster care).

county level with an appeal to the juvenile court. The Task Force also rejected this proposal because 1) appeal of the administrative decision to the juvenile court would increase the already congested juvenile court calendars, especially if private CHIPS petitions are made more user-friendly as the Task Force recommends; 2) the juvenile court does not have jurisdiction to order the county to provide services where no CHIPS petition has been filed; and 3) the juvenile court could not order the county to file a CHIPS petition because that would violate the doctrine of separation of powers. A third proposal suggested creating an "ombudsperson for children" to whom individuals could voice their complaints. The Task Force rejected this proposal in favor of a more in-person approach.

The Task Force also decided the fact that an individual seeks or fails to seek an internal review should not affect a person's right to file a private CHIPS petition at any time before or during the internal review process. There are two main reasons for this. First, the definition of "maltreatment" is much narrower than the definition of "CHIPS." Therefore, a finding that maltreatment has not occurred does not necessarily mean that the child is not in need of protection or services. Second, emergency situations regarding the same or different issues may arise during the pending of the internal review process. If a person's right to bring a private CHIPS petition were suspended during the internal review process or denied for failing to go through the internal review process, children may be harmed.

Recommendations:

1. The Legislature should enact an administrative appeal process which would allow alleged perpetrators to appeal determinations of maltreatment. The administrative appeal process should be structured in the following manner:

    - When a maltreatment decision is made by the county, the county must give written notice of the determination and of the availability of the administrative review process to the alleged perpetrator.

    - Before an appeal of a county's decision regarding the maltreatment may be filed with the Commissioner of Human Services, review by the county must first be requested. Upon receipt of an oral or written request, the county social services agency must provide a review of the decision by one or more individuals (who were not involved in the original determination) designated by the county for that purpose. The request for review must be made within 10 days of notice of the determination and the county review must take place within 5 working days of receipt of the request and must include the opportunity for an in-person meeting, if any party desires.

    - The appellant shall have the opportunity to examine the contents of the case file and all documents and records used by the county agency to make its determination except that the identity of the reporter and information that would identify the reporter shall remain confidential. Data which is not otherwise accessible to the appellant pursuant to the Minnesota Data Privacy Act, §§ 13.01 - 13.43 must be made accessible to the appellant subject to a protective order by the court . Disclosure

without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than $700, or both.

- The alleged perpetrator may seek administrative review by the Department of Human Services of a county's determination that maltreatment of a child has occurred.

- A hearing may be requested by submitting a written request within 30 days of the final reviewed determination of the county. At the administrative hearing, the appellant may be represented by counsel and has the right to call, examine, and cross-examine witnesses. In order to minimize the trauma to the child from testifying, the alleged victim shall not be called as a witness at the hearing absent a showing of good cause. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing.[40] If the county demonstrates that reasonable cause existed to reach the determination that maltreatment occurred, the burden of proof shifts to the appellant to prove by a preponderance of the evidence that the determination was incorrect.

- The appellant may appeal the administrative ruling to juvenile court. The juvenile court review shall be confined to the administrative record and no new or additional evidence shall be taken unless the court determines that such evidence is necessary in the interests of justice. The scope of the juvenile court's review shall be that set forth in Minnesota Statutes §14.69.

- The review mechanism should only be available when there is no juvenile court or adult criminal court action pending. If such action is filed in either court while an administrative review is pending, the administrative review shall be suspended until the judicial actions are completed. If the juvenile court matter or criminal charge is dismissed, the criminal conviction or finding of CHIPS is overturned, or the juvenile court determines that the child is not in need of protection or services, the matter may be considered in the administrative hearing.

The legislature should appropriate funding for the Minnesota Department of Human Services, the counties and the courts to implement this recommendation.

Minnesota Statutes §256.045 should be amended to implement this recommendation.

2. There should be an internal review process for a child or anyone on behalf of a child who disagrees with either or both of the following determinations: 1) a determination that maltreatment has not occurred; and 2) a determination that child protective services are not needed. The internal review process should

[40]For a similar standard, see Minnesota Statutes § 256.04, subd. 4(b).

be structured in the following manner:

- Upon receipt of an oral or written request, the county social services agency must provide a review of the decision by one or more individuals (who were not involved in the original determination) designated by the county for that purpose. The request for review must be made within 10 days of notice of the determination. The county review must take place within 5 working days of receipt of the request and must include the opportunity for an in-person meeting, if requested.

- The person seeking the review should be provided with notice that if the person disagrees with the decision of the review panel, the individual has the option of filing a private CHIPS petition.

- Seeking or failing to seek an internal review should not in any way affect a person's right to bring a private CHIPS petition regarding the same matter.

D. BEST INTERESTS OF THE CHILD

Minnesota law provides that the best interests of the child is the paramount consideration in all termination of parental rights proceedings and in all proceedings concerning a child alleged or found to be in need of protection or services.[41] "Best interests of the child" is defined in family law with regard to marital dissolution under Minnesota Statutes § 518.17 and custody determinations under Minnesota Statutes § 257.025 in terms of identified factors to be considered. However, the only definition of best interests in CHIPS and TPR proceedings occurs in the section governing permanent placement disposition hearings. In that provision, "best interests" is defined broadly as "all relevant factors to be considered and evaluated"[42] which must "include a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact."[43]

Many focus group participants and survey respondents indicated that "best interests" is defined differently by each person who is asked to assess it. A number of focus group participants thought it would be helpful to have a "best interests" definition composed of factors similar to those in family law as guidelines to help determine what is in the best interests of the child in CHIPS and TPR proceedings.

The Task Force proposes a definition composed of a non-exclusive list of factors which may be relevant in addressing and deciding what is in the "best interests of the child" in CHIPS and TPR proceedings. The Task Force believes that these "best

[41]Minn. Stat. § 260.011, subd. 2 (a) and (b) (1996).

[42]Id. at § 260.191, subd. 3b (a).

[43]Id. at § 260.191, subd. 3b (a) and (c).

interests" factors would be useful in two ways. First, the best interest factors would function as a checklist for what should be considered when determining the best interests of the child. This will help to assure that such determinations are thorough and more uniform throughout the state. Second, in having to address elements on the "best interests" checklist, persons making assessments for the court would have to weigh the factors and lay out their reasoning as to the importance of each in deciding what is in the best interests of the child. This will assist the fact finder in determining whether the person making the assessment has done a thorough review of the case and whether the assessment is logically flawed or biased. A few of the proposed "best interests" factors are taken from the family law definition of "best interests." Most of the proposed factors come from the federal guidelines regarding implementation of the Howard M. Metzenbaum Multiethnic Placement Act of 1994.[44]

In addition to proposing a definition of "best interests," the Task Force also recommends changes to the "Title, Interest, and Construction" section of chapter 260 (Minnesota Statutes § 260.011) to emphasize that the best interests of the child are the paramount consideration in proceedings for termination of parental rights.

Recommendations:

1. Standard for Best Interests in CHIPS and TPR Cases.

   The Legislature should amend Minnesota Statutes § 260.015 by adding a subdivision which defines "best interests of the child" as follows:

   The "best interests of the child" means all relevant factors to be considered and evaluated. Relevant factors to be considered and evaluated may include, but are not limited to, the following:
   (1) The child's current functioning and behaviors;
   (2) The medical, education and developmental needs of the child;
   (3) The child's history and past experience;
   (4) The child's religious and cultural needs;
   (5) The child's connection with a community, school or church;
   (6) The child's interests and talents;
   (7) The child's relationship to current caretakers, parents, siblings and relatives; and
   (8) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

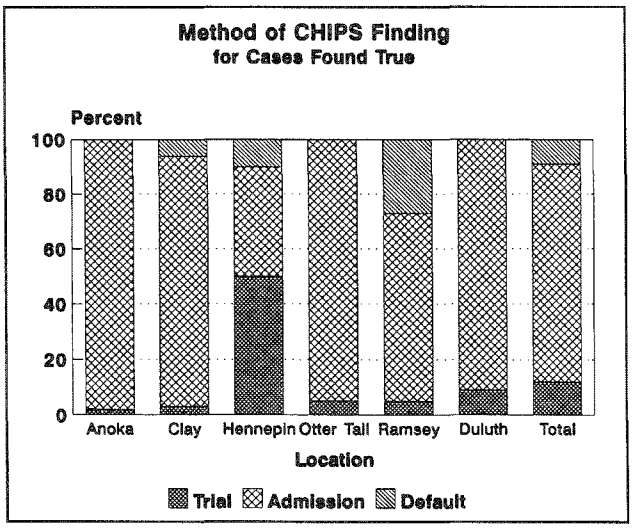
2. The Legislature should amend Minnesota Statutes § 260.011, subd. 2(b) to

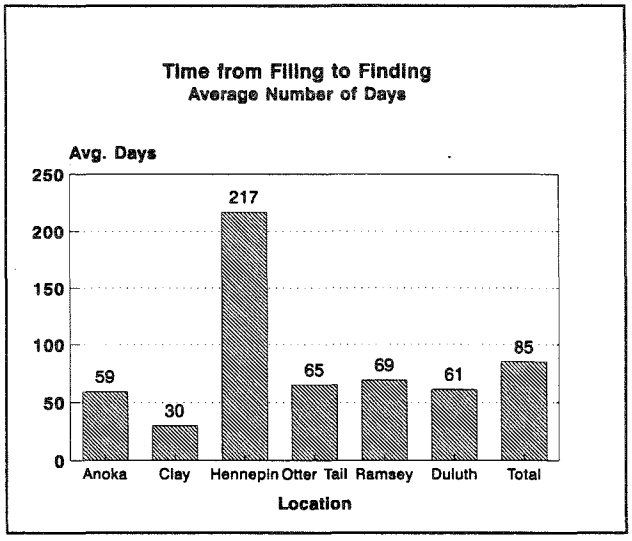
[44] 60 Fed. Reg. 20272, fn.2. The federal guidelines set forth a number of child-related factors that are usually considered before making an adoptive placement:
- The child's current functioning and behaviors;
- The medical, educational and developmental needs of the child,
- The child's history and past experience;
- The child's cultural and racial identity needs;
- The child's interests and talents;
- The child's attachments to current caretakers.

emphasize that the paramount consideration in all proceedings for the termination of parental rights is the best interests of the child by placing that statement at the beginning of the provision instead of near the end.

E. CHIPS ADJUDICATIONS

The court may adjudicate a child in need of protection or services when 1) the parties admit the allegations of the petition; 2) the allegations are proved at trial or 3) the petition is proved by default. The State Judicial Information System is unable to provide information on how many cases reached adjudication as a result of trial, admission or default. However, the Six County Court File Review showed that a majority of dependency and neglect cases (except those in Hennepin County) are adjudicated as a result of party admissions. In Hennepin County, a finding of CHIPS was made only after a trial in 50% of its dependency and neglect cases.





The Six County Court File Review also suggests what many practitioners know to be true: that children are adjudicated CHIPS more quickly when the CHIPS findings are made as a result of admissions rather than after a trial. On a county-by-county average, it took between 30 to 69 days from the filing of the CHIPS petition to the finding of CHIPS in those five counties where cases are most often settled by admission. However, it took an average of 217 days from filing to CHIPS finding in Hennepin County where half of its dependency and neglect cases are resolved only after a trial.

Court rules or statute do not specify who must admit in a CHIPS proceeding in order for the matter to proceed to adjudication without trial. Some grounds for CHIPS deal only with the parent's acts or failure to act[45] and others, like those involving delinquents under age 10, runaways and truants[46] are defined in terms of the child's act of omission or commission. This suggests that it may be more appropriate to require the admissions of some parties and not others.

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[45] See e.g., Minn. Stat. § 260.015, subd. 2a (3), (4), and (8) (1996).

[46] Id. at § 260.015, subd. 2a (10), (11) and (12).

Focus groups and survey results indicated confusion as to which parties must admit in order for the matter to proceed to adjudication without a trial, especially in truancy and runaway matters. Statewide, judges gave varying answers when asked who must admit the petition in a truant or runaway matter in order to allow the court to adjudicate the child without a trial. About half of judges (47%) replied that admission of "the child alone" was sufficient. About one-third (32%) stated that "the child and either parent/guardian/custodian" must admit. One fifth (20%) answered that "the child and both parents/guardians/ custodians" must admit.

The Task Force recognizes that admissions are an important way to speed the adjudicatory process and provide the child with needed services. Therefore, the Task Force recommends that the Minnesota Rules of Juvenile Procedure be clarified to provide which parties in what circumstances must admit a CHIPS petition in order for the matter to proceed to adjudication without trial. Further, because it serves no purpose and can actually hinder reunification efforts to require admission of both parent and child to a parent's act or omission which forms the basis of the CHIPS petition, the Task Force recommends that a child's admission should only be required in order to adjudicate without trial when the reason for the CHIPS petition is due to the child's act or failure to act.

The Task Force also reviewed the practice of continuance without adjudication of CHIPS. Current law provides that if it is in the best interests of the child or the parents, and the allegations of the petition have been proved by admission or trial but a finding of CHIPS is not yet entered, the court may continue the case without adjudicating the child CHIPS for a period not to exceed 90 days on any one order.[47] This continuance may be extended for one additional successive period not to exceed 90 days.[48] During this continuance, the court may enter a CHIPS disposition.[49]

Many on the Task Force were concerned that the system does a disservice to children any time the court takes an admission that the child is in need of protection or services (or finds after a trial that the child is in need of protection or services) but fails to adjudicate. However, some members of the Task Force made the argument that the strategy of continuing without adjudication often works well for less serious cases. The Task Force agreed on a compromise which limits the use of the continuance without adjudication in a number of ways. First, because the paramount consideration in CHIPS cases is the best interests of the child,[50] the Task Force recommends allowing the court to impose a stay of adjudication only when it is in the best interests of the child, not when it is in the best interests of the child or the child's parent as current law provides.[51] Second, the Task Force recommends allowing the court to order continuance without adjudication only when there has

[47] Id. at § 260.191, subd. 4 (1996).

[48] Id.

[49] Id.

[50] Minn. Stat. § 260.011, subd. 2 (1996).

[51] Id. at § 260.191, subd. 4.

been an admission at the first appearance. This will likely have the effect of limiting the use of the stay of adjudication to cases which are less serious in nature. Finally, the Task Force recommends limiting the time a case may be continued without adjudication to one period not to exceed ninety (90) days.

Recommendations:

1. A child should not be required to admit a CHIPS petition in order for the matter to proceed to adjudication without trial except where the basis for the CHIPS allegation is the child's act of omission or commission. The Minnesota Rules of Juvenile Procedure should be revised to clarify which parties in what circumstances must admit a CHIPS petition in order for the matter to proceed to adjudication without a trial.

2. Minnesota Statutes § 260.191, subd. 4 should be amended to limit the time a child may be continued without adjudication to just one period not to exceed ninety (90) days. The statute should also provide that, at the end of that period, if both the parents and child prove they have complied with the terms of the continuance, the case should be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care. Additionally, the statute should require that, if either the parents or the child have not complied with the terms of the continuance during that period, the court shall adjudicate the child in need of protection or services or neglected and in foster care. The court may only grant a continuance without adjudication at the first appearance and only if it is in the child's best interests; the best interests of the parent(s) are not a factor.

F. "PERMANENCY TIMECLOCK"

1. Federal Law

The Adoption Assistance and Child Welfare Act of 1980[52] ("P.L. 96-272") was enacted to curb unnecessary removal of children from their homes and to remedy the problem of children trapped in "foster care drift." P.L. 96-272 conditions a state's receipt of federal funding for foster care on the state's compliance with federal provisions and requires each state to develop a plan as to how compliance will be achieved.[53] The law emphasizes preventive and reunification services and permanency planning for children by requiring that

- reasonable efforts be made to eliminate the need to remove a child from home and, once the child is removed, that reasonable efforts be made to return the child home;[54]

[52]P.L. 96-272; 42 U.S.C.A. § 670 et seq. (1995).

[53]42 U.S.C.A. § 671 (1995).

[54]Id. at § 671 (a) (15).

- each child [in placement] has a case plan;[55]
- the status of the child be reviewed every 6 months by administrative review or by the court;[56]
- each child remain in placement no more than 18 months after the original placement before a "dispositional hearing to...determine the future status of the child...is held"; and
- a "dispositional hearing to...determine the future status of the child" not less frequently than every 12 months thereafter during the continuation of foster care.[57]

P.L. 96-272 also gives juvenile court judges oversight responsibility of children in placement by requiring the judges to 1) make reasonable efforts determinations and 2) conduct (or appoint and approve an administrative body to conduct) permanent placement determination hearings.

2. "Permanency Time Clock"

In 1993, Minnesota enacted legislation which set forth a more aggressive timeline than that provided by federal law for scheduling a dispositional hearing to determine the future status of the child The Task Force calls this provision the "Permanency Time Clock." Under Minnesota law, if the court places a child in a residential facility[58], the court shall conduct a hearing to determine the permanent status of the child (a permanent placement determination hearing or "PPD hearing") not later than 12 months after the child was placed out of the home of the parent.[59] The court may extend the time period for determination of permanent placement to 18 months after the child was placed in a residential facility if:

(1) there is a substantial probability that the child will be returned home within the next six months;

(2) the agency has not made reasonable, or, in the case of an Indian child, active efforts, to correct the conditions that form the basis of the out-of-home placement; or

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[55]Id. at § 675 (1) (A).

[56]Id. at § 675 (5) (B).

[57]Id. at § 675 (5) (C).

[58]A "residential facility" is any group home, family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision, or any agency thereof, to provide those services or foster care as defined in section 260.015, subd. 7. Minn. Stat. § 257.071, subd. 1 (1996).

[59]Minn. Stat. § 260.191, subd. 3b (a) (1996).

(3) extraordinary circumstances exist precluding a permanent placement determination, in which case the court shall make written findings documenting the extraordinary circumstances and order one subsequent review after six months to determine permanent placement. A court finding that extraordinary circumstances exist precluding a permanent placement determination must be supported by detailed factual findings regarding those circumstances.[60] If a petition to terminate parental rights is filed before the date for the PPD hearing, the PPD hearing does not need to be held.[61]

The table below compares federal and state review and "Permanency Time Clock" provisions.

[60] Id. at § 260.191, subd. 3b (b).

[61] Id. at § 260.191, subd. 3b (a).

Comparison of Federal and State Placement Time Lines For Children in Foster Care		
	P.L. 96-272	MINNESOTA
Reviews	No less frequently than every 6 months (by court or administrative review) *(42 U.S.C. § 675 (5) (C))*	If the court orders placement, then court review... • At least every 6 months; and • Every 6 months thereafter. Administrative review of case plan... • No later than 180 days after initial placement of child in residential facility; and • Every 6 months thereafter. *(Minn. Stat. § 260.191, subd. 3a)*
Dispositional Hearing to Determine Future Status of the Child / Permanent Placement Determination ("PPD")	No later than 18 months after the original placement *(42 U.S.C. § 675 (5) (B))*	If the court orders placement, • No later than 12 months after child placed out of the home of the parents • One time extension of 6 months only if court finds: 1. there is a substantial probability that the child will be returned home within the next six months; 2. the agency has not made reasonable (or for an Indian child, active) efforts to correct the conditions that caused the child to be placed out of the home; OR 3. extraordinary circumstances exist precluding a PPD and the court makes detailed written factual findings regarding those circumstances. *(Minn. Stat. § 260.191, subd. 3b (a)).*
Reviews After PPD	• Not less frequently than every 12 months only for • Continuing foster care *(42 U.S.C. § 675 (5) (C))*	• No less frequently than every 6 months and only if • required by federal law; • an adoption has not yet been finalized; or • there is a disruption of the permanent or long term placement. *(Minn. Stat. § 260.191, subd. 3b (d))*

3. Voluntary Placements

Parents, legal guardians and legal custodians may place their child into foster care voluntarily (without court order and before any CHIPS petition is filed) by signing a voluntary placement agreement.[62] The parents may revoke the agreement at any

[62]A "voluntary placement agreement" is a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement. 42 U.S.C. § 672(f).

time, in the proper manner, and request that the child be returned to their home or the home of a relative.[63] The child must be returned unless there is a judicial determination that such return would not be in the child's best interests.[64] Each child placed voluntarily must have a case plan[65] and the agency must conduct an administrative review of the case plan every six months.[66] Federal law provides that a dispositional hearing to determine the future status of the child must be conducted "no later than eighteen months after the original placement" for "each child in foster care under the supervision of the State."[67] The plain language of the federal law does not appear to distinguish between placement in foster care by court order and voluntary placement in foster care. The same federal funds are used for both court ordered and voluntary placements in foster care.[68]

a. Placement of Children Who Are Not Developmentally Disabled or Emotionally Handicapped

Minnesota Statutes §§ 257.071, subd. 1 and 260.192 (a),(c) and (d) govern reviews of voluntary placements other than reviews of voluntary placements of developmentally disabled or mentally handicapped children.[69] The process is depicted on the next page in the flow chart entitled "Voluntary Placement in Minnesota."

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[63]42 U.S.C. § 672 (g).

[64]Id.

[65]42 U.S.C. § 675 (1) (1995); Minn. Stat. § 257.071, subd. 1 (1996).

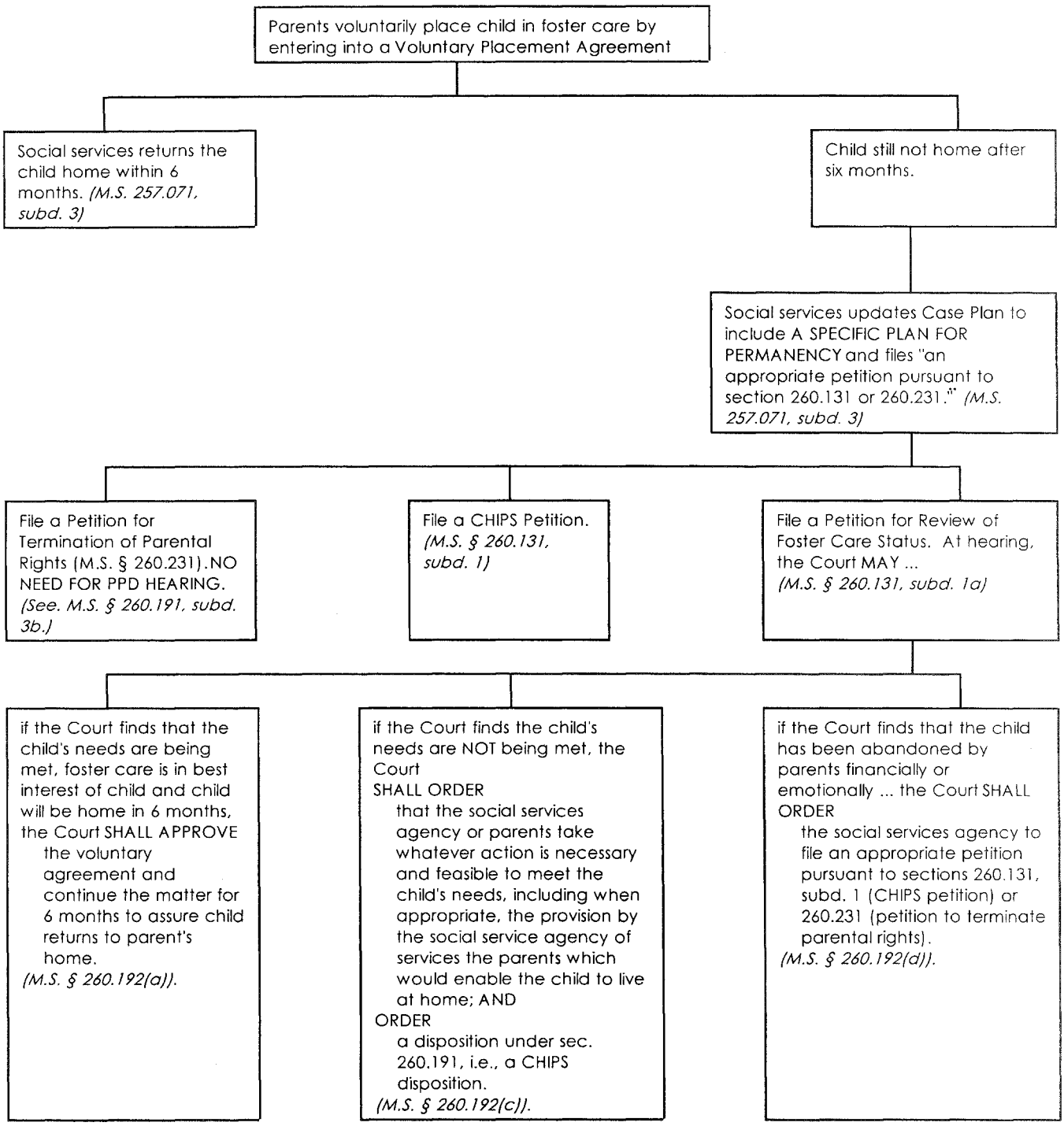
[66]42 U.S.C. § 675 (5) (B) (1995); Minn. Stat. § 257.071, subd. 3 (1996).

[67]42 U.S.C. § 675 (5) (C) (1995).

[68]P.L. 96-272 provided federal matching funding for children voluntarily placed in foster care which, before the passage of the Act was nonexistent. H.R. Conf. Rep. No. 900, 96th Cong., (April 23, 1980) (regarding P.L. 96-272, sec. 102).

[69]Minn. Stat. §§ 257.071, subd. 4 and 260.192 (b), (c), and (d) govern the reviews of voluntary placement of developmentally disabled and mentally handicapped children. "Developmentally disabled child" is defined at 42 U.S.C.A. 6001 (7) (1995). "Emotional handicap" is defined at Minn. Stat. § 252.27, subd. 1a (1996).

Voluntary Placement in Minnesota*



*This does not apply to voluntary placements of developmentally disabled or mentally handicapped children. Review of those placements is governed by Minn. Stat. §§ 257.071, subd. 4 and 260.192 (b), (c), and (d) (1996).

**Although Minn. Stat. § 257.071, subd. 3 and § 260.192 refer to the social services agency filing petitions, in reality (in almost all cases) it is the county attorney that files petitions. *See Minn.R.Juv.P. 53.01, subd. 1* ("All petitions shall be drafted and filed under the supervision of the county attorney unless Minnesota Statute or the court by rule or order permits counsel, other than the county attorney, to draft and file a petition with the court.")

Minnesota law does not specify how or when permanency hearings are to occur in voluntary placements of children who are not developmentally disabled or emotionally handicapped. It does provide that where a child has not returned home after 6 months, the social services agency must update the case plan and include a "specific plan for permanency" before filing "an appropriate petition pursuant to section 260.131 or 260.231."[70] However, the Permanency Statute appears to apply only if the court orders placement in foster care.[71] A child in voluntary foster care placement might not be court-ordered into foster care for at least six months after the initial placement in foster care. In some cases, the court order may be deemed to be a year after the date the child was actually placed in foster care because court "approval" of a voluntary placement pursuant to Minnesota Statutes § 260.192 (a) is not interpreted as a court "order" for the purposes of the Permanency Statute in some counties.[72] The Task Force was concerned that children voluntarily placed in foster care (for reasons other than the child's developmental disability or emotional handicap) may be eluding the Permanency Time Clock because of how present law is being interpreted. To a child, the time spent in voluntary foster care is qualitatively the same as the time spent in court-ordered foster care.

b. Placement of Developmentally Disabled or Emotionally Handicapped Children

Minnesota law sets out a special procedure under Minnesota Statutes §§ 257.071, subd. 4 and 260.192(b), (c) and (d) for review of placements of children in voluntary placements who are developmentally disabled or emotionally handicapped. The social service agency must bring a petition for review of the foster care status of the child within 18 months of the child's placement for a developmentally disabled child and for a child with an emotional handicap, after the child has been in placement for six months.[73] At that review hearing, the court may do one of three things:

> 1) find that the child's needs are not being met, in which case the court shall order the social service agency or the parents to take whatever action is necessary and feasible to meet the child's needs, including, when appropriate, the provision by the social service agency of services to the parents which

[70]Minn. Stat. § 257.071, subd. 3 (1996).

[71]Id. at. § 260.191, subd. 3b (a) ("If the court places a child in a residential facility, as defined in section 257.071, subdivision 1, the court shall conduct a hearing to determine the permanent status of the child not later than 12 months after the child was placed out of the home of the parent.") (emphasis supplied).

[72]Ann Ahlstrom, Assistant Hennepin County Attorney; Kathryn Scott, Assistant Dakota County Attorney; Gwen Werner, Assistant Ramsey County Attorney.

[73]Minn. Stat. § 257.071, subd. 4 (1996).

would enable the child to live at home, and order a CHIPS disposition;[74]

2) find that the child has been abandoned by parents financially or emotionally, or that the developmentally disabled child does not require out-of-home care because of the handicapping condition, in which case the court shall order the social service agency to file an either a CHIPS petition or a TPR petition;[75] or

3) find that the child's needs are being met and that the child's placement in foster care is in the best interests of the child, in which case the court shall approve the voluntary arrangement. The court shall order the social service agency responsible for the placement to bring either a CHIPS petition or a petition for review of foster care status, as appropriate, within two years.[76]

The provisions for review of voluntary placements of children who are developmentally disabled or emotionally handicapped appear to be in compliance with federal law except for the provision regarding reviews following the court's approval of the voluntary arrangement. Under Minnesota law, reviews following the court's approval of the voluntary arrangement must take place every two years.[77] Federal law requires that a review take place every 12 months during the continuation of foster care.[78]

4. Findings and Deliberations

The Task Force learned that judges, county attorneys and social services agencies all reported a variety of practices as to when the permanency time clock is deemed to start under Minnesota law with regard to a single CHIPS case:

	Judges	County Attorneys	Social Services Agencies
The date of the child's **Initial Placement** in foster care whether court-ordered or not	20%	23%	20%
The date of the child's first **Court-Ordered** placement in foster care	24%	20%	16%

[74] Id. at § 260.192 (c).

[75] Id. at § 260.192 (d) (1996).

[76] Id. at § 260.192 (b) (1996).

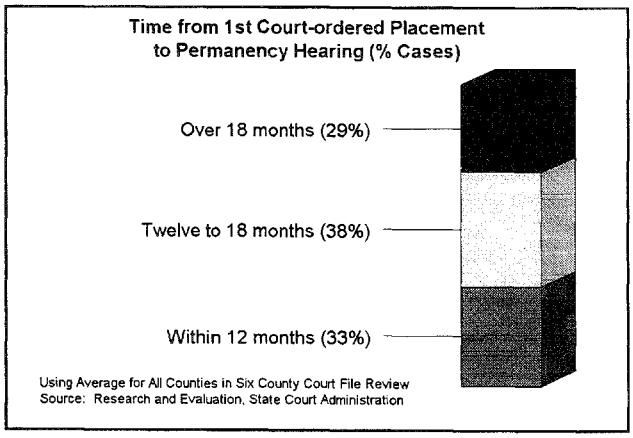
[77] Id. at § 260.192 (b) (1996).

[78] 42 U.S.C.A. 675 (5) (C) (1995).

The date of the child's first **Court-Ordered** placement in foster care **unless** the child is returned home and later court-ordered back into foster care. Then the time for the permanent placement determination hearing starts over from the date of the **most recent court order** placing the child in foster care	17%	35%	24%
The date of the disposition in the CHIPS case	5%	5%	10%
The permanency time clock is **not triggered** so long as the family and the social services agency are continuing to do case plans and attempting reunification.	34%	17%	30%

Judges, county attorneys and social services agencies were relatively evenly split as to whether the time a child spends in voluntary placement is to be counted in determining when a PPD hearing should be held.

Although the Permanency Statute was passed in July, 1993, it was not until late 1995 that the State Judicial Information System (SJIS) had a code to identify when a permanent placement determination hearing had taken place. At the time of the analysis for this report, SJIS identified only 16 cases as having had a permanency hearing. Therefore, the Task Force looked instead at the results generated from the Six County Court File Review which showed that for dependency and neglect cases filed from July 1, 1993 to December 31, 1995 in these six counties, 252 cases had permanency hearings.



For all these cases, the average time from the date of the first court-ordered placement to the date of the permanency hearing was 15.9 months. The average time the child actually spent in foster care before the permanency hearing was slightly less at 15.4 months. Counting from the time of the first court-ordered placement to the date of the permanency hearing, on average, about 71% of the cases fell within the 18 month mark as required by federal law. However, only one third (33%) of the cases had permanency hearings within 12 months of the first court-ordered placement. Thirty-eight percent (38%) of the cases had a permanency hearing some time between the 12 and 18-month mark; a little less than one third (29%) of the cases exceeded 18 months.

The reason for 1) the disparity in when the permanency hearings occurred and 2) the difference between the time actually spent in foster care versus the time from the first court-ordered placement to the permanency hearing, may be due, in part, to the fact

that interpretations vary as to when the Permanency Time Clock starts and stops.

The Task Force was also concerned that permanency hearings had not been held in some cases even though several CHIPS petitions had been filed over the years and the accumulated time under the current petition and all previous petitions met or exceeded the statutory limit. The Task Force believes this is occurring because the Permanency Time Clock is "starting over" at each new petition. The following case study illustrates how children may remain in foster care more than 12 and even 18 months over several petitions without ever having a permanency hearing.

PART IV DELIBERATIONS

CASE STUDY[79]

Anna (age 6) and her little sister Belinda (age 4) first came to the attention of Social Services when their little brother Craig was born a "cocaine baby" in November, 1989. The FIRST CHIPS PETITION was filed November 16, 1989 based on their little brother's being born cocaine positive and because Anna had been truant from First Grade for 20 days. Anna and her sister Belinda were placed in relative foster care with their aunt. Their brother Craig was in foster care until he was reunited with Mom on April 11, 1990. All the children were returned to their mother on November 1, 1990 under the protective supervision of Social Services. To provide this family with a good start, the county paid for November's rent and the security deposit on an apartment as well as some household furnishings. Mom was to complete an after-care program and have "clean" drug tests for the next month. In November, 1990, a baby sister Debra was born.

TIME IN FOSTER CARE UNDER FIRST PETITION		
Anna	Belinda	Craig
11/16/89 to 11/1/90 = 11.5 months	11/16/89 to 11/1/90 = 11.5 months	11/16/89 to 4/11/90 = 5 months

Mom failed to successfully complete the after-care program. Additionally, from July to October 1991, family members began calling Child Protection concerned that the children were not being properly clothed or fed, that Mom was selling her food stamps and the furnishings the county provided for her to buy drugs, that she was living with an alleged drug dealer, that she was living next to a known drug house and that the children were not attending school. Upon investigation, the social services discovered that Anna and Belinda had missed 50% of the past school year. Since January 1991, the family had lived at three different addresses.

Based on these allegations, the SECOND PETITION was filed on October 11, 1991, and the court issued an order for immediate custody of the children. Craig (almost 2) and Baby Debra (almost 1) were taken into custody immediately and ordered into foster care on October 23, 1991. Because Mom hid the two older children Anna (age 8) and Belinda (age 6), they were not taken into custody until December. The court ordered placement in foster care for them on December 11, 1991. On February 21, 1992, the SECOND PETITION was AMENDED to include Baby Ellen (born February , 1992). Mom and Baby Ellen were placed in a treatment center because Mom admitted to shooting cocaine during pregnancy. At the February 25, 1992 review hearing, Debra (1) was placed with Mom and Baby Ellen in the treatment center; all the other children remained in foster care. Mom did well at the treatment center and Social Services returned the children to Mom on July 1, 1992. The court ordered continuing therapy for Anna and Belinda. The county provided Mom with basic furniture needs and rental expenses and covered the expense of the therapy and the treatment center. On July 15, 1993, based on progress reports, the CASE WAS DISMISSED.

TIME IN FOSTER CARE UNDER SECOND PETITION				
Anna	Belinda	Craig	Debra	Ellen
12/11/91 to 7/1/92 = 6.5 months	12/11/91 to 7/1/92 = 6.5 months	10/23/91 to 7/1/92 = 8 months	10/23/91 to 2/25/92 = 4 months	0 months (always with mother)

In September 1994, another baby sister, Fiona, was born.

[79]Based on an actual case. The names of the children and other identifying information has been changed.

PART IV DELIBERATIONS

On January 22, 1996 a THIRD PETITION was filed with regard to all children: Anna (age 12), Belinda (age 10), Craig (age 6), Debra (age 5), Ellen (almost 4) and Fiona (1 year old). The petition was based on reports that a male visitor to the home had sexually abused Debra on December 16, 1995. Mom had agreed to get a restraining order against the male visitor, but failed to follow through. Mom had also agreed to take the Debra and Ellen to medical exams to check for sexual abuse, but didn't. Both Anna and Belinda had missed more than a month of school over the past year. Mom was using crack cocaine again and letting a number of drug dealers work out of her apartment. All the children were taken into custody on a police hold when police went to investigate on December 20, 1995, but five days later, the children were released to Mom under protective supervision of Social Services.

On May 14, 1996, the children were placed in shelter care because Anna ran to the police station and told them that Mom had slammed Anna's head on the floor several times, scratched her neck and stomped on her abdomen. Police and hospital personnel noted contusions, scratches and bruises on Anna. On July 24, 1996, the children were adjudicated CHIPS based on their mother's admission that she 1) failed to protect her children from sexual abuse, 2) was chemically dependent, 3) lacked parenting skills and 4) that the older children were truant. Because Mom substantially complied with the case plan, the children were returned to their mother's care under protective supervision of Social Services on July 31, 1996.

On August 19, 1996, a police drug raid at Mom's home turned up narcotics, drug dealing paraphernalia and at least three guns and ammunition. The home was also filthy. The children were removed on a police hold and ordered into foster care on September 10, 1996.

On December 16, 1996, Anna was returned to her mother's care under protective supervision of Social Services. The other children remain in foster care. No permanency hearing has been scheduled.

TIME IN FOSTER CARE UNDER THIRD PETITION					
Anna	Belinda	Craig	Debra	Ellen	Fiona
5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to 12/16/96 = 3 months = 5.5 months	5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to present = 4 months so far = 6.5+ months	5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to present = 4 months so far = 6.5+ months	5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to present = 4 months so far = 6.5+ months	5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to present = 4 months so far = 6.5+ months	5/14/96 to 7/31/96 = 2.5 months + 9/10/96 to present = 4 months so far = 6.5+ months

Anna (age 13), Belinda (age 11), and Craig (age 7) have each been in foster care for over 18 months cumulatively over all three petitions.

TOTAL TIME IN FOSTER CARE												
Anna		Belinda		Craig		Debra		Ellen		Fiona	
1st Pet.	11.5 mos.	1st Pet.	11.5 mos.	1st Pet.	5 mos.	1st Pet.	—	1st Pet.	—	1st Pet.	—
2nd Pet.	6.5 mos.	2nd Pet.	6.5 mos.	2nd Pet.	8 mos.	2nd Pet.	4 mos.	2nd Pet.	0 mos.	2nd Pet.	—
3rd Pet.	5.5 mos.	3rd Pet.	6.5+ mos.	3rd Pet.	6.5+ mos.	3rd Pet.	6.5+ mos.	3rd Pet.	6.5+ mos.	3rd Pet.	6.5+ mos.
Total:	23.5 mos.	Total:	24.5+ mos.	Total:	19.5+ mos.	Total:	10.5+ mos.	Total:	6.5+ mos.	Total:	6.5+ mos.

Even over the past two petitions (filed within 5 years of one another) Anna and Belinda have each been in placement for over 12 months, Craig has been in placement over 14 months, and Debra (age 6) has been in placement over 10 months.

5. Proposed Solutions

Federal law requires permanency hearings within 18 months of placement in foster care; it does not specify that the foster care be court-ordered. To bring voluntary placements into compliance with federal law, the Task Force recommends 1) limiting the amount of time a child can be in voluntary placement without starting the Permanency Time Clock[80]; and 2) starting the Permanency Time Clock at the earlier of a) the first court-ordered placement of the child in a residential facility; or b) the first court-approved placement of the child (where the child has been in voluntary placement for reasons other than developmental disability or emotional handicap). This latter recommendation will also help to standardize practice across the state as to when the Permanency Time Clock is started. For children who are in voluntary placement due to their developmental disability or emotional stability, the Task Force recommends that reviews following the initial review of their foster care status occur every year instead of every two years to be in compliance with federal law.

The Task Force also wanted to make sure that the Permanency Time Clock did not start over every time a child is returned home and later placed back in foster care. The Task Force recommends that within one CHIPS petition, the time a child is placed in foster care should be added together, even if the child's time in foster care has been separated by placements back in the home. With regard to previous petitions, the Task Force felt that time in placement under previous petitions should be included to some extent in determining when to schedule a permanent placement determination hearing under the present petition. The Task Force recommends that the time spent in foster care under the current petition be cumulated with the time spent in foster care under all previous petitions filed within five years of the present petition to determine the date for a permanency hearing. The Task Force does not

[80]The Task Force considered abolishing voluntary foster care placements altogether (except those for developmentally disabled or emotionally handicapped children). However, after consideration that some short term voluntary foster care placements are useful in respite and less serious situations, the Task Force adopted a compromise position.

intend this recommendation to apply to situations involving the voluntary placement of a child due to the child's developmental disability or emotional handicap.

Recommendations:

1. The Legislature should amend Minnesota Statute § 260.191, subd. 3b to incorporate and clarify the following concepts with regard to the Permanency Time Clock:

   a. When the Permanency Time Clock Starts:

      The permanency time clock is started at the earlier of 1) the first court-ordered placement of the child in a residential facility or 2) the first court-approved placement of the child (where the child has been in voluntary placement for reasons other than developmental disability or emotional handicap).

   b. Within One CHIPS Petition:

      During one CHIPS petition, the permanency time clock should not start over again when a child is placed in foster care after being returned home. The total time a child spends in foster care during one petition should be added together to determine when a permanent placement hearing must be held pursuant to Minnesota Statutes § 260.191, subd. 3b.

   c. For Subsequent CHIPS Petitions:

      When a child is placed out of the home in connection with a CHIPS petition, and the child has been placed out of the home in connection with a previous CHIPS petition or CHIPS petitions filed within the past five years, the time the child has been placed out of the home in connection with the existing CHIPS petition and all previous CHIPS petitions filed within five years of the present petition should be added together to determine the time for a permanency placement determination hearing pursuant to Minnesota Statutes § 260.191, subd. 3b. When the court determines it is in the best interests of the child, the court may extend the total time the child may continue out of the home under the current CHIPS petition up to an additional 6 months.

      It is presumed that reasonable efforts under the direction of the court have failed if the child has been placed out of the home by court order for a cumulative period of more than 12 months within a five year period and the court has approved the reasonable efforts of the responsible social service agency in proceedings under chapter 260.

Minnesota Statutes § 260.221, subd. 1(b)(5) should be revised to reflect this presumption.

This recommendation does not apply to voluntary placements of developmentally disabled and emotionally handicapped children.

2. The Legislature should amend statutory provisions dealing with voluntary placements of children who are not developmentally disabled or emotionally handicapped to provide as follows:

Voluntary placements of children who are not developmentally disabled or emotionally handicapped are limited to ninety (90) days. Prior to the end of the ninety (90) days, the court may 1) return the child home or 2) approve the voluntary placement and extend the placement for another ninety (90) days. The parent, legal guardian or legal custodian and child have a right to counsel (at public expense, if necessary) at the hearing to approve and extend a voluntary placement. The court's approval of the voluntary placement triggers the permanency time clock. During this second ninety (90) day period, the parent, legal guardian or legal custodian still have the right to remove the child from voluntary placement at any time. At the end of the second ninety (90) day period, the child must be returned home unless a CHIPS petition has been filed.

3. The Legislature should revise Minnesota Statutes § 260.192 (b) to require that, following the court's approval of the voluntary placement of a developmentally disabled or emotionally handicapped child at the hearing to review foster care status, subsequent reviews shall occur every twelve (12) months during the continuation of foster care.

PART IV DELIBERATIONS

G. PERMANENT PLACEMENT DISPOSITIONS

The following table compares the permanent placement dispositions permissible under federal[81] and state law.[82]

COMPARISON OF FEDERAL AND STATE PERMANENT PLACEMENT DISPOSITIONS	
P.L. 96-272	MINNESOTA
Return the child home	Return the child home
Continue in Foster Care for a Specified Period	
Place for Adoption	Termination of parental rights and adoption
Continue in Foster Care on a Permanent or Long-Term Basis (because of the child's special needs)	Long term foster care <u>but only if</u> the court finds • the child is 12 or more and reasonable efforts by the social service agency have failed to locate an adoptive family; or • the child is a sibling of such a child and the siblings have a significant positive relationship and are in the same long-term foster care home.
Continue in Out-of-State Placement (if that continues to be appropriate and is in the best interests of the child)	
In the case of a child 16 or over, provide the services needed to transition from foster care to independent living.	*(Although this is not listed as a dispositional option for permanent placement under Minnesota Statutes, it <u>is</u> a dispositional option for a child found to be in need of protection or services.)*
	Transfer permanent legal and physical custody to a relative "pursuant to the standards and procedures applicable under chapter 257 or 518."

[81] <u>See</u> 42 U.S.C.A. § 675 (5) (C) (1995)

[82] <u>See</u> Minn. Stat. § 260.191, subd. 3b (a) (1996).

With regard to issue of permanent placement dispositions, the Task Force discussed three matters: 1) the process of transfer of permanent legal and physical custody to relatives; 2) long term foster care; and 3) "foster care for a specified period of time."

1. Transfer of Permanent Legal and Physical Custody to Relatives

As a permanent placement, the court may transfer permanent legal and physical custody of the child to a relative.[83] Transfer of permanent legal and physical custody and adoption are preferred over long-term foster care as permanency options for children who cannot return home.[84] The transfer of permanent legal and physical custody is to be accomplished "pursuant to the standards and procedures applicable under chapter 257 or 518."[85] The social service agency may petition on behalf of the proposed custodian.[86]

Transfers of permanent legal and physical custody to a relative are used as a permanency option in many cases. The Six County Court File Review shows that overall for the six counties, 29% of the permanent placement dispositions were for transfer of permanent legal and physical custody to relatives.

Statewide, judges, county attorneys and social services agencies were nearly equally split as to whether there has been an increase in the number of transfers of permanent legal and physical custody to relatives over the past five years. Fifty-one percent (51%) of judges, 47% of county attorneys, and 43% of social services agencies believe there has been an increase. However, there are some regional differences. The vast majority of Metro (100%) and Suburban (62%) judges perceived an increase in transfers to relatives over the past five years while Greater Minnesota (67%) judges generally believe there has not been an increase.

The Task Force found that confusion exists as to what procedure should be used to accomplish the transfer of permanent legal and physical custody to relatives. Over half of judges (57%) reported that transfers of permanent legal and physical custody to a relative are treated like juvenile court matters, while more than a third (35%) said the transfers are treated like family court matters. Eight percent (8%) of judges responded that the transfer was treated like a probate court matter. County attorneys were evenly split as to whether the transfer was treated as a juvenile court matter (33%), a family court matter (35%) or both (29%). Overwhelmingly, judges and county attorneys (81% and 89% respectively) believe there is a need for new statutes

[83] Id. at § 260.191, subd. 3b (a) (1).

[84] Id. at § 260.191, subd. 3b (a) (3).

[85] Id.

[86] Minn. Stat. § 260.191, subd. 3b (a) (1) (1996).

or rules that more clearly describe a procedure for transferring permanent legal custody to a relative.

In light of these findings, the Task Force recommends that the Minnesota Supreme Court's Juvenile Rules Committee revise the juvenile protection rules to provide a clear procedure for the transfer of permanent legal and physical custody to a relative. Because CHIPS grounds constitute the reason for the transfer, the Task Force proposes that a transfer of permanent legal and physical custody to a relative occur as a juvenile court matter. The guardian ad litem and counsel for the parties should continue on the case until the transfer proceedings are complete. In recognition of the juvenile court's heavy workload, the Task Force recommends that any modifications of the order transferring custody occur in family court.

Finally, the Task Force recommends that when the government is involved in the recommendation that a transfer of legal and physical custody to a relative be made, that relative should be made a party to the action and should be entitled to notice of all hearings and legal counsel at public expense. Under current law, "the social service agency may petition on behalf of the proposed custodian."[87] The majority of judges (85%), county attorneys (60%) and social services agencies (60%) reported that the county attorney or the social services agency with the assistance of the county attorney brings the petition on behalf of the relative. The Task Force believes that an inherent conflict of interest exists when the county attorney represents both the relative and the social services agency because the county benefits financially from a transfer of permanent legal and physical custody to a relative in that the county will no longer have to pay for foster care for the child. Additionally, where it is to the county attorney's benefit to close another case, an inherent conflict of interest exists between the relative and the county attorney. The majority of judges (77%) and all of the county attorneys reported that the county attorney "rarely" or "never" continues to represent the relative when a conflict arises between the relative and the social services agency. Although most judges (65%) and county attorneys (61%) do not think separate counsel should be provided to relatives at public expense for the transfer proceedings, the Task Force believes that where the government is proposing the transfer be made, the relative should be appointed counsel at public expense to ensure that the relative right's are adequately protected. The Task Force proposes limiting the relative's right to counsel at public expense to the initial transfer proceeding; it does not recommend that counsel be appointed at public expense for relatives seeking subsequent modification of the order transferring permanent legal and physical custody.

2. Long Term Foster Care

Under current law, the court may order long term foster care as a permanent placement only if court finds that

[87] Id. at § 260.191, subd. 3b (a) (1).

1) neither an award of legal and physical custody to a relative, nor termination of parental rights and adoption is in the child's best interests; and
2) the child has reached age 12 and reasonable efforts by the responsible social service agency have failed to locate an adoptive family for the child; or the child is a sibling of such a child and the siblings have a significant positive relationship and are ordered into the same long-term foster care home.[88]

The Task Force decided against making long term foster care more accessible to all children because it felt that long term foster care would be overused as a permanency option and that adoption and transfer of permanent legal and physical custody to a relative offer better long term solutions for a child.

3. Foster Care for a Specified Period of Time

Even though the Task Force was unwilling to recommend that long term foster care be made available as a permanency option to more children, the Task Force felt that the current permanent placement disposition options are often inadequate for truants, runaways and delinquents under 10. The Task Force recommends that a permanent placement disposition of foster care for a specified period of time (as permitted under federal law) be available to this class of children to accommodate their special situations. The disposition should be available only when 1) either truancy, running away or committing a delinquent act under age 10 was the sole basis for the CHIPS adjudication; and 2) such a permanent placement serves the child's best interests. The Task Force also recommends that the court review a permanent placement of foster care for a specified period of time every six months following the P.P.D. hearing.

Recommendations:

1. Proceedings for Transfer of Permanent Legal and Physical Custody to Relatives

   a. Jurisdiction:

      The Legislature should revise Minnesota Statutes § 260.191, subd. 3b (1) to provide that when a transfer of permanent legal and physical custody to a relative is recommended as a permanent placement, that transfer will occur as a juvenile court matter. Subsequent modifications of permanent legal and physical custody shall take place in family court. The Juvenile Rules Committee should revise the juvenile protection rules to provide for a procedure for the transfer of permanent legal and

[88] Id. at § 260.191, subd. 3b (a) (3) (1996).

physical custody to a relative when that is the permanent placement plan.

b. Relative's Party Status; Right to Counsel at Public Expense:

Minnesota Statutes § 260.155, subd. 1a and the Rules of Juvenile Procedure should be amended to provide that when the county makes a permanent placement recommendation that permanent legal and physical custody be transferred to a relative, that relative shall be considered a party, shall have a right to notice of every hearing thereafter (including notice of the permanent placement determination hearing), and shall have the right to counsel appointed at public expense. Once the order has been entered, the relative does not have a right to counsel appointed at public expense in actions to modify the order.

c. The Rules of Juvenile Procedure should be revised to provide that counsel for the child, counsel for the parent(s), the guardian ad litem and counsel for the guardian ad litem should continue to represent their clients through the transfer of permanent legal and physical custody to a relative when that is the permanent placement.

2. The permanent placement disposition options for runaways, truants and delinquents under age 10 should be expanded to include "foster care for a specified period of time" where 1) either truancy, running away or committing a delinquent act under age 10 was the sole basis for the CHIPS adjudication and 2) the court finds that "foster care for a specified period of time" is in the best interests of the child. The court shall review a permanent placement of "foster care for a specified period of time" every six (6) months.

H. "REASONABLE EFFORTS" AND TERMINATION OF PARENTAL RIGHTS ("TPR")

P.L. 96-272 requires that social services must make "reasonable efforts" at two points: 1) prior to a child's placement in foster care to eliminate the need to remove a child from home[89]; and 2) after the child has been removed from the home, to facilitate the child's return home. P.L. 96-272 does not define "reasonable efforts." Under Minnesota statute "reasonable efforts" are defined as

> the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child from the child's family; or upon removal, services to eliminate the need for removal and

[89] 42 U.S.C.A. § 671 (a) (15) (1995).

reunite the family. Services may include those listed under section 256F.07, subdivision 3[90], and other appropriate services available in the community.[91]

The social service agency has the burden of demonstrating that it has made reasonable efforts.[92] The juvenile court must make findings and conclusions as to reasonable efforts with regard to prehearing placement/detention decisions, CHIPS proceedings, and termination of parental rights proceedings.[93] When determining whether reasonable efforts have been made, the court must consider whether services to the child and family were:

(1) relevant to the safety and protection of the child;
(2) adequate to meet the needs of the child and family;
(3) culturally appropriate;
(4) available and accessible;
(5) consistent and timely; and
(6) realistic under the circumstances.[94]

The majority of judges (76%), county attorneys (83%) and social workers (66%) surveyed believe there are some circumstances where "reasonable efforts" by the social services agency should be bypassed because it is very unlikely that reunification of the parent and child will occur no matter what efforts social services makes. More social workers (34%) than judges (24%) and county attorneys (17%) believe that no circumstances exist which would merit bypass of the provision of reasonable efforts by the social services agency. Many focus group participants believed that "reasonable efforts" go on too long in some cases and that there is no clear guidance as to how much effort by the social services agency is enough.

Recent case law and federal amendments to the Child Abuse Prevention and Treatment Act ("C.A.P.T.A.")[95] have attempted to clarify the issue of "reasonable

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[90]Minn. Stat. § 256F.07, subd. 3 (1996) provides that "placement prevention and family reunification services include family-based services as defined in section 256F.03, subdivision 5. "Family-based services" means one or more of the following services which are provided to families primarily in their own home for a limited time: crisis services, counseling services, life management skills services, case coordination services, mental health services, early intervention services, placement prevention and family reunification services, and family preservation core services. Minn. Stat. § 256F.03, subd. 5 (1996).

[91]Minn. Stat. § 260.012 (b) (1996).

[92]Id.

[93]Minn. Stat. § 260.012 (c) (1996).

[94]Id. at § 260.015 (c) (1996).

[95]42 U.S.C. § 5101, et. seq. (1974). The Child Abuse Prevention and Treatment Act Amendments of 1996 are found at 110 Stat. 3063 (enacted October 3, 1996).

efforts" by emphasizing that there are some situations in which it would be unreasonable for social services to make any efforts toward reunification. In *In re the Welfare of S.Z.*[96], the Minnesota Supreme Court recently held that in every T.P.R. case, the court must make the determination as to whether the efforts made by social services were reasonable even if that determination is that provision of services for the purpose of rehabilitation is not realistic under the circumstances.[97] The court emphasized that, in some cases, any provision of services or further provision of services would be futile and therefore unreasonable.[98] In October, 1996, Congress amended C.A.P.T.A. to set out circumstances under which reasonable efforts toward reunification of a surviving child with a parent are not required. C.A.P.T.A. now provides that reunification of a surviving child with a parent is not required where that parent is convicted of murder or voluntary manslaughter under federal law or similar state statute.[99] Additionally, where the parent is convicted of aiding, abetting, attempting, conspiring or soliciting such murder or voluntary manslaughter of another child of such parent, reunification with the surviving child is not required.[100] Finally, C.A.P.T.A. mandates that reunification of the surviving child with the parent is not required where that parent has been convicted of a felony assault (under federal or similar state statute) that results in the serious bodily injury to the surviving child or another child of such parent. [101]

As a way of clarifying the concept of "reasonable efforts," the Task Force recommends incorporating the holding of *In re the Welfare of S.Z.* into the "Title, Intent, and Construction" section of Chapter 260 (Minnesota Statutes § 260.011) as it regards the consideration of reasonable efforts. The Task Force also recommends incorporating the holding of *In re the Welfare of S.Z.* as well as the requirements of C.A.P.T.A. into the definition of "reasonable efforts" and the definition of "egregious harm"[102] as it relates to grounds for termination of parental rights.

Finally, the Task Force discussed revising the presumption regarding "palpable

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[96]In re the Welfare of S.Z., 547 N.W.2d 886 (Minn. 1996).

[97]Id. at 892.

[98]Id.

[99]110 Stat. 3063, sec. 107 (b) (2) (xii) (I) and (II).

[100]Id. at sec. 107 (b) (2) (xii) (III).

[101]Id. at sec. 107 (b) (2) (xii) (IV).

[102]"Egregious harm" is defined at Minn. Stat. § 260.015, subd. 29 (1996). Minn. Stat. § 260.221, subd. 1 (b) (6) (1996) provides that grounds for termination of parental rights exist when a child "has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care."

unfitness" as a ground for termination of parental rights. Under current law, a parent is presumed "palpably unfit" for parenting if

> (i) the child was adjudicated in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); and
>
> (ii) within the three-year period immediately prior to that adjudication, the parent's parental rights to one or more other children were involuntarily terminated under clause (1), (2), (4), or (7), or under clause (5) if the child was initially determined to be in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8).[103]

The Task Force recommends deleting the three-year limit in this presumption because it is an arbitrary and artificial limitation on relevant information that should be used in creating a presumption of "palpable unfitness."

Recommendations:

1. The Legislature should amend Minnesota Statutes § 260.012(b), § 260.012(c) and Minnesota Statutes § 260.221, subd. 5 (regarding the definition of reasonable efforts, factors to consider when determining whether reasonable efforts have been made and required findings as to reasonable efforts) to comply with the holding of In re the Welfare of S.Z., 547 N.W.2d 886 (Minn. 1996) which provides that, in some cases, any provision of services or further provision of services would be futile and therefore unreasonable. The Legislature should also amend Minnesota Statutes § 260.012 (b) to comply with the Child Abuse Prevention and Treatment Act Amendments of 1996 by providing that reunification of a surviving child with a parent is not required when that parent has been found by a court of competent jurisdiction

   (1) to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

   (2) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

   (3) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

   (4) to have committed a felony assault (under federal or similar state

[103]Minn. Stat. § 260.221, subd. 1 (a) (4) (i) and (ii) (1996).

law) that results in the serious bodily injury to the surviving child or another child of such parent.

2. Minnesota Statutes § 260.011, subd. 2 (b) should be amended to provide that, in addition to considering the best interest of the child in termination of parental rights proceedings, the court should also consider what reasonable efforts have been made by the social service agency to reunite the child with the child's parents in a placement that is safe and permanent, bearing in mind that it may not be appropriate in all cases to provide reasonable efforts towards reunification.

3. The Legislature should amend Minnesota Statutes §§ 260.221, subd. 1(b) (6) and 260.015, subd. 29 to expand the definition of "egregious harm" as a ground for termination of parental rights so that it includes the crimes and circumstances listed below when the parent has been found by a court of competent jurisdiction

(1) to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(2) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(3) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

(4) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

4. The Legislature should modify the presumption regarding "palpable unfitness" in Minnesota Statutes § 260.221, subd. 1(b)(4) by deleting the requirement that involuntary terminations of parental rights on certain grounds may only factor into the presumption if they happened within three years immediately prior to the CHIPS adjudication of the child in question pursuant to Minnesota Statutes § 260.015, subd. 2a, clause (1), (2), (3), (5), or (8).

I. ADOPTION OF CHILDREN UNDER STATE GUARDIANSHIP

After parental rights are terminated, a child is committed to the guardianship of the commissioner of human services if there is no licensed child-placing agency involved and no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.[104] The local social services agency acting as an agent of the commissioner then becomes responsible to ensure that these children find permanent homes, preferably through adoption.[105] As of March 1, 1996, there were 1,445 children under the guardianship of the commissioner.[106] Of those 1,445, only 494 children (or 34%) had been placed for adoption.[107] Sixty-eight percent (68%) of the children under state guardianship were under age 12.[108] The same percentage had siblings in need of adoptive placement.[109] More than half (51%) of the children under state guardianship are children of color.[110] In 1995, two hundred thirty (230) adoptions were finalized for children under state guardianship.[111]

> *"All us kids want is a family. We've been taken out of our family. We just want to be placed back in a family that will treat us as one of theirs."*
>
> *- Foster child*
> *March 12, 1996 Focus Group*

[104] Id. at § 260.242, subd. 1.

[105] Minnesota Department of Human Services, Community Services Division, Family and Children's Services Division, *Review of Minnesota Data on Foster Care and Adoption: A Presentation to the Supreme Court Task Force*, 12 (April 25, 1996) (on file with Minnesota Supreme Court).

[106] Id. The Department of Human Services has adoption statistics for all adoptions since 1993. Id. at 13.

[107] Being "placed for adoption" means that the child has been placed in a prospective adoptive home and an adoptive placement agreement has been signed. When a child is "placed for adoption," the adoption is not finalized and the adoption decree has not been entered. Note that a child may be placed as a foster child in a prospective adoptive home well before the adoptive placement agreement has been signed.

[108] Id. at 13.

[109] Id. at 13.

[110] Forty percent (40%) are African American, 10% are American Indian, 1% are Asian / Pacific Islander, and the rest (49%) are Caucasian. In addition, some of the children from these groups are also listed as Hispanic: about 5% of those listed as Caucasian; about 2% of those listed as African American and about 5% of those listed as American Indian. These statistics are based on data available as of March 1, 1996. Id. at 14.

[111] Id. The number of adoption decrees per year involving children under state guardianship has remained substantially the same since 1993. In 1993, there were 237. In 1994, there were 232. Id.

Younger children under state guardianship are placed for adoption sooner than older children. Sixty-three (63%) of those children 0 to 6 years old at the time of termination of parental rights ("TPR")[112] who were placed for adoption within 1 year of TPR.[113] Within 2 years of TPR, ninety-five (95%) of children ages 0 to 6 at the time of TPR were placed for adoption.[114]

However, children under state guardianship who were over 6 years of age at the time of TPR generally waited longer for an adoptive placement. Only 34% of children ages 6 to 12 at the time of TPR were placed within 1 year of TPR; 65% were placed within 2 years; and 88% of the children in this age group were placed within three years.[115] Most children (around 60%) who were over 12 at the time of TPR were usually placed for adoption within 2 years of TPR.[116]

Time from TPR to Adoptive Placement (% kids)			
Age of Child (at TPR)	Placement within One Year of TPR	Placement within Two Years of TPR	Placement within Three Years of TPR
0 to 6	63%	95%	100%
6 to 12	34%	65%	88%
12 to 14	26%	63%	79%
14 to 18	35%	60%	78%

Even though a child may be placed in a prospective adoptive home, the adoption is not finalized until the entry of an adoption decree. For 70% of children under 6 at the time of the adoptive placement[117], the adoption decree was entered within 1 year of adoptive placement; within 2 years, adoption decrees were entered for all the children in this age category.[118] Most adoptions of state wards over age 6 at the time of adoptive placement were finalized between one and two years after placement: 49% of the children 6 to 12; 66% of the children 12 to 14; and 59% of the children 14

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[112]Facsimile transmission from Ruth Weidell, Minnesota Dept. of Human Services to Tonja Rolfson dated January 7, 1997.

[113]Letter from Robert B. Denardo, Family and Children's Services Division, Minnesota Dept. of Human Services to Tonja Rolfson, 4 (May 20, 1996) (on file with Minnesota Supreme Court).

[114]Id.

[115]Id.

[116]Id. at 5.

[117]Facsimile transmission from Ruth Weidell, Minnesota Dept. of Human Services to Tonja Rolfson dated January 7, 1997.

[118]Letter from Robert B. DeNardo, supra note 113 at 6.

to 18.[119]

Time from Adoptive Placement to Finalized Adoption (% kids)			
Age of Child (at Adoptive Placement)	Finalization within One Year of Placement	Finalization Within Two Years of Placement	Finalization Within Three Years of Placement
0 to 6	70%	100%	--
6 to 12	27%	76%	96%
12 to 14	18%	84%	92%
14 to 18	18%	77%	92%

The Task Force identified six areas needing improvement in order to encourage adoption of children under state guardianship and discourage delays in adoptive placements and the finalization of adoptions: 1) recruitment; 2) relative searches; 3) adoption studies; 4) adoption subsidies; 5) continuing jurisdiction following TPR; and 6) appellate review of matters arising during the pendency of an adoption. The Task Force also addressed the issue of placement of a child following disruption of a permanent placement or pre-adoptive placement.

Based on the large number of children under state guardianship who have not yet been placed for adoption, the Task Force recommends increased recruitment of adoptive parents as well as foster parents.

One of the delays identified by focus groups in getting children into adoptive placements is that current law is being interpreted by agencies as requiring them to do a whole new relative search before the adoptive placement even though a relative search was already done with regard to the child's placement in child in foster care. Seventy-two percent (72%) of social service agencies reported that relative searches are done twice--once for the child's placement in the CHIPS proceeding and once before the adoption. The Task Force recommends that a thorough relative search be done within the first 6 months of the child's placement out of the home in the CHIPS proceeding and that the relatives found be given notice that they must keep the social services agency apprised of their current address in order to receive additional notice regarding adoption or other permanent placement, if that occurs. Additionally, they must be given notice that their failure to express an interest in being a placement resource early on in the proceedings may affect their success at being a permanent placement for the child should a permanent placement be necessary. Current law requires the social services agency to continue to search for relatives for six months after placement in foster care even if the child has been placed in foster care with a relative who is interested in being a permanent

[119] Id. at 6-7.

placement option.[120] The Task Force recommends that current law be amended to provide that the relative search may stop if the child is placed with a relative who is interested in permanent placement.

An adoption study must be completed before the child may be placed for adoption with pre-adoptive parents.[121] Although foster care licensing standards are more stringent than the standards for a home to be approved for adoption,[122] an adoption study is still conducted in its entirety when a foster parent is adopting a child in the foster parent's care. The Task Force recommends that when a licensed foster care provider seeks to adopt a child in that person's care, the requirements of the adoption study which have already been completed as part of the foster care licensing process should be waived for the purposes of the adoption study.

Another delay identified in the focus groups was the length of time it takes to approve adoption subsidies. Sometimes, the finalization of an adoption is delayed because the adoption subsidy has not yet been approved. The Task Force recommends specific time lines for completion of the adoption subsidy paper work by the county and by the Minnesota Department of Human Services. It also recommends training for the county social service agency employees on how to complete adoption subsidy applications.

Minnesota statutory provisions conflict regarding the review of a child in foster care following termination of parental rights. With regard to reviews following permanent placement, the Permanency Statute (Minnesota Statutes § 260.191, subd. 3b) provides that

> once a permanent placement determination has been made and permanent placement has been established, further reviews are only necessary if otherwise required by federal law, an adoption has not yet been finalized, or there is a disruption of the permanent or long-term placement. If required, reviews must take place no less frequently than every six months.[123]

The Permanency Statute complies with federal law which requires that, following the initial dispositional hearing to determine the future status of the child, reviews must occur at least every 12 months while the child remains in foster care.[124]

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[120]Minn. Stat. § 257.072, subd. 1 (1996) and Minn. Rule 9560.0535, subpart 3 (Supp. 1996).

[121]Minn. Stat. § 259.41 (1996).

[122]Compare Minn. Stat. § 259.41 (1996) (requirements of adoption study) and Minn. Stat. § 245A.04, subd. 3 (1996) (study of applicant for foster care licensure).

[123]Minn. Stat. § 260.191, subd. 3b (d) (1996) (Emphasis supplied).

[124]42 U.S.C.A. § 675 (5) (C) (1995.

Minnesota Statute § 260.242, subd. 2 (d), however, conflicts with the Permanency Statute by requiring reviews for a child remaining in foster care after TPR only once every two years upon motion of the court or the guardian:

> If the ward is in foster care, the court shall, upon its own motion or that of the guardian, conduct a dispositional hearing within 18 months of the foster care placement and once every two years thereafter to determine the future status of the ward including, but not limited to, whether the child should be continued in foster care for a specified period, should be placed for adoption, or should, because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. When the court has determined that the special needs of the ward are met through a permanent or long-term foster care placement, no subsequent dispositional hearings are required.[125]

To ensure that progress is being made toward adoption and that state statutes comply with federal law and are internally consistent, the Task Force recommends that where adoption is the plan, there be continuing court jurisdiction following TPR with in-court reviews every three months until the adoption is finalized.

The Task Force also recommends that the guardian ad litem and the child's attorney continue on the case until the entry of the adoption decree. Where the permanent placement is long term foster care, the guardian ad litem and the child's attorney should be dismissed from the case on the effective date of the permanent placement order, but the child, if the child is of sufficient age, and the foster parents should be given information as to how to contact the guardian ad litem program or a guardian ad litem. If the matter comes back to court, a guardian ad litem should be assigned to the case again. The Task Force recommends that the Permanency Statute and Minnesota Statutes § 260.242, subd. 2 (d) be amended to effectuate this recommendation.

The Task Force was concerned that appeals pertaining to a contested adoptive petition, adoptive placement or final decree of adoption should not delay the adoption process any longer than necessary. The Task Force recommends a clarified and accelerated track for appeal of these matters and suggests a time limit for appellate decision-making.

Finally, the Task Force was concerned about the trauma caused to children by the disruption of pre-adoptive placements or permanent placements. To minimize the trauma to the child, the Task Force recommends that statutes be amended to provide that when a permanent placement or pre-adoptive placement disrupts within a year, the child should be placed back in the placement that immediately preceded the pre-adoptive placement or permanent placement. If the child is not placed back in the

[125]Minn. Stat. § 260.242, subd. 2 (d) (1996).

previous placement, the Task Force recommends that statute require the court to hold a hearing within 10 days of the time the child was taken into custody to determine where the child should be placed and that the child be appointed a guardian ad litem for the hearing.

Recommendations:

1. The state should explore new strategies and incentives to facilitate recruitment of more adoptive and foster families.

2. Relative Searches Prior to Adoption and Time Frames for Completing Adoption Subsidy Agreement.

   a. A thorough relative search should be done within the first six (6) months of the time a child is first placed out of the home. The relatives identified should be given notice that a permanent placement could occur in the future and that it is their duty to keep the county social service agency informed of their current address so that they will receive notice of the permanent placement hearing. A relative who fails to keep the county social service agency apprised of his or her current address is not entitled to additional notice of the permanent placement. The notice should contain an advisory that if the relative chooses not to be a placement resource at the beginning of the case, this may affect the relative's rights to have the child placed with that relative permanently later on.

   b. Minnesota Statutes § 259.33 provides that, once a termination order is final, notice must be sent to certain interested persons inquiring about their interest in providing the child a permanent home. At the point that the county or the juvenile court determines that it is necessary to prepare for the permanent placement determination hearing or in anticipation of filing a termination of parental rights petition, the county should send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. (Notice need not be sent to a parent whose rights to the child have been terminated.) The notice should state that a permanent home is sought for the child and that the individuals receiving the notice should indicate to the agency their interest in providing a permanent home. The notice should contain an advisory that if the relative chooses not to be a placement resource at the beginning of the case, this may affect the relative's rights to have the child placed with that relative permanently later on.

c. Those entitled to notice shall have 30 days from the mailing of the notice to respond.

d. Minnesota Statutes § 257.072, subd. 1 and Minnesota Rule 9560.0535, subpart 3 currently require social services to do a relative search for six months even though the child has been placed in foster care with a relative who is interested in being a permanent placement option. These provisions should be amended to provide that the relative search may stop if the child is placed with a relative who is interested in being a permanent placement option.

e. A maximum of thirty (30) days from the identification of the prospective adoptive family should be allowed to complete all county preparation of any documents necessary for an "adoption assistance agreement." Thereafter, a maximum of fifteen (15) days should be allowed for the Minnesota Department of Human Services to complete review of the "adoption assistance agreement."

f. County social service agency employees should receive training in the preparation of the adoption subsidy agreement.

3. When a licensed foster care provider seeks to adopt a child in that person's care, those requirements of the adoption home study which have already been completed as part of the foster care licensing process should be waived for the purposes of the adoption home study.

4. There should be continuing court jurisdiction following TPR. Where TPR has occurred and adoption is the plan, the guardian ad litem and attorney for the child shall continue on the case until the adoption is finalized. Following TPR, in-court review hearings shall be held every three (3) months to determine what progress has been made toward adoption. Where long term foster care is the permanent placement, the guardian ad litem and attorney for the child should be dismissed on the effective date of the permanent placement order. The child, if of sufficient age, and the foster parents should be given information on how to contact the guardian ad litem program or a guardian ad litem. If the matter is returned to court, a guardian ad litem should be reappointed.

5. The following changes to court rules should be made regarding appeals in adoption matters:

a. The Rules of Appellate Procedure and the Rules of Juvenile Procedure should be amended to provide that the Court of Appeals has jurisdiction to decide any challenges that arise in pending proceedings in which an adoptive petition, adoptive placement or both are challenged, or any proceeding challenging a final adoption decree. The

Rules should also be amended to provide that the Court of Appeals shall decide these challenges within ninety (90) days, with one thirty (30) day extension allowed.

b. The Rules of Appellate Procedure and the Rules of Juvenile Procedure should be amended to provide expedited deadlines for the filing of an appeal, submission of briefs, oral argument, and issuance of an opinion in any appeal pertaining to a contested adoptive petition, adoptive placement or final decree of adoption.

6. The Legislature should amend Minnesota Statutes § 257.071 by adding a new subdivision which provides that if a child is removed from a new placement in a pre-adoptive home or other permanent placement within the first year after the child is placed in the new placement and the child is not returned to the foster home in which the child was placed immediately preceding the child's placement in the new placement, the court shall hold a hearing within ten (10) days of the time the child was taken into custody to determine where the child should be placed. The amendment should also provide that the child shall be appointed a guardian ad litem for this hearing.

J. ADOPTIONS AND A PUTATIVE FATHER REGISTRY ("P.F.R.")

Under Minnesota Statutes § 259.49, subd. 1 ("Mandatory Notice Statute"), the following individuals are entitled to receive notice of an adoption proceeding:

1. the guardian, if any, of a child;
2. the parent of a child if
   a. The person's name appears on the child's birth certificate, as a parent, or
   b. The person has substantially supported the child, or
   c. The person either was married to the person designated on the birth certificate as the natural mother within 325 days before the child's birth or married that person within the ten days after the child's birth, or
   d. The person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both, or
   e. The person has been adjudicated the child's parent, or
   f. The person has filed an affidavit pursuant to section 259.51.[126]

[126]Minn. Stat. § 259.49, subd. 1 (1996). The following people currently do not need to receive notice of an adoption hearing:

1. those whose parental rights have been terminated with regard to the child;
2. those who have consented to the adoption; and

When a mother voluntarily places a child for adoption, all presumed fathers[127] under the Parentage Act[128] must receive notice of the adoption proceeding pursuant to Minnesota Statutes § 257.74.[129] Consent to the adoption is not required of a parent who is not entitled to notice of the adoption proceedings.[130]

The U.S. Supreme Court in *Lehr v. Robertson*[131] held that not all putative fathers have a due process right to notice of an adoption proceeding.[132] A putative father only acquires substantial protection under the Due Process Clause requiring notice of an adoption proceeding when that father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child.[133] The Court approved the New York statutory scheme which provided mandatory notice of an adoption proceeding to some putative fathers and the opportunity for other putative fathers who were not entitled to mandatory notice to obtain notice of an adoption proceeding by registering with New York's putative father registry.[134]

The Task Force became interested in the idea of a putative father registry following the Minnesota Supreme Court's recent ruling in *Matter of Paternity of J.A.V.*[135] Under current law, Minnesota Statutes § 259.51, subd. 1 (the "60 / 90 Day Statute") provides that a person who is not entitled to notice of an adoption hearing pursuant to the Mandatory Notice Statute shall lose parental rights and not be entitled to notice at termination, adoption, or other proceedings affecting the child unless that person files an affidavit stating the intention to retain parental rights with the

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3. those who have waived notice of the hearing or whose notice of intention to retain parental rights pursuant to Minn. Stat. § 259.51 has been successfully challenged need not receive notice. Id.

[127]Minn. Stat. § 257.55, subd. 1 sets forth the presumptions of paternity under the Parentage Act.

[128]Id. at §§ 257.51 - 257.74.

[129]Id. at § 257.74, subd. 1. The list of presumed fathers under the Parentage Act is more expansive than the list of those entitled to notice under the Mandatory Notice Statute.

[130]Minn. Stat. § 259.24, subd. 1 (a) (1996).

[131]Lehr v. Robertson, 463 U.S. 248 (1983).

[132]Id. at 261.

[133]Id. at 261-2.

[134]Id. at 263-4.

[135]Matter of Paternity of J.A.V., 547 N.W.2d 374 (Minn. 1996).

Minnesota Department of Health within the time limits prescribed.[136] The Minnesota Supreme Court, in *Matter of Paternity of J.A.V.*, interpreted the 60 / 90 Day Statute to mean that failure to timely file an affidavit pursuant to that statute merely limits the person's right to notice of an adoption hearing; it does not mean that a person's parental rights are terminated.[137] Because failure to timely file the affidavit does not terminate parental rights, a putative father who fails to timely file such an affidavit may still initiate an action to establish paternity at any time before the adoption decree is entered.[138]

Task Force members were concerned that delays would be caused by paternity actions initiated during the pendency of adoption proceedings by putative fathers not otherwise entitled to receive notice pursuant to the Mandatory Notice Statute or required to give consent to the adoption. They decided to recommend replacing the 60 / 90 Day Statute with a modified version of the Illinois Putative Father Registry.[139]

The purpose of the Task Force's recommended putative father registry ("P.F.R.") is three-fold: 1) to clarify who must receive notice of an adoption proceeding; 2) to expand a putative father's access to the adoption proceedings; and 3) to ensure that adoptions, once finalized, remain undisturbed. The P.F.R. proposal benefits children because it helps to clarify whether they are "legally free" for adoption.

The Task Force does not recommend that all presumed fathers under the Parentage Act receive mandatory notice of an adoption hearing as Minnesota Statutes § 257.74 currently provides. Instead, the Task Force recommends deleting Minnesota Statutes § 257.74 and expanding the list of those entitled to notice under the Mandatory Notice Statute (those whose consent to an adoption is required) to the following categories of fathers whose level of involvement or interest in the child gives them an arguable constitutional right to notice of an adoption proceeding:

- The person has filed a paternity action within sixty (60) days after the child's birth and the action is still pending;

- The person and the mother of the child have signed a declaration of parentage pursuant to Minn. Stat. § 257.34 before August 1, 1995 which has not been revoked or a recognition of parentage pursuant to Minn. Stat. § 257.75 which

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[136]Minn. Stat. § 259.51, subd. 1 (1996).

[137]Matter of Paternity of J.A.V., supra note 134 at 377.

[138]Id. at 379.

[139]750 Ill. Comp. Stat. Ann. ch. 750 § 50 / 12.1 (Supp. 1995). Several other states have putative father registries. See Susan Swingle, *Rights of Unwed Fathers and Best Interests of the Child: Can These Competing Interests be Harmonized? Illinois' Putative Father Registry Provides an Answer*, 26 Loy. U. Chi. L. J. 703, 735, n. 221 (1995).

has not been revoked; and

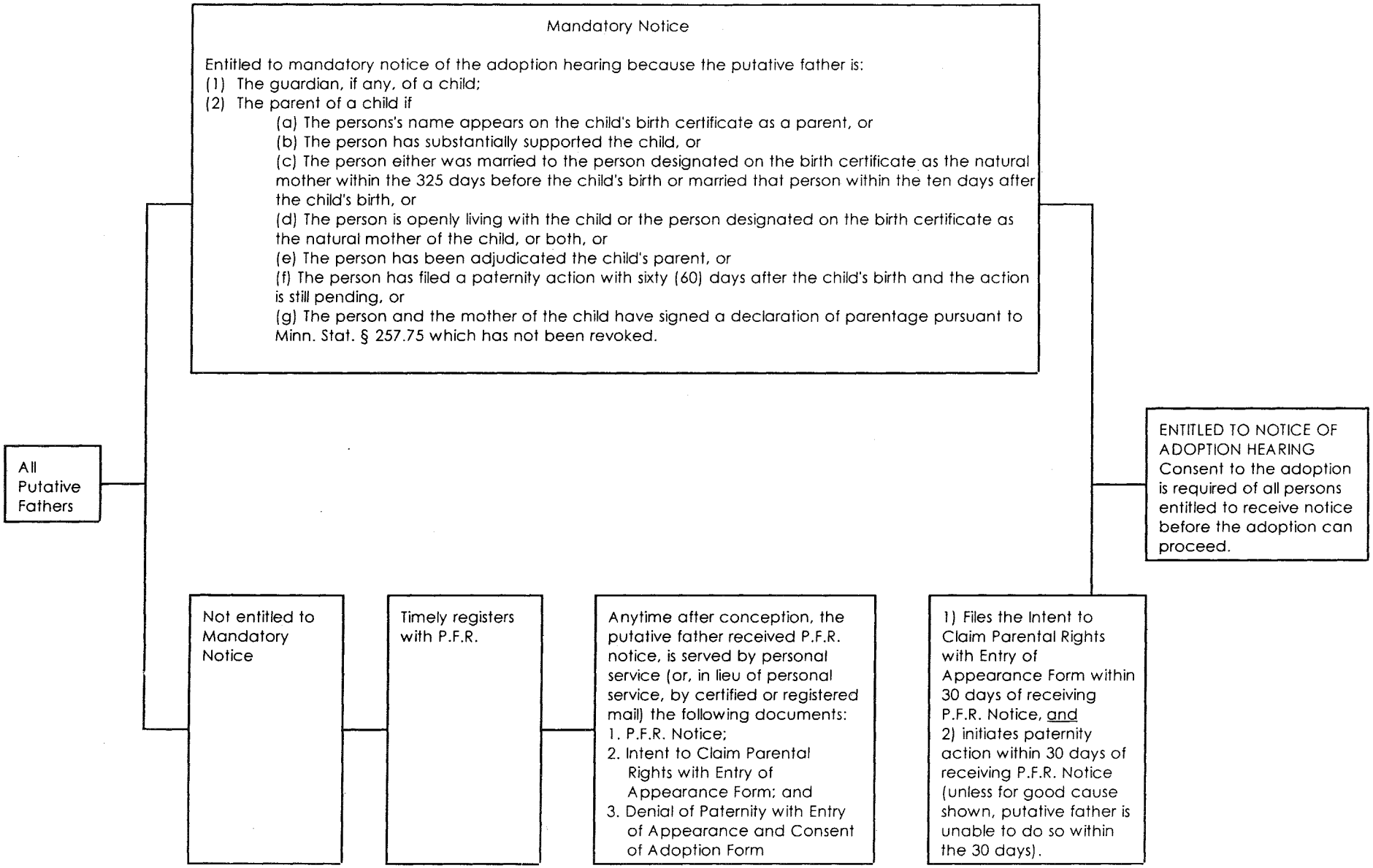
- The person has complied with the requirements of the Putative Father Registry entitling that person to notice of the adoption hearing.

The Task Force also recommends, for the sake of clarification, adding Illinois' statutory definition of "putative father" to the definitions section of the adoption statute.[140]

Under the Task Force's proposal, putative fathers who are not entitled to notice pursuant to the Mandatory Notice Statute (as proposed by the Task Force above) may obtain the right to receive such notice (and therefore, the right to consent or not consent to the adoption) by complying with the requirements of the P.F.R. (*See* flow chart entitled "Proposed Paths to Notice of Adoption Hearings.")

[140]Under Illinois law, "putative father" means a man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born and (2) has not established paternity of the child in a court proceeding before the filing of a petition for the adoption of the child. The term includes a male who is less than 18 years of age. Ill. Comp. Stat. Ann. ch. 750, § 50/1 (R) (West Supp. 1995).

Proposed Paths to Notice of Adoption Hearing



If a putative father's only way to receive notice of an adoption hearing under the Mandatory Notice Statute (and establish the right to consent or not consent to the adoption) is through the P.F.R., his failure to comply with the requirement of the P.F.R. does not automatically terminate his parental rights but will bar him from asserting any claim to the child during the pendency of the adoption proceeding and can serve as grounds for termination of parental rights on the basis of abandonment. Because failure to timely register with the P.F.R. does not automatically terminate parental rights, a putative father may still bring a paternity action any time before the putative father receives a P.F.R. Notice that an adoption proceeding is being initiated. Additionally, because failure to register does not automatically terminate parental rights, the P.F.R. cannot be used as a defense to an action to establish a child support obligation. The P.F.R. must be searched before any adoption proceeding may go forward.

The Indian Child Welfare Act ("ICWA")[141] and the Minnesota Indian Family Preservation Act ("MIFPA")[142] apply any time an Indian child[143] is the subject of a foster care placement, pre-adoption or adoption matter, or termination of parental rights proceeding.[144] (*See* Part IV, Section M for a discussion of ICWA and MIFPA.) The Task Force's proposal does not address what affect ICWA and MIFPA would have on its proposed putative father registry provisions.

Recommendations:

1. Minnesota Statutes § 259.21 should be amended to include a provision defining "putative father" as "any man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born and (2) has not established paternity of the child in a court proceeding before the filing of a petition for the adoption of the child. The term includes a male who is less than 18 years of age."

2. The list of those entitled to receive notice of an adoption hearing pursuant to

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[141]25 U.S.C.A. §§ 1901 et seq. (1983).

[142]Minn. Stat. §§ 257.35 - 257.3579 (1996).

[143]An "Indian child" is defined as "an unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C.A. § 1903(4) (1983). The term "Indian tribe" includes only federally recognized tribes and Alaskan Native villages. Id. at § 1903 (8). Therefore, state-recognized tribes and Canadian Indians are not included in this definition. Terminated and unrecognized tribes are also not included. B.J. Jones, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children,* 32 (Section of Family Law, American Bar Association)(1995); *See also* Bruce Davies, *Implementing the Child Welfare Act,* 16 Clearinghouse Rev. 179 (July 1982).

[144]25 U.S.C.A. § 1903 (1) (1983).

Minnesota Statutes § 259.49 (and to consent to the adoption pursuant to Minnesota Statutes § 259.24) should be expanded to include the parent of a child if

a. The person has filed a paternity action within sixty (60) days after the child's birth and the action is still pending; or

b. The person and the mother of the child have signed a declaration of parentage pursuant to Minnesota Statutes § 257.34 before August 1, 1995 which has not been revoked or a recognition of parentage pursuant to Minnesota Statutes § 257.75 which has not been revoked; or

c. the person has complied with the requirements of the Putative Father Registry entitling that person to notice of the adoption hearing.

3. The Legislature should replace Minnesota Statutes § 259.51 (the "60 / 90 Day Statute") with a Putative Father Registry ("P.F.R."). The P.F.R. should be structured as follows:

a. A putative father who is not entitled to notice of an adoption proceeding pursuant to Minnesota Statutes § 259.49 (as expanded above) may obtain the right to receive notice (and the right to consent to the adoption pursuant to Minnesota Statutes § 259.24) if that putative father complies with the requirements of the P.F.R. A putative father complies with the requirements of the P.F.R. if the putative father

1) timely registers with the P.F.R.;

2) after receiving a Putative Father Registry Notice indicating that an adoption proceeding is occurring, timely files an INTENT TO RETAIN PARENTAL RIGHTS WITH ENTRY OF APPEARANCE; and

3) within thirty (30) days of receipt of the Putative Father Registry Notice, initiates a paternity action (unless for good cause shown, he is unable to do so within the thirty (30) days).

b. The putative father may register any time before the birth of the child but no later than thirty (30) days after the birth of the child. A putative father who does not register within those time lines will be deemed to have timely registered if he can prove by clear and convincing evidence that (a) it was not possible for him to register within the specified time, (b) his failure to register was through no fault of his own, and (c) he registered within ten (10) days after it became possible for him to file. A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

c. Failure to Register with the P.F.R.

Except for a putative father who is entitled to notice of an adoption proceeding and to consent to the adoption, a putative father who fails to timely register with the Putative Father Registry pursuant to its time lines

1) is barred thereafter from bringing or maintaining any action to assert any interest in the child during the pending adoption proceeding concerning the child;

2) shall be deemed to have waived and surrendered any right to notice of any hearing in the pending judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

3) shall be considered to have abandoned the child. Failure to register shall be prima facie evidence of abandonment which shall constitute sufficient grounds to support termination of such father's parental rights.

d. Registering with the P.F.R. but Filing a Denial of Paternity or Failing to File an Intent to Claim Parental Rights Form

Except for a putative father who is entitled to notice of an adoption proceeding and to consent to the adoption, a putative father who receives a P.F.R. Notice and within 30 days of receipt files a completed DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION or who fails to timely file an INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE,

1) is barred thereafter from bringing or maintaining any action to assert any interest in the child during the pending adoption proceeding concerning the child;

2) shall be deemed to have waived and surrendered any right to notice of any hearing in the pending judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

3) shall be considered to have abandoned the child. Failure to register shall be prima facie evidence of abandonment which shall constitute sufficient grounds to support termination of such father's parental rights.

e. Minnesota Statutes § 257.74 should be repealed to comport with the above recommendation.

K. OPEN ADOPTIONS

Although open adoption agreements exist in Minnesota, these agreements are not legally enforceable under current law.[145] The unenforceability of these agreements can come as a surprise to biological parents who consent to an adoption or agree to voluntary termination of parental rights on the basis of these agreements without knowledge that these agreements are not legally enforceable. Relatives also may be led to believe that they have legally protected rights to contact with a child based on these agreements.

Judges, county attorneys and social services agencies surveyed were relatively evenly split on the issue of whether open adoption agreements should be made legally enforceable. Fifty-five percent (55%) of judges, 60% of county attorneys, and 47% of social services agencies believe that making open adoptions legal would be a good idea. The Task Force believes that making open adoption agreements enforceable under certain conditions will have at least two major beneficial affects. First, making open adoption agreements enforceable may encourage parents to voluntarily terminate their parental rights earlier, knowing that they will have some contact (however, minimal) with their child. This will result in quicker permanency for children. Second, making open adoption agreements enforceable will help to protect relationships with birth parents and birth relatives when it is in the best interests of the child to do so.

In researching the issue, the Adoption Subcommittee of the Task Force reviewed statutes from some states that provide for the enforceability of open adoption agreements[146] as well as from some states that statutorily prohibit the enforcement of such agreements.[147] The recommendation as ultimately approved by the Task Force provides for the enforceability of open adoption agreements, as long as four main conditions are met:

1) the child must have emotional ties with the birth parent or birth relatives;
2) the adoptive parent(s), the birth parent(s) or birth relative(s) seeking communication, contact or visitation and the adoption agency (if any) must enter into a notarized written agreement before the issuance of a final adoption decree;

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[145]In re the Adoption of C.H., 554 N.W.2d 737, 741 (Minn. 1996) ("...until such time as the legislature determines that state policy favors open adoptions and specifically authorizes such arrangements, it is beyond the power of a court granting an adoption petition to mandate continuing visitation with the biological family").

[146]N.M. Stat. Ann. § 32A-5-35 (Michie 1995); Wash. Rev. Code Ann. § 26.33.295 (West Supp. 1996); and N.Y. Soc. Serv. § 383-c, subd. 2 (McKinney 1996).

[147]Tenn. Code Ann. § 36-1-121 (f) (1996); Ohio Rev. Code Ann. § 3107.65 (C) (Anderson 1996) or (Baldwin 1996).

3) the court must determine that the agreement is in the best interests of the child; and
4) the court must incorporate the terms of the agreement into a written order.

The Task Force wanted to make sure that the open adoption agreement did not become a means whereby a birth parent or birth relative could undermine the adoptive parent(s)' authority to decide what is best for their adopted child. Therefore, the Task Force's recommendation allows an adoptive parent to limit communication, contact or visitation between the child and a birth parent or birth relative without seeking modification of the order in court. Once the adoptive parent limits such communication, contact or visitation, the party seeking to enforce the order bears the burden of proving by clear and convincing evidence that continued communication, visitation or contact is in the child's best interests. Before any motion to enforce or modify may be filed with the court, however, the parties must have mediated the issue or attempted to mediate.

The Interagency Task Force, a colloquium for Minnesota's non-profit adoption agencies[148] cautions against enacting the Task Force's proposal without additional study, including input from adoptive couples, birth parents, adoption agencies and from states who are working under similar laws.[149] Among other things, the Interagency Task Force is concerned that making open adoptive agreements legally binding will undermine the child's sense of security and permanence within the adoptive family. However, the Task Force's reason for recommending that open adoption agreements be made legally enforceable is to enhance the child's sense of security by providing a way to preserve the child's emotional ties with relatives and birth parents if it is in the child's best interests. Additionally, the Task Force's proposal is structured to support the adoptive parent(s)' authority by placing the burden of enforcement or modification of an order incorporating an open adoption agreement on the birth parent or birth relative.

The Interagency Task Force is also concerned that a birth parent may change his or her mind about putting the child up for adoption if the adoptive parents fail to sign an open adoption agreement which can be made legally enforceable upon incorporation into the court's order. However, a birth parent might do the same thing under current law where an adoptive parent refuses to enter into a voluntary but legally unenforceable open adoption agreement with the birth parent. Even if an adoptive parent under current law does sign a voluntary open adoption agreement,

[148]The Interagency Task Force includes the following non-profit private adoption agencies: Bethany Christian Services, Caritas Family Services, Catholic Charities, Children's Home Society, Downey Side, HOPE Adoption and Family Services International, Lutheran Social Services, New Life Family Services, Summit Adoption Home Studies.

[149]Letter from Interagency Task Force to Tonja J. Rolfson dated December 6, 1996 (on file with Minnesota Supreme Court).

that is no assurance that the adoptive parent will abide by it. Additionally, under current law, a birth parent who relies on the adoptive parents' promise to abide by the open adoption agreement, even when that agreement is part of a court order, may seek to vacate the birth parent's agreement to voluntarily terminate parental rights when that birth parent was not advised that there would be no recourse against the adoptive parents if they failed to comply with the terms of the order establishing the open adoption.[150] This situation creates uncertainty for all involved, and can cause delays in achieving permanence for a child.

Recommendation:

1. The Legislature should amend Minnesota Statutes § 257.022 and § 259.59 to provide for the legal enforceability of certain open adoption agreements. Open adoption agreements should be legally enforceable under the following conditions:

   a. Before the issuance of a final adoption decree, adoptive parents and birth parents, and birth relatives enter into a written agreement regarding communication, contact and visitation rights between the child and birth parents or birth relatives with whom the child has established emotional ties.

      1) "Birth relative" means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of the minor. This relationship may be by blood or marriage. For an Indian child, relatives include members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

   b. The court may incorporate the terms of the agreement in a written order if it finds that the agreement is in the best interests of the child at the time the order is entered and the agreement is signed before a notary public by the prospective adoptive parents, the birth parents and birth relatives who are parties to the agreement and, if the child is in the custody of an agency, a representative of the agency.

   c. The family court has jurisdiction over the enforcement and modification of the order for communication, contact and visitation.

[150] See In the Matter of Welfare of D.D.G., 1996 WL 481492 (court held that because father was not advised that he would have no recourse if the adoptive parents failed to comply with the conditions of the order setting forth the open adoption agreement, his consent to the termination of his parental rights was not voluntary.)

1) Jurisdiction by the family court arises upon the filing of a certified copy of the order granting the communication, contact and visitation and an affidavit stating that the parties have mediated or attempted to mediate prior to filing.

2) All subsequent motions to modify must be accompanied by an affidavit stating that the parties have mediated or attempted to mediate prior to the filing of the motion.

d. Upon the adoptive parent's denial of communication, contact and visitation pursuant to the terms of the order, the birth parent or birth relative has the burden to prove by clear and convincing evidence that enforcement or modification is in the child's best interests.

e. Failure to comply with the terms of the order permitting communication contact and visitation as provided above is not grounds for setting aside or vacating an adoption decree or revoking a written consent by a birth parent to an adoption after the consent has become irrevocable under Minnesota Statutes § 259.24, subd. 6a.

f. The court cannot modify an order granting communication, contact and visitation unless it finds that the modification is necessary to serve the best interests of the child.

g. The court may restrict the communication, contact and visitation if the court finds that such restriction would serve the best interest of the child, without a finding that the communication, contact and visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development.

h. All records filed with the court regarding an open adoption agreement must be permanently maintained by the agency which completed the adoption study.

i. The agency, the adoptive parents and any birth parent or birth relative who has been granted such communication, contact or visitation, upon request, must be given access to any court records needed to provide postadoption services or any court records needed to establish the jurisdiction of the family court in order to enforce or modify communication, contact or visitation with the child.

L. Changes to the Minnesota Heritage Act

The Howard Metzenbaum Multiethnic Placement Act of 1994 ("MEPA") was signed into law on October 20, 1994.[151] The purpose of the law was threefold: 1) to decrease the time children wait for adoption, 2) prevent discrimination in the placement of children in foster care and for adoption, and 3) facilitate the identification and recruitment of foster and adoptive families that meet children's needs. MEPA did not apply to those children covered by the Indian Child Welfare Act ("ICWA").[152]

MEPA provided that,

> [a]n agency, or entity, that receives Federal Assistance and is involved in adoption or foster care placements may not
>
> (A) categorically deny to any person the opportunity to become an adoptive or parent, solely on the basis of race, color, or national origin of the adoptive or foster parent, or the child, involved, or
>
> (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive parent or foster parent, or the child involved.[153]

The U.S. Department of Health and Human Services, the department in charge of enforcement of MEPA, published federal guidelines regarding its implementation.[154] Noncompliance by agencies or entities resulted in the loss of federal funds, or the risk of law suits brought by individuals seeking injunctive relief,[155] or possible money damages in actions under Title VI of the Civil Rights Act.[156]

In an effort to comply with MEPA, the 1996 Minnesota legislature amended the

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[151]P.L. 103-382, § 551-555, 108 Stat. 4056, codified at 42 U.S.C.A. § 5115a (1995).

[152]42 U.S.C.A. § 5115a (f) (1995). ICWA is found at 25 U.S.C. §§ 1901-1963 (1983).

[153]42 U.S.C.A. § 5115a (a) (1) (1995).

[154]60 Fed. Reg. 20272.

[155]42 U.S.C. § 5115a (b) (1995).

[156]MEPA expressly provided that any person who was aggrieved by a violation of MEPA could file a law suit.in United States District Court or appropriate jurisdiction for equitable (injunctive) relief. 42 U.S.C. § 5115a (b) (1995). It also provided that noncompliance was a civil rights violation under Title VI of the Civil Rights Act of 1964. *Id.*at § 5115a (e). Money damages could be available in certain cases where a person is harmed by an agency or entity's discriminatory practices or policies. *Id* at §5115a (b).

Minnesota Heritage Act.[157] Three main changes were made to Minnesota Statutes §§ 257.071, subd. 1a; 259.29; and 260.181, subd. 3. The language in the Minnesota Heritage Act that specifically established a preference for placement with a family of the child's racial or ethnic group was amended to give it a lower preferential emphasis. However, the Minnesota Heritage Act still requires "due, not sole, consideration of a child's race or ethnic heritage" in making foster care placements or appointments of legal guardians;[158] foster family care placements;[159] and adoptions.[160] The Minnesota Heritage Act also currently requires that the court place the child in the following order of preference, in the absence of good cause to the contrary:

> with an individual who
>
> > (a) is related to the child by blood, marriage, or adoption, or if that would be detrimental to the child or a relative is not available,
> > (b) is an important friend with whom the child has resided or had significant contact, or if that is not possible,
> > (c) is of the same racial or ethnic heritage as the child, or if that is not possible,
> > (d) is knowledgeable and appreciative of the child's racial or ethnic heritage.[161]

If the child's birth parent or parents explicitly request that the preferences above not be followed, the court shall honor that request if it is consistent with the best interests of the child.[162]

Before a final determination by the U.S. Department of Health and Human Services, Office of Civil Rights was made regarding whether these changes to the Minnesota Heritage Act met the requirements of MEPA, Congress, in section 1808 of the Small

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[157]On June 30, 1995, the U.S. Department of Health and Human Services, Office of Civil Rights, notified the Minnesota Department of Human services that Minn. Stat. §§ 257.071 subd. 1a; 257.072, subd.1; 259.29; 259.53, subd. 1 and 2; 259.57 subd. 2; 259.77; 260.181, subd. 3; 260.191, subd. 1 and 1a; and 260.242, subd. 1a (1994 and Supp. 1995); which establish a preference for family of a child's racial or ethnic group, did not comply with MEPA. Copy of June 30, 1995 letter on file with Minnesota Supreme Court. The amendments to the Minnesota Heritage Act are found at 1996 Minn. Laws Ch. 416.

[158]Minn. Stat. §260.181, subd. 3 (1996).

[159]Minn. Stat. §257.071 (1996).

[160]Minn. Stat. §259.29 (1996).

[161]Minn. Stat. § 260.181, subd. 3 (a), Minn. Stat. § 259.29, and Minn. Stat. §257.071 (1996).

[162]Id.

Business Job Protection Act of 1996,[163] repealed MEPA and replaced it with a section of legislation entitled "Removal of Barriers to Interethnic Adoption" (hereafter "MEPA-II").[164] Its provisions are effective on January 1, 1997.[165]

MEPA-II provides that,

> [N]either the State nor any other entity in the State that receives funds from the Federal government and is involved in adoption or foster care placements may
>
> (A) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color, or national origin of the person or the child, involved, or
>
> (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive parent or foster parent, or the child involved.[166]

MEPA-II, like its predecessor MEPA, prohibits discriminatory behavior in adoption and foster care placements by States that receive Federal funds but does not apply to cases involving ICWA. However, MEPA-II is more expansive. Under MEPA-II, a delay or denial in placement of the child on the basis of race, color or national origin, does not have to be "categorical," nor does the delay or denial have to result from race, color or national origin being used as the sole consideration in the placement decision. Moreover, an individual may bring a civil rights action against any person or government violating MEPA-II.[167] Under MEPA, a civil rights action could only be brought against an agency or entity that received federal funding.[168] MEPA-II also

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[163]P.L. 104-188 (enacted August 20, 1996).

[164]*Id.* at § 1808. MEPA-II will be codified in the Social Security Act, 42 U.S.C. §671 et seq. and the Civil Rights Act, 42 U.S.C. §2000d. MEPA, which was found at 42 U.S.C. 5115a has been repealed.

[165]P.L. 104-188, § 1808 (a).

[166]Id. at § 1808 (a) (3).

[167]42 U.S.C. §2000d. MEPA-II provides that "[a] person or government that is involved in adoption or foster care placements may not--

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color or national origin of the adoptive or foster parent, or the child, involved." P.L. 104-188, § 1808 (c) (1).

Noncompliance with this provision is deemed to be a violation of Title VI of the Civil Rights Act of 1964. L. 104-188, § 1808 (c) (2).

[168]42 U.S.C. §5115a (b) and (e).

sets out a specific percentages by which federal funding will be cut for noncompliance.[169]

In addition to affecting the placement of children in foster care, MEPA-II will have a major impact on the lives of Minnesota children under state guardianship awaiting adoption. Many of the children under state guardianship awaiting adoption are children of color. Forty percent (40%) are African American, 10% are American Indian, 1% are Asian/Pacific Islander, and the rest (49%) are Caucasian.[170] In addition, some of the children from these groups are also listed as Hispanic: about 5% of those listed as Caucasian; about 2% of those listed as African American and about 5% of those listed as American Indian.[171]

In order to ensure that the children of Minnesota receive federal funding for foster care and adoption, the Task Force recommends that the Legislature enact whatever legislation is necessary to comply with MEPA-II. The Minnesota Department of Human Services is working with the U.S. Department of Health and Human Services, Office of Civil Rights on required changes and will introduce legislation in the upcoming 1997 session. The Task Force endorses the legislation proposed by the Minnesota Department of Human Services and presented to the Task Force on December 19, 1996.[172]

Recommendation:

1. Minnesota should enact legislation to comply with federal law regarding adoptive and foster care placements so that Minnesota's laws do not a) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color or national origin of the person or the child involved, or b) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive parent or foster parent or the child involved.

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[169]P.L. 104-188, § 1808 (b).

[170]These statistics are based on data available as of March 1, 1996. Minnesota Department of Human Services, Community Services Division, Family and Children's Services Division, *Review of Minnesota Data on Foster Care and Adoption: A Presentation to the Supreme Court Task Force*, 14 (April 25, 1996) (on file with Minnesota Supreme Court).

[171]Id.

[172]A copy of this proposed legislation is on file with the Minnesota Supreme Court.

M. Indian Child Welfare Act and Tribal Courts

In 1978, the federal government enacted the Indian Child Welfare Act ("ICWA"),[173] and adopted guidelines for its implementation. The purpose of ICWA is to "protect the rights of the Indian child as an Indian and the rights of the Indian Community and Tribe in retaining the child in its society."[174] ICWA also establishes "a federal policy that, where possible, an Indian child should remain in the Indian Community by making sure that Indian child welfare determinations are not based on a white middle class standard, which in many areas, forecloses placement in an Indian family."[175] ICWA applies any time an Indian child[176] is the subject of a foster care placement, preadoption or adoption matter, or termination of parental rights proceeding.[177] ICWA mandates that, in those proceedings in which it applies, higher standards of proof must be met before an Indian child may be placed in foster care and before parental rights can be terminated.[178] Additionally, special "expert witnesses" are required with regard to proof of some issues during these proceedings.[179] ICWA also mandates a preference for foster or adoptive placement with a member of the child's extended family or an Indian family[180] except where

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[173]25 U.S.C.A. §§ 1901 et seq. (1983).

[174]H.R. Rept. No. 1386, 95th Cong., 2d. Sess. (1978).

[175]Id.

[176]An "Indian child" is defined as "an unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C.A. § 1903(4) (1983). The term "Indian tribe" includes only federally recognized tribes and Alaskan Native villages. Id. at § 1903 (8).

[177]25 U.S.C.A. § 1903(1) (1983).

[178]Under ICWA, an Indian child cannot be placed in foster care unless "active efforts" have been made to keep the child in the home. Id. at § 1912(d). Under P.L. 96-272, the standard is "reasonable efforts." Additionally, under ICWA there must be "clear and convincing evidence" supported by the testimony of expert witnesses that the child cannot remain in the home before the child can be placed in foster care. For non-Indian children, the standard is preponderance of the evidence. (ICWA does make an exception for the emergency removal of an Indian child in order to prevent imminent physical damage or harm to the child. Id. at § 1922.) For a non-Indian child, the standard of proof in a TPR proceeding is "clear and convincing evidence." Santosky v. Kramer, 455 U.S. 745 (1982). For an Indian child under ICWA, the standard is "proof beyond a reasonable doubt." 25 U.S.C.A. § 1912 (f) (1983).

[179]25 U.S.C.A. § 1912 (e) (1983). See Welfare of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991) and Custody of S.E.G., A.L.W., and V.M.G., 521 N.W.2d 357 (Minn. 1994) for discussions of expert witness qualifications.

[180]Placement of an Indian child in foster care or in a preadoptive placement must be in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. Placement must be according to the following preferences in the absence of good cause to the contrary:

good cause is shown.[181] "MEPA-II," which prohibits delay or denial of placement of a child for foster care or adoption based on race, ethnicity or national origin does apply to cases involving ICWA.[182] At any point in an ICWA proceeding, the Indian child's tribe has a right to actively participate and intervene.[183] Indian parents or tribes[184] may petition to vacate any action involving custody of an Indian child upon a showing that the action violated ICWA.[185]

If the Indian child resides or is domiciled[186] on a reservation,[187] the tribal court has exclusive jurisdiction.[188] Otherwise, the state court has jurisdiction but must transfer

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(1) a member of the Indian child's extended family;
(2) a foster home licensed, approved, or specified by the Indian child's tribe;
(3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
(4) an institution approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. 25 U.S.C. § 1915 (b).

An Indian child placed for adoption shall be placed according to the following preferences in the absence of good cause to the contrary:
(1) with a member of the child's extended family;
(2) other members of the Indian child's tribe; or
(3) other Indian families. 25 U.S.C. § 1915 (a).

[181]Id. A determination of good cause not to follow the orders of preference must be based on one or more of the following considerations: (i) The request of the biological parents or the child when the child is of sufficient age; (ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified witness; (iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria. The party urging that the preferences not be followed bears the burden of proof. 44 Fed. Reg. 67,584-67,595 (1979).

[182]P.L. 104-188, § 1808 (c) (3)(enacted August 20, 1996). See Part IV, Section L of this report for a discussion of "MEPA-II."

[183]25 U.S.C.A § 1911(c) (1983).

[184]"Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. Id. at § 1903(5).

[185]25 U.S.C.A. at § 1914 (1983).

[186]ICWA does not define "domicile," but the Supreme Court in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989), held that an Indian child's domicile is determined by the domicile of that child's parents and that a parent's domicile is established by physical presence in a place with an intent to remain there.

[187]"Reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. 25 U.S.C.A. § 1903 (10) (1983).

[188]Id. at § 1911(a).

the proceedings to tribal court upon petition of either parent, the Indian custodian[189], or the tribe absent good cause to the contrary[190] or objection by either parent.[191] ICWA provides for notification of the parent(s) or Indian custodian and the Indian child's tribe in any involuntary proceedings in state court.[192] However, ICWA is silent as to what notice is required when a child is placed voluntarily.

Minnesota incorporated the federal mandate of ICWA into state statute by adopting the Minnesota Indian Family Preservation Act ("MIFPA").[193] MIFPA, complements and augments ICWA in several ways. First, MIFPA ensures tribal involvement in proceedings before the decision to remove the child from the home is made by requiring notification of the tribal social service agency in certain circumstances which could lead to an out-of-home placement of the child or preadoptive or adoptive placement.[194] Second, MIFPA expands the definition of "Indian child's tribe" by providing that if a child is eligible for membership in more than one tribe and the tribe with the most significant contacts does not express an interest in the outcome of the proceedings, then "any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe."[195] Third, MIFPA requires that social service agencies make reasonable efforts to identify and locate extended family members in both involuntary and voluntary proceedings.[196] It also clearly places the burden of determining whether the child is an Indian child and the identity of the child's tribe on the local social service agency or private child-placing agency in both voluntary and involuntary proceedings.[197] Finally, MIFPA fills the gap ICWA left with regard to notification in voluntary foster care and voluntary preadoptive placements by providing that the child's parents,

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[189]"Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child. Id. at § 1903(6).

[190]Good cause to deny a transfer may be 1) there is no tribal court; 2) the proceeding is at an advanced stage when the request for transfer was made and the party making the request received proper notice; 3) the Indian child is over 12 years old and objects to the transfer; 4) the child is over age 5, the child's parents are unavailable or their parental rights are terminated, and the child has little contact with tribe and members; 5) the tribal court forum is inconvenient. 44 Fed. Reg.at 67591.

[191]25 U.S.C.A. § 1911 (b) (1983).

[192]25 U.S.C.A. § 1912 (a).

[193]Minn. Stat. §257.35 - 257.3579 (1996).

[194]Id. at § 257.352, subds. 2 and 3.

[195]Id. at § 257.351, subd. 7.

[196]Id. at §§ 257.352, subd. 4 and 257.353, subd. 5.

[197]Id. at §§ 257.352, subd. 1 and 257.353, subd. 2.

tribal social service agency and the Indian custodian must receive notice within a specified amount of time following the placement.[198]

Through focus groups and through surveys, the Task Force sought input and information from all the tribal social services agencies of the 11 tribes in Minnesota as well as lawyers and law firms representing these tribes. After reviewing the survey results, the Task Force focused on three areas in making its recommendations: 1) participation / intervention of tribes in State court proceedings involving ICWA; 2) state court / tribal court relations and 3) the lack of resources for tribes to handle CHIPS cases.

The Task Force's survey of tribal social service agencies and tribal lawyers revealed that all of the eleven tribes in Minnesota actively intervene in ICWA proceedings. Nine of the eleven tribes reported that they send non-lawyers to intervene in ICWA proceedings in state courts. Tribes that indicate that their participation in state court proceedings involving ICWA proceedings is limited cite travel distance and the lack of funds to hire support staff as reasons limiting their participation.

Some of the tribes that intervene reported that their tribal representatives were not recognized, were not allowed to fully participate, or both. One tribal lawyer observed that:

> Judges don't want to recognize the authority or right of tribal staff to be present at proceedings and there is a lack of communication or acknowledgement [of tribal staff] to the Court by county social service agencies.

Minnesota statutes and court rules are silent on the issue of recognizing tribal representatives and their right to participate in proceedings involving ICWA. Thus, the decision on the level of participation by tribal representatives in state court ICWA proceedings is usually made by the presiding judge. The Task Force recommends that Minn. Stat. § 260.155 subd. 1a (which governs the right to participate) and the Juvenile Rules of Procedure be amended to provide that official tribal representatives be recognized and allowed to participate in proceedings in State court involving ICWA.

Starting in 1991 and initiated by the tribes, the Department of Human Services ("DHS") and the tribes entered into discussions as to how to encourage and achieve compliance with ICWA and MIFPA. Through these discussions, a Tribal / State Agreement ("Agreement") was drafted. At the time of the writing of this report, the agreement had not yet been signed by all involved, but the Department of Human

[198] Id. at § 257.353.

Services was abiding by its terms voluntarily.[199]

The purpose of the Tribal / State Agreement ("Agreement")[200] is to increase awareness of the ICWA, and its state counter-part, MIFPA. Information gathered throughout the negotiations process indicated that many county child protection and welfare workers are not aware of either of the Acts' requirements with regard to the out-of-home placement of Indian children. Therefore, the Agreement attempts to summarize those requirements and represent an understanding between the state and the tribes as to what the laws require and how they should be followed.

In addition to providing a workable summary of ICWA and MIFPA, the Agreement also sets forth responsibilities of the Department of Human services, ("DHS") and the tribes with regards to supporting the tribes in their desire to directly provide social and child welfare services to their children. One example of this mechanism is a provision that permits DHS to purchase services directly from the tribes to provide culturally appropriate child welfare services to Indian Children.

The Agreement also indicates that DHS will revise its ICWA Procedures Manual which is distributed to county child welfare workers in an effort to increase compliance with ICWA and MIFPA. The Agreement sets up an ICWA Compliance Review Team which will regularly monitor child placing agencies' compliance with ICWA and MIFPA. The Agreement also requires DHS to utilize its sanction mechanisms, where appropriate, to sanction agencies that fail to comply with ICWA and MIFPA. The Agreement requires DHS to provide regular training to child placing agency staff on the requirements of ICWA and MIFPA.

The Agreement summarizes the current law as to how funding is provided for foster care payments, adoptive placement costs, and adoption assistance payments. Finally, the Agreement includes provisions addressing periodic review of foster care placements, requirement and registry of Indian foster and adoptive homes, and procedures DHS will agree to use to insure that ICWA and MIFPA are followed when children are placed in Minnesota from another state, or placed out of Minnesota to another state.

The Task Force recommends that once this Agreement is signed, court personnel, judges, county attorneys and public defenders should be trained on its provisions and the accompanying procedural manual. Also, in an effort to establish cooperation between State courts and tribal courts, which would lead to better compliance of ICWA and MIFPA, the Task Force recommends that the Supreme Court create a

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[199]February 12, 1997 Telephone conversation with Theresa M. Couri, Assistant Attorney General, State of Minnesota.

[200]For a complete description of the proposed terms of the State / Tribal Agreement see Letter from Theresa Couri, Assistant Attorney General, State of Minnesota to Mike Dees dated January 8, 1997. (On file with the Minnesota Supreme Court).

commission to examine State court and tribal court relations.

Many tribes reported that one of the main barriers to tribes requesting and accepting more transfers of ICWA cases from state court to tribal court was lack of resources. Currently, there is no direct federal reimbursement money to tribes for foster care placements. The Task Force recommends that the state encourage and cooperate with tribes that desire to establish eligibility to receive direct federal reimbursement funds for foster care placement. The Task Force further recommends that, once tribes become eligible to receive federal reimbursement funds, a pilot project be created whereby a combination of state, county and tribal funds be used for the initial foster care payments to get a system up and running.[201] The pilot project should be hosted by a tribe which has a built-in social services infrastructure and experiences a large volume of ICWA cases.

Recommendations:

1. Minnesota Statutes § 260.155, subd. 1a and the Juvenile Rules of Procedure should be amended to provide that official tribal representatives must be recognized and allowed to participate in State court ICWA proceedings.

2. The Supreme Court should create a commission to examine state court and tribal court relations.

3. The State should encourage and cooperate with tribes who desire to establish eligibility to receive direct federal reimbursement funds for foster care placement and enter into appropriate agreements.

4. Following completion of any necessary requirements and agreements which would make tribes eligible to receive federal reimbursement funds for foster care placement, the state and tribes should decide which tribe would be best suited to host a pilot project. The purpose of the pilot project would be to develop and implement procedures for the tribe to comply with necessary Title IV-E requirements. This pilot project should be started with a combination of state, county and tribal funds to pay for the initial foster care payments to get the system up and running. Training should be provided for tribes as to the obligations that go along with accepting these federal reimbursement funds.

5. Court personnel, judges, county attorneys and public defenders should be trained on the provisions in the "Tribal / State Agreement" and the accompanying Procedural Manual when that is developed.

[201]The money spent by the entities would be reimbursed, in part, by the federal government.

N. REPRESENTATION AND RIGHTS OF PARTIES

1. Representation of Children

a. Role of Legal Counsel and Role of Guardian ad Litem

Minnesota, in both court rule and statute, sets out separate and distinct roles for the child's counsel and the child's guardian ad litem. Both statute and court rule provide that the child has a right to be represented by an attorney who shall act as the child's counsel in representing the child's "expressed wishes" and legal rights.[202] Pursuant to current statute, the guardian ad litem, is required to "advocate for the child's best interests."[203] Recent legislation has clearly specified the guardian ad litem's role. A guardian ad litem shall

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.[204]

In 1980, the Minnesota Supreme Court interpreted Minnesota Statutes § 260.155, subd. 4 as giving the guardian ad litem standing as a party to

[202]Minn. Stat. § 260.155, subd. 2 (1996); Minn. R. Juv. P. 40.01, subd. 1.

[203]Minn. Stat. § 260.155, subd. 4 (b) (2) (1996).

[204]Id. at § 260.155, subd. 4 (b) (1996).

represent the interests of the child.[205]

The guardian ad litem's role is separate and distinct from the roles of others in the process. Current statutes and court rules prohibit others in the process from serving simultaneously as the guardian ad litem. Counsel for the child cannot also act or be appointed as the child's guardian ad litem.[206] The guardian ad litem cannot be the party (or any agent or employee of the party) who is filing the petition,[207] except that the guardian ad litem may bring a petition for termination of parental rights.[208] Although counsel for the child may not be the child's guardian ad litem, counsel for the child is required to serve as counsel for the child's guardian ad litem as long as there is no conflict of interest between the interests of the child and the guardian ad litem.[209] When a conflict develops, counsel for the child is required to continue to represent the child, and the court may appoint separate counsel to represent the guardian ad litem.[210]

When asked who the child's counsel and the guardian ad litem represents, county attorneys, judges and public defenders, overwhelmingly (80-90%) reported that the guardian ad litem represents the best interests of the child and the child's counsel represents the child. Between 10 and 15% of judges and county attorneys responded that the guardian ad litem represents both the child and the best interests of the child; less than 10% reported that the child's counsel represents both the child and the best interests of the child. Even though the majority of judges responded that counsel for the child does not represent the child's best interests, approximately 45% of public defenders reported that counsel for the child is "always," "often" or "sometimes" asked to tell the court what is in the best interests of the child.

b. Appointment of Guardians ad Litem

Federal statutory law, state statutory law and court rules are ambiguous regarding when a child should or must be appointed a guardian ad litem.

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[205]In re the Welfare of Solomon, 291 N.W.2d 364, 369 (Minn. 1980).

[206]Minn. R. Juv. P. 41.06.

[207]Minn. Stat. § 260.155, subd. 4 (e) (1996).

[208]Matter of Welfare of J.S., 470 N.W.2d 697 (Minn. App. 1991).

[209]Minn. R. Juv. P. 40.02.

[210]Id.

The Child Abuse Prevention and Treatment Act ("CAPTA")[211] which was enacted in 1974, offers federal grants to states to assist them in "developing, strengthening, and carrying out child abuse and neglect prevention, treatment, and research programs."[212] In order to be eligible for these grants, states must, among other things, "provide that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem shall be appointed to represent the child in such proceedings."[213] In the Child Abuse Prevention and Treatment Act Amendments of 1996 ("CAPTA Amendments of 1996")[214], this requirement was amended as follows:

> "...in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate or (both), shall be appointed to represent the child in such proceedings
> (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
> (II) to make recommendations to the court concerning the best interests of the child."[215]

Shortly following CAPTA's enactment, Minnesota passed legislation in 1975 mandating the appointment of a guardian ad litem "in every proceeding alleging dependency or neglect."[216] However, this same legislation contained a provision permitting waiver of appointment of a guardian ad litem "whenever counsel has been appointed...or is otherwise retained and the court is satisfied that the interests of the minor are protected."[217] There is no case law testing whether the waiver of appointment of a guardian ad litem provision complies with CAPTA.

Although promulgated after the amendment requiring mandatory appointment of a guardian ad litem in every proceeding alleging dependency or neglect, the Juvenile Protection Rules (effective July 20, 1982) do not provide for the mandatory appointment of a guardian ad litem in every proceeding alleging

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[211] 42 U.S.C. § 5101, et. seq. (1974).

[212] Id. at § 5106a(a)(5).

[213] Id. at § 5106a(b)(6).

[214] 110 Stat. 3063 (enacted October 3, 1996).

[215] Id. at § 107 (b) (2) (A) (ix).

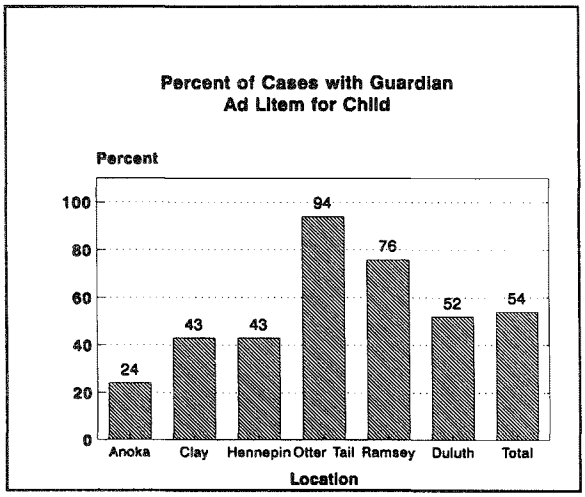
[216] 1975 Minn. Laws, Ch. 210, § 1 amending Minn. Stat. §260.155, subd. 4.

[217] Id. enacting Minn. Stat. § 260.155, subd. 4(b).

dependency or neglect. Instead, the Rules set forth the more discretionary appointment standard which was and is part of the statute regarding appointment of guardians ad litem in juvenile cases:

> The court shall appoint a guardian ad litem (except where waiver[218] of appointment of a guardian ad litem is permitted) to protect the interest of the child when it appears, at any stage of the proceedings, that the child is without parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests. In any other matter, the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines the appointment is in the best interests of the child.[219]

These are the same standards provided in the Rules of Procedure for appointment of a guardian ad litem in delinquency, juvenile petty offender and juvenile traffic offender proceedings.[220] In most CHIPS and TPR cases, the parents and children's interests are in conflict based upon the allegations. Therefore, although, on its face, this provision appears to set forth a discretionary standard, in reality it may not.



In 1988, the statute providing for mandatory appointment of a guardian ad litem in dependency and neglect proceedings was amended to provide for the mandatory appointment of a guardian ad litem in "every proceeding alleging a child's need for protection or services under section 260.015, subdivision 2a, clauses (1) to (10)." Runaways and truants were excluded from this requirement although they were then and still are

[218]The provision regarding waiver of appointment of a guardian ad litem in the Juvenile Protection Rules is essentially the same as that provided by state statute: "[t]he court may determine not to appoint a guardian ad litem when (a) counsel has been appointed or is otherwise retained for the child, and (b) the court finds that the interests of the child are otherwise protected. This waiver provision also appears in the Rules of Procedure regarding appointment of a guardian ad litem in delinquency, juvenile petty offender and juvenile traffic offender proceedings. See Minn. R. Juv. P. 24.01(B) (effective August 1, 1996).

[219]Minn. R. Juv. P. 41.01 and 41.05. Compare Minn. Stat. § 260.155, subd. 4 (a) (1996).

[220]See Minn. R. Juv. P. 24.01 (effective August 1, 1996) (previously Minn. R. Juv. P. 5.01, 5.02 and 5.05).

defined as children in need of protection or services.[221] In 1990, the legislature added the following CHIPS ground which also is not included in the requirement for mandatory appointment of a guardian ad litem: a child is in need of protection or services if the child's custodial parent's parental rights to another child have been involuntarily terminated within the past five years." [222] At the present time, it is not clear why these CHIPS grounds should be omitted from the requirement of mandatory appointment of a guardian ad litem.

No comprehensive statewide analysis regarding representation by guardians ad litem is available. The percentage of dependency and neglect cases which had a guardian ad litem for the child at the adjudicatory hearing varied from county to county in the Six County Court File Review. Anoka County showed the fewest appointments of guardians ad litem with only about one-quarter (24%) of the cases having a guardian ad litem at the adjudicatory hearing. Ottertail County had the highest rate (94%). About three-quarters (76%) of the Ramsey County cases had a guardian ad litem at the adjudicatory hearing. In the other three counties, about half of the cases had a guardian ad litem at the adjudicatory hearing: Hennepin (43%), Clay (43%) and St. Louis County-Duluth (52%).

c. Appointment of Counsel

Statutory provisions and court rules governing appointment of counsel for children in CHIPS and TPR cases are ambiguous and conflicting as well. In some provisions, it appears that all children in CHIPS and TPR proceedings, regardless of age, have the right to appointed counsel. In others, it appears that the right to appointed counsel extends to only those children who are age 12 and over.

Minnesota Statutes § 260.155, subd. 2 governs the appointment of counsel for children, parents and guardians in all proceedings in juvenile court. Although the statute contains a number of provisions dealing with the rights of delinquents and juvenile petty offenders to counsel, the statute provides generally that "the child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court." [223] The phrase "a proceeding in juvenile court" arguably includes all child welfare proceedings. Pursuant to this statute, if the child, parents or guardian desire counsel but are unable to employ it, "the court shall appoint counsel to represent the child or the parents or guardian in any case in which

[221] See Minn. Stat. § 260.015, subd. 2a (11) and (12) (1988).

[222] 1990 Minn. Laws Ch. 542, § 11 adding Minn. Stat. § 260.015, subd. 2a (13).

[223] Minn. Stat. § 260.155, subd. 2(a)(1996).

it feels that such an appointment is desirable [except a juvenile petty offender who does not have the right to counsel under Minnesota Statutes § 260.155, subd. 2(a)(1996)]."[224]

A child's statutory right to appointed counsel at public expense is clearer with regard to preparation of the case plan. Minnesota Statutes § 257.071, subd. 1 provides that "[t]he parent or parents and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child...If unable to employ counsel from their own resources, the court shall appoint counsel upon the request of the parent or parents or the child or the child's legal guardian.[225]

A child also has the right to be present and be represented by counsel appointed at public expense at a detention hearing in a CHIPS, neglected and in foster care or TPR matter.[226] Minn. Stat. § 260.171, subd. 4 (i) provides that when a child is taken into custody, the child, child's parent, guardian, or custodian should be advised that "the child and the child's parent, guardian, or custodian have the right to be present and to be represented by counsel at the detention hearing, and that if they cannot afford counsel, counsel will be appointed at public expense for the child, if it is a delinquency matter, or for any party, if it is a child in need of protection or services, neglected and in foster care, or termination of parental rights matter."

Minnesota Rule of Juvenile Procedure 40 clearly states that children in juvenile protection matters have a right to counsel appointed at public expense. Rule 40 provides that

- the child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parents(s) or guardian;[227]
- the child's right to counsel includes appointment of counsel at public expense (or to the extent the child's parent(s) have the ability to pay, at the parent(s)'s expense);[228]
- if the child is unrepresented by counsel and present in court, the court

[224] Id. at § 260.155, subd. 2(c).

[225] Id. at § 257.071, subd. 1.

[226] Id. at § 260.171, subd. 4 (i).

[227] Minn. R. Juv. P. 40.01, subd. 1.

[228] Id., at § 40.01, subd. 3(A).

must, at or before any hearing, advise the child of the right to court appointed counsel.[229]

Some survey respondents have interpreted Minnesota Rule of Juvenile Procedure 39.01 as setting forth the rule on appointment of counsel and guardians ad litem for children. Minnesota Rule of Juvenile Procedure 39.01 provides that

- A child who is the subject of a petition who has not reached the age of twelve (12) years of age has the right to participate through the child's guardian ad litem and may personally participate upon order of the court.[230]

- A child who is twelve (12) years of age or older who is the subject of a petition has the right to participate in all hearings unless excluded from the hearing pursuant to Rule 42.03. When the child is excluded from the hearing, the child may participate through the child's counsel and guardian ad litem.[231]

Even though this rule deals with a child's right to participate,[232] some have interpreted this provision to mean that only children 12 and over should be appointed counsel and that children 12 and under should be appointed guardians ad litem. This interpretation is in conflict with Minnesota Rules of Juvenile Procedure 40 and Minnesota Statutes § 260.155, subd. 2 which provide that all children have a right to appointment of counsel, at public expense if necessary.

Survey results indicate that, region by region, opinions differ with regard to which children have a right to the appointment of legal counsel in CHIPS cases. Fully 88% of Suburban judges reported that "all children" have a right to appointed counsel in CHIPS proceedings, compared to 12% of Metro judges and 38% of Greater Minnesota judges. Most Metro judges (74%) stated that "only children age 12 and over" have a right to counsel in these proceedings. Greater Minnesota judges reported a wide variety of opinions, but were about evenly split between those that reported that counsel may be appointed for "all children" (38%) and those that said that counsel may be appointed for the child "only at the judge's discretion" (35%). Greater Minnesota judges were

[229] Id. at § 40.01,subd. 2.

[230] Id. at 39.01, subd. 1.

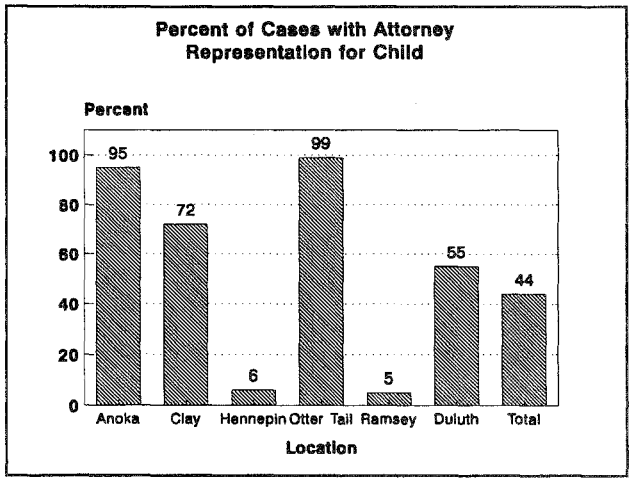
[231] Id. at 39.01, subd. 2.

[232] See Part IV, Section N., Subsection 2 of this report for a discussion of the child's right to participate.

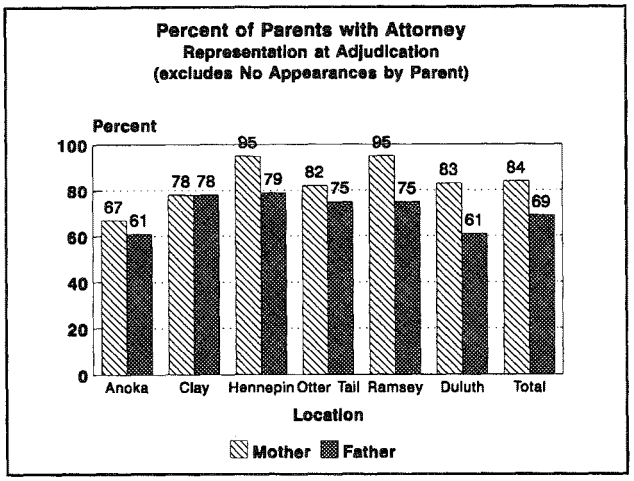
more likely than their urban counterparts to report that counsel for the child may be appointed only at the judge's discretion (35% of Greater Minnesota judges versus 12% of Metro judges). It appears that the interpretation of Minnesota Rules of Juvenile Procedure 39.01 as providing only children 12 and over the right to appointed counsel is mainly a Metro phenomenon.

Except in the Metro region, appointment of counsel for "all children" is a more frequent practice in TPR proceedings. One hundred percent (100%) of Suburban judges reported that "all children" were appointed counsel in TPR proceedings (compared to the 88% that reported "all children" were appointed counsel in CHIPS proceedings). Over half of Greater Minnesota judges (55%) reported that "all children" were appointed counsel in TPR proceedings (compared to the 40% that said "all children" were appointed counsel in CHIPS proceedings). Only Metro judges gave essentially the same response they did when asked about appointment of counsel for children in CHIPS cases--i.e., about three-quarters reported that counsel is appointed only for "children age 12 and over."

Survey results indicate that children in CHIPS proceedings who are appointed legal counsel usually are appointed counsel at or before the first appearance. Over half of the Metro judges (51%) appoint counsel at the first appearance. The majority of Suburban judges (91%) and Greater Minnesota (51%) judges usually appoint counsel for the child before the first appearance.



Currently, no statewide database accurately documents legal representation in juvenile cases. The Six County Court File Review, however, reflects drastic differences in the number of children actually represented by attorneys in CHIPS proceedings at the adjudicatory hearing. Hennepin and Ramsey counties show very low rates of attorney representation for children: 5% and 6% respectively. The highest rates were in Ottertail (99%) and Anoka Counties (95%). Over half (55%) of the children in CHIPS proceedings in St. Louis County-Duluth had counsel at the adjudicatory hearing while about three-quarters (72%) of those in Clay county had counsel.



In contrast, most parents were represented by legal counsel at the adjudicatory hearing in all of the six counties.

d. Task Force Deliberations Regarding Appointment of Guardians Ad Litem and Counsel

The Task Force was very concerned that in some cases it appeared that no one was representing the child or the child's best interests at the adjudicatory hearing. For instance, in Hennepin County, in at least 51% of the cases, children had neither a guardian ad litem nor legal counsel at the adjudicatory hearing. The Task Force agreed that someone must be there for the child in these proceedings.

Because the law governing appointment of legal counsel and guardians ad litem for children is unclear and the practice of appointment varies across the state, the Task Force set itself to the task of developing clear rules regarding appointment of counsel and guardians ad litem. The Task Force members all agreed that legal counsel for the child and the guardian ad litem for the child serve two separate and distinct roles: counsel for the child represents the child's legal interests and expressed wishes (if any), and the guardian ad litem represents the child's best interests. Further, the Task Force members agreed that counsel for the child could not also act as the child's guardian ad litem. To do so would result in a potential conflict of interest when the child's expressed wishes did not coincide with what was in the child's best interests. However, the Task Force disagreed as to which children should be appointed guardiansad litem and which children should be appointed legal counsel.

This issue was the subject of vigorous Task Force debate. The majority of Task Force members were of the opinion that pre-verbal and young children cannot utilize legal counsel because these children are too young to express their interests, and the attorney for the child often ends up functioning as a guardian ad litem instead of legal counsel. These Task Force members argued that a guardian ad litem was more appropriate for these children than legal counsel and that counsel could be appointed for the guardian ad litem, when

necessary, to represent the guardian ad litem in legal proceedings.

Other Task Force members, especially those who represent children, argued that even young children can benefit from the representation of their legal interests and should have the same right to counsel as adults under a disability do.[233] This is consistent with the American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases ("ABA Standards") which provide that "all children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues."[234] Under the ABA Standards, "to the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem."[235] The commentary to the ABA Standards provides that once a guardian ad litem is appointed, the child's attorney should continue to represent the child's legal interests.[236]

Task Force members arguing for the position that every child should have legal counsel pointed out that, in all juvenile offender proceedings, the child must be represented by counsel before the court may place the child out of the home, including into foster care.[237] Because every child in a CHIPS proceeding faces the possibility of out of home placement, these Task Force members argued that every child in a CHIPS proceeding should have legal counsel.

Additionally, some Task Force members were concerned about relying heavily on the guardian ad litem system. They identified issues and concerns raised by the Legislative Auditor's report on Guardians ad Litem,[238] namely, that standards vary from county to county because the guardian ad litem system is county funded and underfunded. They were also concerned that, among other

[233]American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (February 5, 1996), B-3.

[234]Id. at Preface.

[235]Id. at B-4 (1).

[236]Id. at B-4 (1), Commentary.

[237]Minn. R. Juv. P. 3.02, subd. 3; Minn. R. Juv. P. 3.02, subd. 5; and Minn. R. Juv. P. 17.03, subd. 1 (D); See Minn. Stat. § 260.185 (regarding Delinquency dispositions).

[238]Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota, Guardians ad Litem, February 1995.

things, the Proposed Rules of the Guardian Ad Litem Task Force, [239] which are currently under advisement with the Minnesota Supreme Court, do not propose concrete minimum qualifications for guardians ad litem such as a minimum age or a list of crimes which would exclude someone from becoming a guardian ad litem. These Task Force members believe that guardians ad litem should have to meet certain concrete minimum qualifications to 1) ensure quality representation of the child's best interests and 2) ensure that the views of the guardian ad litem have credibility with the court.

The Task Force was initially unable to reach consensus and came up with two alternatives. The first alternative was based on the ABA Standards and provided as follows:

> Every child, no matter what age, has the right to appointment of counsel at public expense to represent the child. A guardian ad litem may be appointed to represent the best interests of the child upon the request of the child's attorney, upon motion of another party or upon discretion of the court.

The second alternative was based on a modified version of Minnesota Rules of Juvenile Procedure 39. This second alternative attempted to emphasize the "best interests of the child" while recognizing concerns regarding the anticipated cost of providing all children in CHIPS and TPR proceedings with appointed counsel. It provided as follows:

> Every child under 10 shall be appointed a guardian ad litem to represent the best interests of the child. Upon request of the guardian ad litem, the court may appoint counsel for the guardian ad litem at public expense. An attorney may be appointed to represent the child for a child under age 10 upon request of the guardian ad litem, upon request of a party or in the discretion of the court.
>
> Every child age 10 and over has the right to an attorney appointed at public expense to represent the child. The court may appoint a guardian ad litem for a child age 10 or over to represent the best interests of the child upon the request of a party or at the court's discretion.

However, the Task Force grew concerned that neither recommendation would ensure that a guardian ad litem was appointed in every case as CAPTA requires in order to qualify for the federal funding under that grant.

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[239] Minnesota Supreme Court Advisory Task Force on the Guardian Ad Litem System, Final Report, February 16, 1996 (on file with the Minnesota Supreme Court: Court File No. Co-95-1475).

Therefore, after due deliberation, the Task Force settled on a compromise position which is what current statute essentially provides: that every child must be appointed a guardian ad litem and that every child has a right to the effective assistance of counsel as provided by current statute. The Task Force also recognized that lack of funding seemed to drive the decision as to whether a child received any type of representation. Therefore, the Task Force also recommends that there be a sufficient appropriation of funds for the appointment of guardians ad litem and for the appointment of legal counsel for children in these proceedings.

At public hearings the Task Force learned that some children who were appointed guardians ad litem or attorneys had not even met with their attorney or their guardian ad litem before they appeared in court. In light of this, the Task Force recommends that counsel for the child and the child's guardian ad litem should meet with the child.

e. The Child's Right to Participate

Under Minnesota Statute, a child as a party in a juvenile court proceeding has the same rights as any other party to be heard, to present evidence material to the case and to cross examine witnesses appearing at the hearing.[240] By statute, a child who is the subject of a petition has a right to "participate" in juvenile court proceedings to the same extent as any other party.[241] However, under the Minnesota Rules of Juvenile Procedure 39, the child's right to participate is limited as follows:

- A child under age twelve (12) has the right to participate through the child's guardian ad litem and may personally participate upon order of the court;[242]

- A child age twelve (12) or over has the right to participate in all hearings unless excluded from the hearing pursuant to Rule 42.03.[243] When the child is excluded from the hearing, the child may participate

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[240]Minn. Stat. § 260.155, subd. 6 (1996). Cf. Minn.R.Juv.P. 59.03, subd. 2 (A) (defines the right to present evidence, present witnesses, cross-examine witnesses and present arguments in support of or against the allegations of the petition as a right of counsel for persons who have the right to participate and the county attorney).

[241]Minn. Stat. § 260.155, subd. 1a (1996).

[242]Minn. R. Juv. P. 39.01, subd. 1.

[243]Minnesota Rules of Juvenile Procedure 42.03 provides that "in any hearing, the court may temporarily exclude the presence of any person other than counsel or guardian ad litem when it is in the best interest of the child to do so...."

through the child's counsel and guardian ad litem.[244]

One interpretation is that Rule 39 more appropriately addresses a child's right to be PRESENT at hearings, not the child's right to PARTICIPATE.[245] Under this interpretation it appears that a child under 12 does not have the right to be present unless upon order of the court.

The Task Force decided to clear up the confusion between a child's right to participate as a party and a child's right to be present at hearings. The Task Force decided that children, as parties to the proceedings, should have the same right to participate in hearings as every other party does. Like every other party, the child should participate at the hearing through the child's counsel. And, like every other party, the court may allow a child to personally address the court if it wishes.

The Task Force also decided that every child should have the right to be present at every hearing but that the court may exclude the child from a hearing when it is in the best interests of the child to do so, such as when certain psychological, psychiatric or other reports are discussed which might cause the child emotional harm to hear. The child's counsel and the child's guardian ad litem, however, should never be excluded from the hearing. The Task Force recommends repealing Minnesota Rules of Juvenile Procedure 39 because it causes confusion between the right to participate as a party and the right to be present at a hearing, sets up artificial age restrictions on a child's right to be "present," and suggests there are age restrictions on a child's right to counsel.

f. Waivers of Child's Rights and Objections

Currently, Minnesota Statutes provide that waiver of any right by a child must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived.[246] However, if the child is under age 12, the child's parent, guardian or custodian must give any waiver or offer any objection on behalf of the child.[247]

The Task Force unanimously believes that placing the power of waiver of a child's rights in the hands of the parent, guardian or custodian of a child is

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[244]Minn. R. Juv. P. 39.02, subd. 2. See also Minn. R. Juv. P. 42.04 ("counsel and the guardian ad litem of the excluded person have the right to remain and participate in the hearing").

[245]Compare with Minn. R. Juv. P. 42. "Presence at Proceedings."

[246]Minn. Stat. 260.155, subd. 8 (a) (1996).

[247]Id.

problematic and contrary to the child's basic right to due process, especially in a juvenile protection proceeding where the parent, guardian or custodian may be the individual whose actions caused the child to be in need of protection or services. The Task Force recommends that the Legislature amend Minnesota Statutes § 260.155, subd. 8(a) to provide that a parent, guardian or custodian of a child does not have the right to give any waiver or offer objections on behalf of the child and instead provide that where the child is not represented by counsel or is deemed unable to make such waivers or objections, the guardian ad litem, with the advice of counsel, shall give any waiver or offer any objection under Minnesota Statutes, Chapter 260.

Recommendations:

1. Minnesota Statutes § 260.155 and the Minnesota Rules of Juvenile Procedure should be clarified as follows:

   a. The guardian ad litem represents the child's best interests. The guardian ad litem must 1) obtain first-hand, a clear understanding of the situation and needs of the child; and 2) make recommendations to the court concerning the best interests of the child. Counsel for the child shall represent the child's legal interests and the child's expressed interests (if any). Counsel for the child shall not also act as the child's guardian ad litem or represent the child's guardian ad litem because that would result in a potential conflict of interest.

   b. Pursuant to federal law and in light of the special role guardians ad litem play, a guardian ad litem must be appointed for every child in a juvenile protection proceeding. The Task Force does not, by this recommendation, mean to suggest that counties cannot also appoint an attorney to represent the child's legal interests and expressed interests (if any) as required by current statute which provides that the child "has a right to effective assistance of counsel in connection with a proceeding in juvenile court."

   c. The court may appoint separate counsel for the child's guardian ad litem, if necessary.

   d. A child has a right to be present at all hearings. The court may exclude a child from a hearing if it is in the best interests of the child to do so. Counsel for the child and the guardian ad litem may not be excluded from any hearing. The decision on whether a child shall be excluded from any hearing shall be decided by the court on a case by case basis. To implement this recommendation, Minnesota Rules of Juvenile Procedure, 39.01 should be repealed because 1) it confuses a child's right to be present with a child's right to participate and 2) it sets up artificial

age restrictions on a child's right to be "present" and suggests there are age restrictions on a child's right to counsel.

e. A child has a right to participate in all hearings. Like any other party, the child shall participate in hearings through the child's counsel. To implement this recommendation, Minnesota Rules of Juvenile Procedure 39.01 should be repealed.

2. The child's counsel and the guardian ad litem should always meet with the child.

3. The Legislature should amend Minnesota Statutes § 260.155, subd. 8(a) to provide that a parent, guardian or custodian of a child does not have the right to give any waiver or offer objections on behalf of the child. The statute should instead provide that where the child is not represented by counsel, the guardian ad litem, with the advice of counsel, shall give any waiver or offer any objection under Minnesota Statutes, Chapter 260.

4. There should be a sufficient appropriation of funds for the legal representation of children in CHIPS and TPR proceedings. There should also be a sufficient appropriation of funds for the appointment of guardians ad litem for children in CHIPS and TPR proceedings.

2. Role of the County Attorney

In some areas of the law, such as the Parentage Act[248] and proceedings under the administrative process for child and medical support orders,[249] the relationship between the county attorney and the public authority is clearly defined. However, in CHIPS and TPR proceedings, the attorney-client relationship between the county attorney and the social service agency is unclear both in statute and court rules. Minnesota Rules of Juvenile Procedure 39.03 provides that "[t]he county welfare board has the right to participate in the hearings through the county attorney," but also provides that "[t]he county attorney also may participate in a matter in which counsel, other than the county attorney, has drafted and filed a petition pursuant to Rule 53.01, subd. 1 and the county welfare board does not participate" (as long as the county attorney informs the court in writing of the county attorney's intention to

[248]Minn. Stat. § 257.69 (1996). Minnesota Statute § 257.69 provides that "in all proceedings under [the Parentage Act], any party may be represented by counsel. The county attorney shall represent the public authority."

[249]Id. § 518.5511, subd. 7 (1996). This subdivision provides "[a]t all stages of the administrative process, the county attorney, or other attorney under contract, shall act as the legal advisor for the public authority, but shall not play an active role in the review of information, the preparation of default and consent orders, and the contested hearing unless the non-attorney employee of the public authority requests the appearance of the county attorney."

participate at or before the first appearance on the petition).[250] This suggests that the county attorney has a role in CHIPS and TPR proceedings which is unrelated to the representation of the social service agency. The use of the phrase "county welfare board" also creates ambiguity in that it suggests representation of the governing board rather than the social service agency itself. Additionally, although the rights of other parties to participate are clearly defined in statute,[251] the only guidance statute provides county attorneys with regard to participation is that "[e]xcept in adoption proceedings, the county attorney shall present the evidence upon request of the court."[252]

Focus group responses indicate there is confusion as to whom the county attorney represents in CHIPS and TPR proceedings. Survey results show that judges and social service agencies see the role of the county attorney similarly, but both groups are nearly evenly split between those that think the county attorney represents the social service agency (45% of judges; 47% of social services agencies) and those that think the county attorney represents both the social service agency and the interests of the public (41% of judges; 46% of social services agencies). A small percentage of each believe the county attorney represents only the public interests (12% of judges; 7% of social services agencies).

The majority of public defenders (58%) reported that the county attorney's client is "the social service agency." Around one third of the public defenders (28%) said that the county attorney's office represents both the social service agency and the interests of the public; less than 10% responded that the county attorney's office represents only "the interests of the public."

County attorneys generally agreed as to their role. A majority of county attorneys (70%) saw their role as representing both the social service agency and the interests of the public. Most of the remaining county attorneys saw their role as representing the social service agency while less than 10% saw their role as representing only the public interest.

Because of concern that the county attorney is placed in a conflict of interest situation when the county attorney represents both the public interest and the social service agency when the positions of the two differ, the Task Force discussed requiring the county attorney to represent only the social service agency in CHIPS and TPR

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[250]Minn. R. Juv. P. 39.03.

[251]Minn. Stat. § 260.155, subd. 1a (1996). Minn. Stat. § 260.155, subd. 1a provides that "[a] child who is the subject of a petition, and the parents, guardian, or lawful custodian of the child have the right to participate in all proceedings on a petition. Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition..."

[252]Id. at § 260.155, subd. 3.

proceedings. The Task Force eventually rejected this idea because, in a county attorney's unique position as an elected official, a county attorney must also answer to the public and represent the public's interest in protecting children. The Task Force decided that the county attorney has a dual role: 1) as counsel for the social service agency, to advise and represent the local social service agency; and 2) as an elected official, to protect the interests of the public. The National Council of Juvenile and Family Court Judges has also adopted this view.[253]

Recommendation:

1. The Legislature should amend Minnesota Statutes § 260.155, subd. 3 to clarify that the role of the county attorney in all child in need of protection or services, termination of parental rights and other permanency proceedings is to represent both the social service agency and the public interest in the welfare of the child.

3. Foster Parents

In focus groups and at the public hearings, many foster parents reported that they felt left out of the process. As individuals who spend day in and day out with the children, many foster parents stated that they should have more input in the proceedings and should be consulted by the social worker, guardian ad litem, and the court.

Under current law, foster parents have a right to participate in the process as parties. Minnesota Statutes § 260.155, sudb. 1a provides that "a child who is the subject of a petition, and the parents, guardian, or lawful custodian of the child have the right to participate in all proceedings on a petition" (emphasis supplied). The Minnesota Court of Appeals in *Matter of Welfare of C.J.*,[254] interpreted this statute as providing foster parents the right to participate in all proceedings on a petition in a CHIPS or TPR case to the same extent as the parents and child in the same proceeding because foster parents are "lawful custodians."

Although the Task Force agreed that foster parents should be allowed to attend hearings, be called as witnesses and provide information in court at the request of the judge, the Task Force believes that foster parents should not have an automatic right to participate. There are three main reasons for this. First, foster parents do not have

[253]Linda Lange, ed., Making Reasonable Efforts: Steps for Keeping Families Together, National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center and National Center for Youth Law, 30 ("Agency attorneys are responsible not only for representing their client (the agency), but also for serving the ends of justice and protecting children.").

[254]Welfare of C.J., 481 N.W.2d 861 (Minn. App. 1992).

the same rights at stake as do the parent and child involved in a CHIPS or TPR proceeding; the parent and child are ultimately at risk of severance of their blood-tie relationship; foster parents do not risk the severance of a blood-tie relationship. Second, foster parents have a contractual relationship with the county. Providing foster parents with an automatic right to participate as parties puts them and the county in an awkward situation. Foster parents have contracted to cooperate with county social workers and to help the parents and the child comply with the case plan. If a foster parent takes a position in opposition to that of the county that is employing them, the whole contractual relationship is upset. Third, if social workers and guardians ad litem are not seeking information from foster parents, the answer lies not in making foster parents automatic parties but in ensuring that social workers and guardian ad litem receive the proper training and supervision to do their jobs as they should.

Even though the Task Force does not support automatic party status for foster parents, the Task Force recognized that there may be circumstances where it would be in the child's best interests for the child's foster parent to be given party status and allowed to participate, such as where the child and the foster parent have established a close parent-child-like relationship over a period of time. Therefore, the Task Force recommends that the Juvenile Rules of Procedure be amended to provide a process which would allow for either 1) the permissive intervention of foster parents in a CHIPS or TPR case or 2) the granting of party status to foster parents at the court's discretion if doing so would serve the best interests of the child.

Recommendations:

1. Unless permitted by the court, foster parents should not be allowed to participate as parties in a CHIPS or TPR proceeding. The foster parent should be allowed party status either 1) through the process of permissive intervention or 2) at the judge's discretion only if granting the foster parent party status would serve the best interests of the child. The Juvenile Rules Committee should determine which standard would be most appropriate. Foster parents should be allowed to be present at all hearings if it is in the best interests of the child, regardless of whether the foster parents have the right to participate. To supersede Welfare of C.J., 481 N.W. 2d 861 (Minn. App. 1992), which held that foster parents as "lawful custodians" have a right to participate pursuant to Minnesota Statutes § 260.155, subd. 1a, the Legislature should amend Minnesota Statutes § 260.155, subd. 1a to provide that "legal custodians," not "lawful custodians," have a right to participate in all proceedings on a petition.

2. Foster parents should be allowed to be present at all hearings if it is in the best interests of the child, regardless of whether the foster parents have the right to participate.

4. Representation in Voluntary Placements

The parent(s) and the child have the right to legal counsel appointed at public expense in the preparation of a case plan.[255] The child also has the right to a guardian ad litem.[256] Currently, however, there is no right to counsel at public expense for a parent and a child when they enter into a voluntary placement agreement.

Some focus group participants voiced concern that sometimes voluntary placements in foster care were not "voluntary" in nature. Some participants, especially public defenders, felt that parents were pressured into voluntarily placing their children into voluntary foster care by the threat that social services would file a CHIPS petition. The Task Force agreed that parent(s) and children have the right to have counsel present to advise them before entering a voluntary placement, but after due deliberation, the Task Force decided not to require the appointment of counsel at public expense for parents and children entering into voluntary placements. It did so because:

- there is no government action forcing parents to voluntarily place their children in foster care;
- the parent(s) and child already have the right to counsel appointed at public expense during the preparation of the case plan which must be prepared within thirty (30) days of placement of the child by court-ordered or voluntary release by the parent(s),[257] and
- a written notice of rights given to the parent(s) and children should help to eliminate any coercion or appearance of coercion on the part of social services with regard to how voluntary placement agreements are entered without the added cost court-appointed counsel.

Recommendations:

1. The Legislature should amend Minnesota Statutes § 257.353 to require that where the parent, legal custodian or legal guardian is contemplating voluntary placement of a child who is not developmentally disabled or emotionally handicapped, social services shall advise both the parent and child:

   a) that each has a right to separate legal counsel before signing a voluntary

[255]Minn. Stat. § 257.071, subd. 1 (1996).

[256]Id.

[257]Id.

placement agreement, but not to counsel appointed at public expense;

b) that the parent(s), legal custodian(s) or legal guardian(s) and the child have the right to counsel at public expense at the beginning of a case plan and the child also has the right to appointment of a guardian ad litem;

c) that they are not required to agree to the voluntary placement and that if they enter into a voluntary placement agreement, the parent(s), legal custodian(s) or legal guardian(s) may at any time request that the agency return the child to their care and the child shall be returned within twenty-four (24) hours of the receipt of the request pursuant to Minnesota Statutes § 257.353, subd. 4;

d) that if the social service agency files a petition alleging that the child is in need of protection or services or a petition seeking the termination of parental rights, the parent, legal custodian or legal guardian would have the right to appointment of separate legal counsel at public expense and the child would have a right to the appointment of counsel and a guardian ad litem as provided by law.

e) that evidence gathered during the time the child is voluntarily placed may be used at a later time as the basis for a petition alleging that the child is in need of protection or services or as the basis for a petition seeking termination of parental rights; and

f) of the effect the time spent in voluntary placement will have on the scheduling of a permanent placement determination hearing pursuant to Minnesota Statutes § 260.191, subd. 3b.

O. INFORMATION ACCESS

Survey results showed that public defenders and even social workers have some difficulty obtaining necessary information and reports about the parents and children who are the subjects of CHIPS petitions. In focus group discussions, social workers, public defenders and guardians ad litem also voiced some of the same concerns. Judges and public defenders complained that they were not given access to the collateral reports which form the bases of the social services agency's recommendations or reports. Foster parents complained that they were not given basic medical, health and social history information on the children who were placed in their care. Many focus group participants believed that some of the difficulties are occurring because the Minnesota Government Data Practices Act[258] which governs

[258]Minn. Stat. § 13.01, et. seq. (1996).

access to information collected by state and local government agencies on individuals is complex and difficult to interpret.

The Task Force recommends that the Minnesota Government Data Practices Act and other relevant statutes be clarified or amended to ensure that the attorney for the child, attorney for the parent, guardian ad litem, social worker, and the judge have necessary and complete information regarding the case and that foster parents be given information necessary for the proper care of the child. The Task Force also recommends that the court issue protective orders with regard to certain information where the court deems such orders necessary.

Recommendations:

1. Statutes should be clarified to ensure that attorneys for children and attorneys for parents in proceedings under Minn. Stat. § 260 have access to records, social services files and reports which form the bases of any recommendations. The guardian ad litem should also have statutorily mandated access to these materials. Where necessary, the court should issue protective orders to prohibit attorneys from sharing certain reports or parts of reports with their clients, except where the client is the guardian ad litem.

2. Child protection workers and foster parents should be assured access to the following information:

   - Medical data under Minn. Stat. § 13.42;
   - Corrections and detention data under Minn. Stat. § 13.85;
   - Health records pursuant to Minn. Stat. § 144.335; and
   - Juvenile court records under Minn. Stat. § 260.161.

3. Collateral Reports:

   When the agency has legal responsibility for the placement of a child, that agency should have the authority to ask for and receive all information pertaining to that child it deems necessary to appropriately carry out its duties. This information should include educational, medical, psychological, psychiatric, and social / family history data retained in any form by any individual or entity. The agency should have the authority to gather appropriate data regarding the child's parents in order to develop and implement a case plan required by 257.071. Upon request of the court having responsibility for overseeing the provision of services to the child and family and for implementing orders that are in the best interest of the child, the responsible county or tribal social service agency should provide appropriate written or oral reports from any individual or entity providing services to the child or family. Such reports should include the nature of the services being provided the child or family, the reason for the services, the nature, extent and

quality of the child's or parent's participation in the services, where appropriate, and recommendations for continued services, where appropriate. The individual or entity should report all observations and information upon which it bases its report as well as its conclusions. When necessary to facilitate the receipt of such reports, the court should issue appropriate orders.

P. OPEN HEARINGS

The Task Force's charge was to "assess whether open hearings in juvenile court matters (other than delinquency) are desirable and suggest models for these hearings." The Task Force did not address whether there should be public access to adoption proceedings.

1. Minnesota Law on Public Access to Hearings in Juvenile Court

Minnesota statutes currently provide that, except in certain juvenile offender cases,[259] the general public is excluded from all hearings in juvenile court, and the court "shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court."[260] The Minnesota Supreme Court has recognized that the media has a direct interest in the work of the court and may be permitted to attend juvenile hearings at the discretion of the court.[261]

Court rules provide that only the following may attend hearings in juvenile protection cases:

(a) the child, guardian ad litem and counsel for the child;
(b) the parent(s), and guardian of the child and their counsel, guardian ad litem and legal custodian of the child;
(c) the spouse of the child;
(d) the county welfare board and county attorney;
(e) the petitioner in a private CHIPS petition and the petitioner's counsel;
(f) persons requested by a person with the right to participate or by the

[259]Hearings are open to the public in delinquency or extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least 16 years of age at the time of the offense. However, the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minn. Stat. § 260.155, subd. 1 (c) (1996).

[260]Minn. Stat. § 260.155, subd.1 (c) (1996).

[261]Welfare of R.L.K., 269 N.W.2d 367 (Minn. 1978) (court, in its discretion, allowed reporter (who promised not to reveal the names or addresses of the parties) to attend a TPR hearing after carefully weighing the interests involved and perceiving that no subsequent harm would fall upon the parents or their children due to the presence of the reporter).

county attorney who are approved by the court;
(g) persons authorized by the court under such conditions as the court may approve; and
(h) persons authorized by statute under such conditions as the court may approve.[262]

All hearings in adoption proceedings at the district court level must be held in closed court without admittance of any persons other than the petitioners, their witnesses, the commissioner of human services or an agency, or their authorized representatives, attorneys, and persons entitled to notice, except by order of the court.[263]

2. Minnesota Law on Public Access to Juvenile Court Records

The Minnesota Government Data Practice Act[264] governs access to information collected by state and local government agencies on individuals. The provisions of this Act do not apply to the judiciary.[265] Access to the records of the judiciary is governed by rules adopted by the Minnesota Supreme Court.[266] The Supreme Court's rules regarding procedure in juvenile protection cases provide that access to juvenile court records is governed both by statute and by court rule.[267]

Except with regard to the records in certain juvenile offender cases,[268] none of the records of the juvenile court and none of the records relating to an appeal from a non-public juvenile court proceeding, except the written appellate opinion, are open to public inspection. The contents of these records cannot be disclosed except (a) by order of a court or (b) as required by sections 245A.04 [application procedures for foster care and other licensing], 611A.03 [notification to victim of plea agreements], 611A.04 [orders and judgments for restitution], 611A.06 [notification to victim of

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[262]Minn. R. Juv. P. 43.01.

[263]Minn. Stat. § 259.61 (1996).

[264]Id. at § 13.01, et. seq.

[265]Id. at § 13.90, subd. 2.

[266]Id.

[267]Minn. R. Juv. P. 64.02, subd. 1.

[268]See Minn. Stat. § 260.161 generally which specifies under what circumstances juvenile offender information must be passed to the Bureau of Criminal Apprehension and the juvenile offender's school. Where the hearings in certain juvenile offender proceedings (or portions of proceedings) are open to the public, the legal records arising from those proceedings are also open to the public. Court services data relating to delinquent acts that are contained in records of the juvenile court may be released as allowed under section 13.84, subdivision 5a. Minn. Stat. § 260.161, subd. 2 (1996).

defendant's release or escape], and 629.73 [notice to crime victim regarding release of arrested or detained person].[269] The records of juvenile probation officers and county home schools are considered records of the court.[270] However, any report or social history furnished to the court must be open to inspection by the attorneys of record and the guardian ad litem a reasonable time before it is used in connection with any proceeding before the court.[271]

The files and records of the court in adoption proceedings are not open to inspection except by the commissioner of human services or the commissioner's representatives, an agency acting under Minnesota Statutes § 259.47, subd. 10, or upon an order of the court granting a petition for access.[272]

3. Public Access to Criminal Proceedings and Records Involving Child Victims

The public has a constitutional right of access to criminal trials,[273] but the court may deny the public access under some circumstances. In *Globe Newspaper Co. v. Superior Court*, the U.S. Supreme Court overturned a state statute which mandated closure of criminal trials involving specified sexual offenses against victims under age 18.[274] It held that closure of criminal trials cannot be mandated for all such cases, but may be allowed when the court makes an individualized determination that a compelling governmental interest exists necessitating closure and the denial of public access is narrowly tailored to achieve that interest.[275] Safeguarding the physical and psychological well-being of a minor is a compelling governmental interest.[276] But the court in a criminal case must determine on a case-by-case basis whether closure is necessary to protect the welfare of the minor victim.[277] Among the factors to be weighed are the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of the parents and

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[269]Minn. Stat. § 260.161, subd. 2 (1996).

[270]Id.

[271]Id. at § 260.161, subd. 2.

[272]Id. at § 259.61 (1996).

[273]Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980).

[274]Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982).

[275]Id. at 606-7.

[276]Id. at 607.

[277]Id. at 607-8.

relatives.[278]

Minnesota statutes provide a number of protections for child victims in criminal cases especially cases involving criminal sexual conduct or like offenses. Minnesota law prohibits, except by court order, public access to data in records or reports relating to petitions, complaints, or indictments which would identify a child victim of criminal sexual conduct in the first, second, third, or fourth degrees.[279] A judge may exclude the public from the courtroom during the victim's testimony or during all or part of the remainder of a trial upon a showing that closure is necessary to protect a witness or ensure fairness in the trial where the victim is a minor under age 18 and the case involves charges of criminal sexual conduct or use of a minor in a sexual performance.[280] Minnesota statutes also allow a child under age 12 who is the victim of an act of physical or sexual abuse or a crime of violence[281] to testify by video or closed circuit television "to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony."[282] In upholding a similar Maryland statute, the U.S. Supreme Court recognized that "a state's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court."[283]

4. U.S. Supreme Court Decisions on Access to Juvenile Court Proceedings and Records

Although the U.S. Supreme Court has held that there is a constitutional right of public access to criminal trials, it has not addressed the issue as to whether there is a constitutional right of public access to juvenile court proceedings.[284] Minnesota, like

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[278]Id. at 608.

[279]Minn. Stat. § 609.3471 (1996).

[280]Id. at § 631.045.

[281]"Crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26. Minn. Stat. § 595.02, subd. 4 (d) (1996).

[282]Minn. Stat. § 595.02, subd. 4 (a) (1996).

[283]Maryland v. Craig, 497 U.S. 836, 853 (1990).

[284]See Justice O'Connor's concurrence in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 611 (1982) ("I interpret neither *Richmond Newspapers* nor the Court's decision today to carry any implications outside the context of criminal trials"). See also Id. at 612 (Burger, J., and Rehnquist, J., dissenting)(noting that, paradoxically, under the majority opinion in *Globe Newspaper*, "states are permitted,...to mandate the closure of all proceedings in order to protect a 17-year-old charged with rape, [but] they are not permitted to require the closure of part of criminal proceedings in order to protect an innocent child who has been raped or otherwise

many other states, has a statutory scheme which presumes exclusion of the public from juvenile court proceedings.[285] Once a juvenile hearing is open to the public, however, the U.S. Supreme Court has held that a state may not punish those who publish truthful information obtained at that hearing--including names of juveniles.[286] Further, when court records are made accessible to the public, the press may not be prohibited from publishing truthful information released to the public in official court records."[287]

5. Federal Law Prohibiting Public Access to Certain Documents

The Child Abuse Prevention and Treatment Act Amendments of 1996 ("CAPTA Amendments of 1996") 110 Stat. 3063, § 107 (b) (2) (A) (v) provides that every state receiving federal grants under CAPTA must provide

> (v) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant

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sexually abused"). It is not clear how the Supreme Court would rule on this issue of whether the public has a right to attend juvenile hearings. In *Richmond Newspapers*, the issue was "whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without any demonstration that closure is required to protect the defendant's superior right to a fair trial, or that some other overriding consideration requires closure." Richmond Newspapers, 448 U.S. at 564. The Court cited the long history of openness of criminal trials and found that "[f]rom this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inherent in the very nature of a criminal trial under our system of justice." Id. at 573. However, there has been a long history of closure of juvenile courts. Smith v. Daily Mail Publishing Co., 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring). Because delinquency proceedings in juvenile court are much like criminal proceedings, some have argued that delinquency proceedings should be open to the public. See e.g., Hon. Gordon A. Martin, Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 New Eng. J. on Crim. & Civ. Confinement 393, Summer 1995.

[285]Hon. Gordon A. Martin, Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 New Eng. J. on Crim. & Civ. Confinement 393, n. 17, Summer 1995.

[286]Oklahoma Publishing Company v. District Court in and for Oklahoma County, Oklahoma, 430 U.S. 308, 310 (1977). See also Welfare of R.L.K., 269 N.W.2d 367, 371-2 (1978) (recognizing the court's limited ability to punish a newspaper that breaches its promise not to publish names and addresses of the parties, except by considering that breach in exercising its discretion to permit representatives of that publication to attend subsequent juvenile hearings).

[287]Cox Broadcasting Corp. v. Cohn, 42 U.S. 469, 491 (1975), 95 S.Ct. 1029, 1045 (1975) (holding that state may not impose sanctions for publication of rape victim's name where name was obtained from official court documents maintained in connection with a public prosecution in which those records were open to public inspection). The Court's holding only dealt with records which are open to the public. The court did not address the constitutional issues involved in a state's policy to keep other official records, such as juvenile records, closed. Id. at 496, n. 26 ("We mean to imply nothing about constitutional questions which might arise from a state policy not allowing access by the public and press to various kinds of official records, such as records of juvenile-court proceedings.")

to the purposes of this Act shall only be made available to--

(I) individuals who are the subject of the report;
(II) Federal, State and local government entities, or any agent of such entities, having a need for such information in order to carry out is responsibilities under law to protect children from abuse and neglect;
(III) child abuse citizen review panels;
(IV) child fatality review panels;
(V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grant jury; and
(VI) other entities or classes of individuals statutorily authorized to receive such information pursuant to a legitimate State purpose.

6. Task Force Deliberations

The vast majority of those surveyed are opposed to opening CHIPS and TPR hearings to the public. Statewide, over half of judges (58%) and a majority of county attorneys (79%), social service agencies (89%) and public defenders (86%) responded that CHIPS and TPR hearings should never be opened to the public. Judges were more likely than county attorneys, social service agencies or public defenders to respond that hearings should be opened but with "certain protections like those involving child victims in criminal proceedings...to protect the child's identity" or should be opened but "only at the discretion of the judge." More Metro judges (69%) than Suburban (35%) or Greater Minnesota judges (26%) favored opening hearings with "certain protections like those involving child victims in criminal proceedings...to protect the child's identity" or "only at the discretion of the judge." Around 70% of all survey respondents reported that the confidentiality of the juvenile court process has the effect of protecting "both the parents and the children." At focus groups and at Task Force hearings, opinion was mixed as to whether hearings should be open to the public.

Even though the idea is controversial and was opposed by the majority of those surveyed, as well as many of those who spoke at hearings and in focus groups, the majority of the Task Force decided to recommend that CHIPS and TPR hearings should be presumed open to the public in the same manner as criminal proceedings are open to the public now. It did so for the following reasons:

First, the majority of the Task Force believes the juvenile protection system lacks accountability because it is a closed system. Although the purpose of a closed system is to provide a protective rehabilitative environment for both parents and children by shielding them from public scrutiny and stigmatization, a closed system allows abuses to exist uncorrected and lack of funding for children's services to go unnoticed by the public. In effect, the very confidentiality that was meant to protect children ends up harming them by keeping abuses in the system and the effects of lack of funding a secret. The potential for abuse is particularly great in juvenile

protection proceedings because much of what is decided is based on subjective judgment.

Second, because the juvenile protection system is a closed system, child abuse and neglect decisions are not truly based on a set of "community standards." Arguably, one of the benefits of having a county-based system of funding juvenile protection services and foster care is that each county may make decisions according to its own community standards guided by the Minnesota Department of Human Services guidelines. But where the community is not cognizant of the perils children face or the types of services or lack of services available to those children, the community cannot respond to or comment on the practices or funding of the juvenile protection system. Therefore, no true community standards exist upon which to base decisions regarding child welfare. While the community can find out in minute detail about the condition of county roads and bridges and the need for building new ones, it can find out little about what constitutes enough abuse or neglect to merit providing county services to a child or to merit placing that child in foster care.

Third, the closed nature of CHIPS and TPR proceedings is largely unnecessary. A number of proceedings already open to the public deal with issues which are at the heart of CHIPS and TPR proceedings. Criminal proceedings involving criminal sexual conduct charges involving a child victim or malicious punishment of a child, for instance, are open to the public with certain protections for the child victim witness.[288] Dissolution and child custody matters often contain the very same allegations which form the bases of CHIPS petitions. These proceedings are open to the public as well with certain protections for the child as a witness.[289] Additionally, the press is already free to print any information it lawfully obtains from sources outside the juvenile courtroom and juvenile court records, such as by interviewing witnesses.[290]

Fourth, in Michigan, juvenile protection and termination of parental rights hearings are presumptively open but may be closed to the public under the standards set forth in *Globe Newspaper* with regard to closure of criminal cases. "The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings, the age and maturity of the witness and the preference of the witness, and the preference of a parent if the witness is a child, that the proceedings be open or

[288]Minn. Stat. §§ 631.045, 595.02, subd. 4, and 609.3471 (1996).

[289]Id. at § 595.02, subd. 4 (1996).

[290]Smith v. Daily Mail Publishing Co., 443 U.S. 101, 105-6 (1979); Accord Minneapolis Star and Tribune Co. v. Schmidt, 360 N.W.2d 433 (Minn. Ct. App. 1985).

closed."[291] Hearings involving juvenile offenders may not be closed to the public.[292] In Michigan, juvenile court records are open to the public as well.[293] Those records which must remain inaccessible to the public pursuant to law are placed in a "confidential file" to which only those persons with a "legitimate interest" may be allowed access.[294] In determining whether a person has "legitimate interest," the court must consider the nature of the proceedings, the welfare and safety of the public, and the interest of the minor.[295]

Members of the Task Force's Open Hearings Subcommittee conducted a site visit of the Juvenile Division of the Wayne County Probate Court and talked with the chief judge of the division, other judges, referees, a representative from the attorney general's office,[296] social workers, court clerks, administrative personnel and a newspaper reporter.[297] Those in the Michigan juvenile court reported favorably on open hearings in juvenile court. One judge commented that before the hearings were opened, everyone thought the "sky would fall," but "it didn't."[298] Others reported that the public and the press are not usually in attendance at hearings; family members and foster parents are.[299] Although children's names can be published, the news media in Michigan has been very sensitive and has rarely published children's names.[300]

Because open hearings in juvenile protection cases appear to be working in Michigan, the Task Force bases it recommendations on Michigan court rules, statutes and practices. However, the Task Force also recognized that open hearings in juvenile protection proceedings may chill admissions to CHIPS petitions in some instances. Therefore, if hearings are opened to the public, the Task Force recommends that "no

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[291]Michigan Rules of Juvenile Procedure 5.925 (A); See also Mich. Comp. Laws § 712A.17 (7).

[292]Michigan Rules of Juvenile Procedure 5.925 (A).

[293]Id. at 5.925 (D) (1).

[294]Michigan Rules of Juvenile Procedure 5.925 (E) (2).

[295]Id.

[296]In Michigan, the attorney general's office prosecutes juvenile protection and TPR cases.

[297]Representative Wes Skoglund, Erin Sullivan Sutton, and Heidi S. Schellhas, *Site Visit to Wayne County Juvenile Court in Detroit, Michigan: Summary of Observations and Information Gathered* (September 6, 1996) (on file with the Minnesota Supreme Court).

[298]Id.

[299]Id.

[300]Id.

contest" answers should be allowed so that parents will not have to enter public admissions. "No contest" answers will also have the added benefit of allowing children to be adjudicated CHIPS more quickly and without a trial where the parents are not willing to admit. Additionally, the Task Force recognized that practitioners will need clear guidance as to what should be placed in the file accessible to the public and what should be placed in the non-public file. Its recommendation on this issue attempts to provide this guidance by providing a list of the documents to be placed in each file. Finally, because some Task Force members were concerned that the relationship between the Michigan media and the Michigan courts may not be the same as the relationship between Minnesota courts and media, the Task Force recommends that the media be trained regarding the new openness of the court and that training include an emphasis on journalistic ethics.

The authors of the Task Force's Minority Report[301] on the issue of open hearings are concerned that the benefits of opening the court system and court records to the public will not outweigh the damage done to individual children and families by publicizing their situations in the media. They worry this publicity will undermine the system's goal of rehabilitating and reuniting families. They also are concerned that publicity will chill children's willingness to report abuse and families' willingness to seek help. The minority disagrees with the majority's decision to recommend the use of "no contest" answers in CHIPS and TPR hearings because an answer of "no contest" flies in the face of the goal of holding adults accountable and may inhibit therapy efforts when the parents refuse to admit. Finally, they argue that there are more effective and less damaging ways to bring accountability to the system, such as by ensuring that every child has proper representation.

Recommendations:

1. There should be a presumption that hearings in juvenile protection matters will be open absent exceptional circumstances. To close a hearing, a party must delineate the circumstances justifying closure. Michigan Rule of Juvenile Procedure 5.925 should be considered as a model.

2. "No contest" answers should be recognized in juvenile protection proceedings.

3. Court records in juvenile protection matters should be open to the public. However, certain information which is protected by law from public access should not be available to the public as well as other information which is of such a nature that public access to the information might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information

[301] See Appendix D, infra.

about reporters. Statutes and court rules should be amended to specify what records within the court file are accessible to the public.

Accessible Documents

Accessible documents include those in which information is sufficiently detailed to allow the public to hold the agencies involved in the court process accountable, but not so intensely personal as to cause harm to children or discourage reporters from identifying victims of abuse or neglect. The following documents, if located in the court file should be accessible to the public:

- CHIPS Summons and Petition;
- Parental Termination Summons and Petition;
- Affidavits of Publication;
- Petition for Transfer of Legal Custody;
- Petitions for Paternity;
- Affidavits of Service;
- Certificates of Representation;
- Court Orders;
- Hearing and Trial Notices;
- Witness Lists;
- Subpoenas;
- Motions and Legal Memoranda;
- Exhibits Introduced at Hearings or Trial, unless described below as "inaccessible" to public;
- Birth Certificates;
- All other documents not listed as inaccessible to the public.

Inaccessible Documents

Those documents listed as inaccessible include those that if made accessible might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information about reporters. The following documents, if located in the court file should be inaccessible to the public:

- Written, audio-taped, or video-taped information from the social service agency except to the extent the information appears in the petition, court orders or other documents that are presumed accessible;
- Child Protection Intake or Screening Notes;
- Any other documents identifying reporters of neglect or abuse, unless reporters' names and other identifying information are

redacted;
- Guardian ad litem reports;
- Victims' Statements;
- Lists of Addresses and Telephone numbers of Victims;
- Documents Listing Non-Party Witnesses under the age of 18, unless the names and other identifying information of those witnesses are redacted;
- Transcripts of Testimony of Anyone Taken during Closed Hearing;
- Fingerprinting Materials of Anyone;
- HIV Test Results of Anyone;
- Psychological Evaluations of Juvenile;
- Psychological / Psychiatric Evaluations of Anyone;
- Chemical Dependency Evaluations;
- Pre-sentence Evaluations of Juvenile and Probation Reports;
- Medical Records of Anyone;
- Reports Issued by Sexual Predator Programs for Anyone;
- Diversion Records (i.e., records prepared by diversion programs, for example, relating to truancy, shoplifting, drug use, runaway, etc.) of Juvenile;
- Any document which the court, upon its own motion or upon motion of a party, deems inaccessible because doing so would serve the best interests of the child.

Court records should be open only for cases filed after a certain date.

4. Before juvenile protection hearings are opened to the public, there should be advance preparation and training for the media.

Q. Continuity and Case Management

In some jurisdictions in other states, child abuse and neglect cases are assigned to a specific judge and this judge conducts all hearings, conferences, and trials related to the case.[302] This also occurs in some counties in Minnesota, especially in rural areas where only one judge is available to hear cases. This type of calendaring is particularly suitable for CHIPS cases because these cases usually extend over a long period of time and involve complex hearings. Assigning one judge to hear the case throughout its life in the court system enables the judge to become familiar with the needs of the children and the family, the history of "reasonable efforts"[303] made by the

[302]National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, 19 (1995).

[303]For a discussion of "reasonable efforts," see Part IV, Section H. of this report.

social services agency and the complexities of that family's particular situation. The judge's long-term involvement helps the judge to identify patterns of behavior exhibited over time by all parties involved in the case, preventing a judge from having to rely too heavily on the social services agency's recommendations alone. A judge who remains involved with the family is more likely to make decisions consistent with the child's best interests. Calendaring a case to a single judge also gives the judge a sense of ownership in the case and a stake in the outcome.

A single judge hearing the case provides consistency and continuity. Assigning one judge to the "life" of a CHIPS case allows the court to speak with a single voice and convey consistent messages and expectations to the parties. Parties can rely on the court's direction without concern that a different judge at the next hearing will interpret the case in another way. The court's long term involvement can prevent parties from resurrecting previously rejected arguments and excuses. It can also enable the judge to handle a particular case in a more efficient manner because a judge who is already familiar with what has gone before need only quickly review the file before each hearing instead of having to spend a great deal of time thoroughly reviewing the whole court file and case plan, or worse, not having time to conduct a thorough review of the case and having to make a decision without a sense of historical perspective about the case. For all of the above reasons, the Task Force recommends that those jurisdictions which do not currently assign one judge to a CHIPS case consider the implementation of such a system.

Some states have or are developing "unified family courts."[304] These unified courts usually assign all related juvenile protection, dissolution, and custody matters with regard to a single family to one judge.[305] A unified court has the benefit of bringing into one forum all the concerns of a family so that they can be handled in a uniform manner. In Ramsey County, a pilot project called "One Judge / One Family" is being conducted that assigns all family court and CHIPS matters relating to a family to the same judge. This project has a built-in evaluations component. The evaluation is scheduled for completion in 1998. The Task Force recommends that court administrators and judges monitor the progress of this pilot project and the results of the evaluation for possible expansion to other courts throughout the state.

Currently, some social services agencies are compartmentalized to deal with different phases of service delivery during a CHIPS case. Because of this, a family may have several different social workers over the course of the case. Many focus group participants and Task Force members believe that a single social worker should be assigned to a particular CHIPS cases. The reasons for such assignment are similar to those advocating that one judge be involved over the life of a case. Because each CHIPS case is unique and the circumstances are ever-evolving, the assignment of one

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[304] See generally National Center for Juvenile Justice, Family Courts in the United States, 1996: State, Court Rule and Practice Analysis (Technical Monograph) (December 1996).

[305] Id.

social worker, familiar with the child and the family, who can build a relationship with the family and work in partnership with all parties involved to seek the safe and permanent placement for the child would be in the child's best interest.

The Task Force also recommends, for the sake of continuity, consistency and efficiency that one guardian ad litem continue throughout the case and that the same attorney represent the child throughout the proceedings.

Recommendations:

1. The district courts should implement case management systems to avoid the shifting of cases and families between judges. CHIPS cases should be blocked so that one judge will hear the case throughout the proceedings up to and including the implementation of a permanent placement plan and adoption, if that occurs. The court system should consider the one judge / one family model, taking into account the experience of the Ramsey County Pilot project.

2. Wherever feasible, managers and directors of social service agencies should strive to maintain continuity throughout a case and reduce delays by assigning one person to the case until its conclusion up to and including the implementation of a permanent placement plan, adoption or reunification.

3. The child should have the same guardian ad litem throughout the case. The same attorney should be legal counsel for the child throughout the proceedings.

R. Data Collection

Task Force efforts to document and analyze current policies and practices in the handling of CHIPS and TPR cases was hampered by the lack of collected accurate and timely court and social service agency data on such cases.

The judicial system currently maintains two information systems where data on CHIPS and TPR cases is captured. The Total Court Information System ("TCIS") is a computerized record-keeping system containing pertinent information on the processing of each case. The TCIS system is linked to all district courts in the state. The State Judicial Information System ("SJIS") collects aggregate information from each case using TCIS as its source. Data analyses of court activities usually rely on the aggregate data collected in SJIS. However, the Task Force found that the system of data collection through TCIS and the structure and capabilities of SJIS prevented some of the Task Force's information requests from being fulfilled.

The Task Force found that SJIS does not collect some of the information with the specificity the Task Force needed. For example, although SJIS indicates when a child

has been adjudicated, it does not indicate whether that adjudication took place as a result of a trial, admission or by default. This was necessary for the Task Force's assessment of court efficiency and timeliness of proceedings.

The database is slow to track changes in the law. Some terminology used in the SJIS database is outdated and codes to document new and important events, such as permanency hearings, were just recently made available on SJIS, making it difficult to analyze the timeliness of permanency hearings across the state.

Finally, some information that is collected by SJIS is not accurate for the purposes of analysis because uniform reporting of that information is lacking or the codes used to identify the information are very general. In essence, each general code could mean a number of things.

Social services agencies throughout the state are responsible for their own data collection systems with periodic reports being provided to the Minnesota Department of Human Services. Aggregate statewide data is maintained by the Department of Human Services. The Department of Human Services database is not linked directly to any county social services database so aggregate statewide information is not current. For most of the duration of this Task Force, the only available aggregate information on foster care was from 1993. Like the SJIS system, the Department of Human Services' database is not child specific. Therefore, it is not currently possible to track information for a single child from year to year.

Many states have statewide social services information systems with links to every county social service agency. The Department of Human Services is in the process of establishing a statewide Social Services Information System ("SSIS") to collect pertinent child specific data from county social service agencies. Financial support for this system will be sought from the Legislature. The Task Force recommends that the Legislature provide the necessary funding to accomplish the development of this database.

As both courts and the Department of Human Services go forward with data collection systems improvements, it is important that the two agencies share information. The Task Force recommends that the courts and the Department of Human Services share information on improvements and collaborate on the most efficient and effective ways to share appropriate data between the two systems.

Recommendations:

1. Data collection efforts need to be improved in the courts, social services and the Department of Human Services, including:

    a. The Legislature should provide funding for the Department of Human Services Social Services Information System (SSIS). The purpose of the funding is to develop and implement an automated case management

information system that supports social service staff in providing effective and efficient services to clients.

b. The Supreme Court should either make improvements to the Total Court Information System (TCIS) and to the aggregate statistical information system or develop a new system to collect specific data on CHIPS and TPR cases; and

c. The Supreme Court and the Department of Human Services, should appoint a joint work group to study and make recommendations on possible changes to TCIS and SSIS to enable the sharing of appropriate data between the two agencies.

S. ALTERNATIVE DISPUTE RESOLUTION

A number of focus group participants expressed concern that the current system was too adversarial and believed that alternative dispute resolution ("A.D.R.") methods would better address the needs of children in need of protection or services and their families.

In CHIPS cases, success in accomplishing the child's best interests often requires ongoing cooperation between the agency and the parents. Contested hearings can create an adversarial atmosphere that may prevent a cooperative relationship from developing or continuing. On the other hand, where parties play key roles in arriving at a negotiated settlement, the parties will tend to view themselves as allies in solving a problem rather than as adversaries. In many CHIPS case, similar to domestic abuse cases, an unequal power situation exists between the litigants because there is a victim and a perpetrator. This presents special challenges for the use of A.D.R. methods. There are a few programs across the nation that use A.D.R. methods in juvenile protection proceedings or have tried pilot projects using A.D.R. methods in these proceedings: California, Connecticut, Colorado, Maryland.[306] There

[306] See Center for Policy Research, Alternatives to Adjudication in Child Abuse & Neglect Cases, State Justice Institute, Alexandria, VA (1992) (documenting the experiences of the first juvenile courts in the nation to incorporate child protection mediation into their pre-trial procedures: Hartford, Connecticut; Los Angeles County, California; and Orange County, California); Margaret Shaw and Patrick W. Phear, Innovation in Dispute Resolution: Case Status Conferences for Child Protection and Placement Proceedings in the State of Connecticut, FAM. & CONCILIATION CTS. REV., Vol. 29, No. 3. 270-290; Jessica Pearson, Nancy Thoennes, Bernard Mayer, Mary Margaret Golten, Mediation of Child Welfare Cases, 20 FAM. L. Q., (No. 2) Summer 1996 , 303-322 (1995) (regarding Denver, Colorado Child Protection Mediation Project); Roger Wolf, Mediating CINA Cases, 26 MD. B. J. (No. 5), 31-34 (1993) (regarding 1991 University of Maryland Law School pilot project).

are also programs in Canada.[307]

The Task Force decided that alternative dispute resolution methods were a good idea in principle to help aid in reunification of the family, reduce trauma to the child and keep the best interests of the child in the focus of all parties. However, the Task Force realized that there may be evidentiary and constitutional concerns with regard to relaxing a process which could lead to termination of parental rights. It also recognized that under current law, juvenile court matters and domestic abuse matters are specifically excluded from mandatory A.D.R.[308] and that any A.D.R. programs would have to be offered on a voluntary basis unless current law is changed.

The Task Force believes alternative dispute resolution is a good idea worth exploring in juvenile protection proceedings. Therefore, it recommends that the Minnesota Supreme Court establish a pilot project in two counties to offer A.D.R. services in all phases of CHIPS proceedings.

Recommendation:

1. The Supreme Court should establish a pilot project in two counties to offer A.D.R. services in all phases of CHIPS proceedings.

    a. The Supreme Court should address the following in designing the pilot projects:

        1) What types of A.D.R. processes should be offered and at what stages of the proceedings?

        2) Are adequate due process safeguards in place?

        3) Will evidence gathered, stipulations agreed to and statements made during A.D.R. be allowed as evidence in court when the A.D.R. process is not successful?

        4) Who will participate in each process?

        5) Will equal protection problems be created for children if similarly abused spouses are not required to mediate under the Domestic

[307] See George R. Savoury, Harold L. Beals, and Joan M. Parks, Mediation in Child Protection: Facilitating the Resolution of Disputes, 74 Child Welfare (No. 3), May - June 1995, 743-62 (regarding program in Nova Scotia, Canada); June Maresca, Mediating Child Welfare Cases, Id. at 731-42 (regarding mediation of child protection cases in Ontario, Canada).

[308] Minn. Stat. § 484.76, subd. 2 (1996).

Abuse Act?

6) How will cases in which an Order for Protection is in effect be handled?

b. The State Court Administrator should evaluate the pilot project. The following issues should addressed:

1) Does the use of A.D.R.:
   a) Improve system accountability?
   b) Improve the time to disposition in CHIPS cases?
   c) Reduce costs?
   d) Enhance parental understanding of the case worker's role?
   e) Increase parental involvement?
   f) Allow more people's participation in determining ways of addressing the child's needs?
   g) Increase the possibility that all issues are addressed?

2) What is the effect of A.D.R. on children and other participants in the process?

c. CHIPS A.D.R. neutrals shall receive training on A.D.R. in CHIPS proceedings before being assigned cases.

T. SERVICES

Minnesota Statutes §256E.03, subd. 2 (a), of the Community Social Services Act ("CSSA") provides that the responsibilities prescribed under the Act apply to the following groups of persons:

> (1) families with children under age 18, who are experiencing child dependency, neglect or abuse, and also pregnant adolescents, adolescent parents under the age of 18, and their children;
>
> (2) persons who are under the guardianship of the commissioner of human services as dependent and neglected wards;
>
> (3) adults who are in need of protection and vulnerable as defined in section 626.5572;
>
> (4) persons age 60 and over who are experiencing difficulty living independently and are unable to provide for their own needs;
>
> (5) emotionally disturbed children and adolescents, chronically and acutely mentally ill persons who are unable to provide for their own needs or to

independently engage in ordinary community activities;

(6) persons with mental retardation as defined in section 252A.02, subdivision 2, or with related conditions as defined in section 252.27, subdivision 1a, who are unable to provide for their own needs or to independently engage in ordinary community activities;

(7) drug dependent and intoxicated persons as defined in section 254A.02, subdivisions 5 and 7, and persons at risk of harm to self or others due to the ingestion of alcohol or other drugs;

(8) parents whose income is at or below 70 percent of the state median income and who are in need of child care services in order to secure or retain employment or to obtain the training or education necessary to secure employment; and

(9) other groups of persons who, in the judgment of the county board, are in need of social services.

Currently the CSSA does not specifically require counties to provide services for adolescents.

The Task Force was concerned that there was a group of children who fall outside of the services provided in CSSA. The Task Force recommends that the CSSA should be revised so that the definition of the groups of persons to be served by the Act is expanded to include adolescents and others who have been unserved or under-served.

Since the CSSA was written, the services that are delineated have not been substantially revised. The Task Force recommends a review to determine whether the list of services in the CSSA is contemporary to the needs of children and families. The Task Force also recommends that the CSSA be cross referenced with the Children's Mental Health Act.

Recommendations:

1. The Community Social Services Act, Minn. Stat. §256E, should be revised so that the definition of the groups of persons to be served by the Act is expanded to include adolescents and others who have been unserved or under-served.

2. The core services delineated in the Community Social Services Act, Minn. Stat. §256E should be reviewed to determine if they are contemporary to the needs of children and families. This review should include assessing the need for core services which are consistent with the Children's Mental Health Act.

U. GENERAL RECOMMENDATIONS

Currently, laws regarding child protection are spread throughout Minnesota Statutes §§ 257, 259, 260 and 626. In Minnesota § 260, provisions dealing with delinquency and child protection are interwoven; some provisions apply or appear to apply to both proceedings. While delinquency proceedings have become like adult criminal matters both procedurally and in their criminal history ramifications, child protection proceedings remain civil matters. To make it clear what law applies to which proceedings, the Task Force recommends that the Revisor of Statutes should be assigned the task of reorganizing the statutes so that juvenile offender and juvenile protection matters are clearly separated. The statutes should also be reorganized or rewritten so that statutory language is arranged in the order the events in the juvenile protection process occur--so that the statutes clearly show a pathway to permanence for children in foster care. The Revisor of Statutes should be assigned this task with the goal that the reorganization will be available for the 1998 legislative session.

Since the promulgation of the Minnesota Rules of Juvenile Procedure governing juvenile protection proceedings in July 1982, numerous statutory and case law changes have occurred which conflict with or are not reflected in the rules. For instance, the rules do not set forth procedures for conducting permanency hearings, transfers of permanent legal and physical custody to a relative, or termination of parental rights proceedings. Therefore, the Task Force recommends that these rules be revised to reflect current law and practice and the recommendations of the Minnesota Supreme Court's Foster Care and Adoption Task Force.

Practice as an attorney or judicial officer in the area of CHIPS, termination of parental rights, and adoption is unique in the practice of law. No previous experience as an attorney or a judicial officer prepares one for the challenges, responsibilities, and authority that a court, in particular, has in these cases. Beginning judicial officers and lawyers are often ill-prepared to handle the complex legal, social, psychological and procedural issues; and, in particular, to analyze the interrelationships between these issues. The Task Force recommends that the courts, prosecutor's offices and State Public Defender encourage judges and attorneys to attend quality continuing legal education courses on all aspects of the juvenile court and particularly the foster care and adoption systems. This training should include, but not be limited to, procedural and substantive legal issues; training in social welfare issues such as bonding and attachment; training in psychological issues such as methods of testing and various descriptions of the types of mental health problems and mental health issues; discussion of criteria for parenting classes; clear descriptions of the roles and responsibilities of the personnel within the system.; and training in all aspects and requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Ongoing training for child welfare workers is necessary as well to enable them to discharge their complex and difficult responsibilities. The Task Force recommends

that the legislature provide funding to fully implement the Minnesota Child Welfare Training System which will function as a comprehensive statewide training system for child welfare staff.

Recommendations:

1. Delinquency and child protection matters should be separated in the Minnesota Statutes. The child protection statutes should be revised to clearly show the pathway to permanence. The Revisor of Statutes should be assigned this task with the goal that the reorganization will be available for the 1998 legislative session.

2. The Juvenile Rules Committee should be reactivated to revise the "juvenile protection rules" to provide for conformity with current statutory language, case law and court practice and the recommendations of the Minnesota Supreme Court's Foster Care and Adoption Task Force.

3. The courts, prosecutor's offices and State Public Defender should encourage judges and attorneys to attend quality continuing legal education courses on all aspects of the juvenile court and particularly the foster care and adoption systems. This training should include, but not be limited to, procedural and substantive legal issues; training in social welfare issues such as bonding and attachment; training in psychological issues such as methods of testing and various descriptions of the types of mental health problems and mental health issues; discussion of criteria for parenting classes; clear descriptions of the roles and responsibilities of the personnel within the system.; and training in all aspects and requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

4. The legislature should provide additional funding to fully implement the Minnesota Child Welfare Training System, which is a comprehensive statewide training system for child welfare staff.

V. FUNDING STREAMS

In 1995, over $300 million dollars were spent on child welfare services in Minnesota (excluding children's mental health services).[309] Over half of these expenditures ($160.8 million) were for out of home placements for children who were removed from their families.

[309]Minnesota Department of Human Services, *Funding for Child Welfare Services Through County Social Service Agencies* , 1 (March, 1996) (on file with Minnesota Supreme Court).

Child welfare funds are provided by federal, state, and county levels of government. The single largest source of funding is the county social service property tax levy. In calendar year 1995 this amounted to over $171 million statewide.[310] Two block grant programs, the state's Community Social Service Act (CSSA) grant and the federal Title XX block grants are awarded annually to support all county social services, not just child welfare. It is estimated that the counties spend about half of these funds on child welfare programs: $25.8 million CSSA funds and $17.5 million Title XX funds in 1995.[311] Each county has substantial discretion on how the social service property tax levy dollars and the block grant funds will be spent. The $300.8 million dollars spent on child welfare services in 1995 can be broken down as follows[312]:

SOURCE OF FUNDING	AMOUNT
County Property Tax	$ 171.2
Social Service Block Grants	$ 43.3
Title IV-E Foster Care and Administration	$ 29.8
Child Welfare Targeted Case Management Services	$ 12.7
Family Preservation Funds	$ 10.3
Emergency Assistance Intensive Family Preservation Services	$ 8.6
Other Grants	$ 24.9
TOTAL CHILD WELFARE	$ 300.8 million

In addition to the funding sources discussed above, there are two categories of "grant" funds: 1) capped allocations and 2) federal entitlement funding. Capped allocations have "grant ceilings." Once the county or state spends the grant amount there are no additional funds available from the state or federal government. Federal entitlement funding, on the other hand, is uncapped but issued on a reimbursement basis. Federal entitlement funding is based on the eligibility of the individual or family and the eligibility of the planned activity or program to receive funds. Therefore, when the state and counties spend money on eligible activities for eligible individuals and families, the federal government reimburses a portion of those costs (up to 50%).[313] Title IV-E Adoption and Foster Care funds are federal entitlement

[310] Id.

[311] Id.

[312] Id. at 2.

[313] Id. at 3.

funds.[314] Receipt of these funds is conditioned on compliance with P.L. 96-272 (the Permanency Law) and other provisions.[315] Foster care is funded by county property tax dollars reimbursed, in part, by federal Title IV-E funds.[316] Because not all children and placements are eligible, the rate of federal reimbursement for foster care is approximately 15 cents for every dollar the county spends.[317] Adoption is funded by state dollars reimbursed, in part, by Title IV-E funds.[318]

The Task Force discussed the impact of the current service delivery systems and funding structure on the child welfare system. The Task Force heard testimony indicating that the funding drives the system of care. The perception is that too often the services provided to children are based more on availability of county funds than the children's needs. The Task Force, in particular, discussed how the structure of funding drove some permanent placement decisions. For instance, the amount a caretaker receives is greater for foster care than for adoption and greater for adoption than when permanent legal and physical custody is transferred to the caretaker and the child may be eligible only for Aid to Families with Dependent Children ("AFDC"). This makes it difficult for some financially-strapped caretakers to agree to adoption or transfer of permanent legal and physical custody of a child in their care.

The issue of funding was raised constantly at public hearings, focus groups and in the Task Force's own discussions. The Task Force recognized that it was not the appropriate group to make recommendations for changes in the funding structure because such recommendations would be well beyond the charge of the Task Force which was to study the processing of foster care and adoption cases in the court system. Additionally, the Task Force realized that county input and discussion would be required to properly address the issue. The Task Force concluded that the most appropriate forum for recommending reform in the funding structure would be through a legislative commission established by the legislature for that purpose.

Recommendations:

1. The Legislature should create a legislative commission, to examine the current

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[314] Id.

[315] For a discussion of "P.L. 96-272," see Part IV, Section F. of this report.

[316] Minnesota Department of Human Services, *Funding for Child Welfare Services Through County Social Service Agencies* , 7 (March, 1996) (on file with Minnesota Supreme Court).

[317] Dr. David Sanders, Director, Hennepin County Child and Family Services and Minnesota Supreme Court Foster Care and Adoption Task Force member.

[318] Minnesota Department of Human Services, *Funding for Child Welfare Services Through County Social Service Agencies* , 7 (March, 1996) (on file with Minnesota Supreme Court).

funding streams that impact and influence decisions for children needing protection or services. The commission should be composed of individuals representing state and local interests and stakeholders including; trial court judges, tribal court judges, county attorneys, public defenders, public and private attorneys experienced in the area of child welfare, guardians ad litem, local and regional public and private social service and adoption agencies, parents and consumer groups, child advocacy agencies, county commissioners, legislators, law enforcement and the Minnesota Department of Human Services. The commission should examine temporary and permanent placement options, foster care, out-of-home placements, adoption subsides and preventative services. The commission shall make recommendations on future funding streams of such services in Minnesota.

APPENDICES

APPENDIX A

INFORMATION ON FOCUS GROUPS, PUBLIC HEARINGS, SITE VISITS, AND PRESENTATIONS

Focus Groups:

From February 1, 1996 - March 19, 1996, the Task Force heard from the following focus groups:

February 1, 1996	County Attorneys
February 6, 1996	Defense Attorneys
February 13, 1996	Guardians ad Litem
February 15, 1996	Judges and Referees
February 20, 1996	Caseworkers, Social workers, Pre-petition Screeners, Child-Protection Workers
March 5, 1996	State, County and Tribal Social Services Agencies
March 12, 1996, 3:00 - 5:00 p.m.	Foster Parents and Relative Caretakers
March 12, 1996, 5:00 - 7:00 p.m.	Foster Children and Young Adults
March 19, 1996	Adoptive Parents of Children Previously in Foster Care

A Focus Group Report dated April 10, 1996 which synopsizes the comments and themes of the focus groups is on file with the Minnesota Supreme Court.

Public Hearings:

The Task Force conducted the following public hearings:

June 27, 1996	St. Paul Technical College Auditorium, St. Paul
July 17, 1996	City Council Chambers, City Hall, Bemidji
July 25, 1996	Auditorium, Hennepin County Government Center, Minneapolis
August 1, 1996	Government Center Boardroom, Government Center, Rochester
August 14, 1996	The Farmer's Room, Nobles County Courthouse, Worthington

A Summary of Public Hearings which synopsizes and categorizes the comments at the public hearings is on file with the Minnesota Supreme Court.

Site Visits:

July 11, 1996	Parenting Unit, Minnesota Correctional Facility, Shakopee
August 18, 1996	Juvenile Divison, Wayne County Probate Court, Wayne County, Michigan

Presentations:

The Task Force had the following presentations at its Task Force meetings:

- Tonja J. Rolfson on Foster Care: Current Federal and State Law, Timelines and Placement Parameters;
- Ann Ahlstrom, Asst. Hennepin County Attorney on the nuts and bolts of the CHIPS process in Hennepin County;
- Mark Fiddler on the Indian Child Welfare Act;
- Susanne Smith and Dr. C.L. Moore on "Best Interests of the Child" from a psychological and developmental standpoint;
- Denise Revels Robinson (MN Dept. of Human Services) and members of her office on Statistics and Trends, discussing the statistics DHS collects;
- Prof. Esther Wattenberg, U of M School of Social Work on "Reasonable Efforts: A Social Work Perspective";
- Judith Anderson of Minnesota Adoption Resource Network, Inc. on Minnesota's Waiting Children (children formerly in foster care awaiting adoption); and
- Denise Revels Robinson (MN Dept. of Human Services) and Dr. David Sanders (Hennepin County Social Services) on Funding of Foster Care and Adoption Systems.

APPENDIX B

SUMMARY OF DATA COLLECTION EFFORTS

In order to obtain data regarding attitudes, practices and compliance with current law and time lines, the Task Force conducted surveys of key players, an analysis using data from the State Judicial Information System ("SJIS") and a hands-on court file review of CHIPS cases in six counties.

I. Surveys

A. Survey of Judicial Officers, County Attorneys and Social Services Agencies

The Task Force sent surveys to judicial officers, county attorneys and county social service agencies dealing with the following issues: representation of parties, timeliness of proceedings and permanent placements, permanent placement dispositions, termination of parental rights, implementation of the Indian Child Welfare Act and Minnesota Heritage Act and the standards of "best interests of the child" and "reasonable efforts" to prevent removal of the child from the home and to reunify the parent and child. The groups were also asked questions on access to information and data privacy and whether court hearings in juvenile protection and termination of parental rights cases should be open to the public. The questions were of two main types: 1) those that sought to measure attitudinal response and 2) those that sought to document how present law was being interpreted.

- **Judicial Officer Survey:** Questionnaires were mailed to 187 judges and referees; 139 (81%) responded. Of the 48 that did not "respond," one judge refused to participate, 32 judges did not return their surveys and 15 judges were eliminated from the sample because they had not presided over any Children in Need of Protection or Services ("CHIPS") cases or termination of parental rights ("TPR") cases since June 1993, the approximate date the "permanency statute" (Minn. Stat. § 260.191, subd. 3b) went into effect.

- **County Attorney Survey:** Questionnaires were mailed to all 87 county attorneys; 74 (85%) responded.

- **Social Services Agencies Survey:** Questionnaires were mailed to all 84 county social service agencies. (There are only 84 county social services agencies statewide because the following agencies serve multiple counties: Human Services of Faribault and Martin Counties and the Region VIII North Welfare Office (Lincoln, Lyon and Murray Counties)). Seventy-six (76) county social service agencies (or 90%) returned their surveys.

The survey instruments and a Technical Report of each survey setting forth the

responses to each survey question are on file with the Minnesota Supreme Court. Where information from the Technical Report is discussed in the Task Force's Report, questions which were not answered or to which respondents selected the response "no basis for judgment" were not factored into the percentage responses.

- Research and Evaluation, State Court Administration compiled two reports analyzing the surveys:

  1) *Survey Questions Analysis: Highlights of Regional Differences for Judges, Attorneys and Social Services* which analyzes regional differences within each group for only those questions where regional differences were detected. The regions were defined as follows:

  > Metro Region = counties in Judicial Districts 2 and 4
  > Suburban Region = counties in Judicial Districts 1 and 10
  > Greater Minnesota Region = counties in Judicial Districts 3, 5, 6, 7, 8 and 9.
  >
  > Questions which were not answered or to which the respondent selected the response "no basis for judgment" were not factored into the percentage responses. A copy of this report is on file with the Minnesota Supreme Court.

  2) *Survey Questions Analysis: Highlights of Common Questions for Judges, Attorneys, and Social Services* which compares and analyzes responses from the three groups with regard to identical questions asked of each group. All common questions were analyzed, even if there was no marked difference in response between the groups. Questions which were not answered or to which the respondent selected the response "no basis for judgment" were not factored into the percentage responses. A copy of this report is on file with the Minnesota Supreme Court.

B. Survey of Public Defenders

The Chief Public Defender from each judicial district was asked to identify public defenders in the district who handled CHIPS and TPR cases. Based on this identification, questionnaires were mailed to 208 public defenders statewide; 157 (or approximately 75%) returned completed surveys. All respondents had handled CHIPS or TPR cases within the last five years. About two-thirds were part-time public defenders and the rest were full-time.

The public defenders were asked questions dealing with the following issues: representation of parties, client contact, access to information and data privacy and whether court hearings in juvenile protection and termination of parental rights cases should be open to the public.

The Office of Planning, State Court Administration compiled a report analyzing the overall responses to the survey as well as a regional analysis. The regions were defined as follows:

> Metro Region = counties in Judicial Districts 2 and 4
> Suburban Region = counties in Judicial Districts 1 and 10
> Greater Minnesota Region = counties in Judicial Districts 3, 5, 6, 7, 8 and 9.

Questions which were not answered or to which the respondent selected the response "no basis for judgment" were not factored into the percentage responses. The survey instrument and a copy of this report is on file with the Minnesota Supreme Court.

C. Tribal Social Services and Tribal Lawyers Surveys

Surveys were sent to the tribal social service agencies serving the following reservations: Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Lower Sioux, Mille Lacs, Prairie Island, Red Lake, Mdewakanton Sioux, Upper Sioux, and White Earth. All 11 tribal social service agencies responded. Surveys were also sent to all 11 tribal lawyers or law firms representing these tribes; 9 responded.

Both groups were asked questions regarding intervention in child welfare and foster care cases in state court involving the Indian Child Welfare Act ("ICWA"), tribal representatives in ICWA cases in state court, and training needs. The tribal lawyers were also asked about the status of each tribe's tribal court and whether the tribe had a "children's code." In addition to the questions asked of both groups, the tribal social service agencies were asked how many children in the tribe were in placement in 1995, the level of involvement of the tribal social service agency in state court ICWA cases, tribal/county agreements, and the nature of the working relationship between the tribe and the county social service agency in ICWA cases in state court.

The Office of Planning, State Court Administration, prepared two reports: *Tribal Social Services Survey Results* and the *Tribal Lawyers Survey Results*. The survey instruments and copies of the reports are on file with the Minnesota Supreme Court.

II. State Judicial Information System ("SJIS") Review

An analysis of the State Judicial Information System ("SJIS") was undertaken to assess the timeliness of CHIPS and TPR proceedings statewide as well as other information such as the age of the child at the time of the filing of the petition. The sample of CHIPS cases analyzed was comprised of all 11,502 juvenile protection petitions filed

between July 1, 1993[1] and December 31, 1995 on the basis of dependency or neglect. Petitions alleging truancy or runaway status were not included. Proceedings on all TPR petitions filed in 1990 through 1995 were also analyzed. SJIS contains data on court activities in cases all across the state. A "petition" in SJIS is defined as one child per petition. Therefore, if an actual CHIPS petition filed with the court lists six different children, SJIS interprets this CHIPS petition as six different CHIPS petitions -- one for each child.

The Office of Research and Evaluation, State Court Administration prepared a report entitled *An Examination of CHIPS and TPR Cases from the State Judicial Information System* analyzing and evaluating on a statewide basis, timeliness of proceedings and the number of cases where a child was placed out of the home several times during one petition. The report also sets forth statewide data on the number of termination of parental rights petitions their outcomes from 1990 through 1995 as well as information on the time from filing of the termination petition to the date of termination for cases during the same time period. This report is on file with the Minnesota Supreme Court.

III. Six County Court File Review

The study was undertaken to collect data on, among other things, the timeliness of proceedings, representation of the parties, number of cases where guardians ad litem were present on behalf of the children's best interests, the time spent in foster care by children during one CHIPS petition, age of children at the point of filing of the petition, time from filing of the petition to the finding of CHIPS, number of CHIPS adjudications by trial and by admission, number of dismissals, when a permanency hearing pursuant to Minnesota Statutes § 260.191, subd. 3b was held and the number of different permanency dispositions ordered.

This study involved original data collected from juvenile protection petitions alleging dependency or neglect which were filed between July 1, 1993[2] and December 31, 1995 in six counties. Petitions alleging truancy or runaway status were not included in the sample. As in the SJIS study, a "petition" for the purposes of this study represents one child during the court activity of one petition. Case numbers for the petitions were retrieved from the SJIS system.

The Task Force selected the following six counties to ensure a mix of urban, suburban and Greater Minnesota locations: Anoka (suburban), Clay (Greater Minnesota), Hennepin (urban), Otter Tail (Greater Minnesota), Ramsey (urban) and St. Louis (Greater Minnesota). In St. Louis County, only petitions from the Duluth, Minnesota court site were used. Therefore, "Duluth" appears in place of "St. Louis" in all graphs in this report documenting Six County Court File Review findings. All of the petitions filed during the July 1, 1993 through December 31, 1995 time period in

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[1]The date of July 1, 1993 was selected as the starting point because that is the effective date of Minnesota's "permanency statute" (Minnesota Statutes § 260.191, subd. 3b).

[2]*Id.*

Anoka, Clay, Ottertail and St. Louis - Duluth were examined. Due to the large number of petitions filed in Ramsey and Hennepin counties during this time period, a random sample was selected in these two counties. A total of 1600 petitions were reviewed. The following table shows the number of petitions reviewed from each county:

Anoka	Clay	Hennepin	Otter Tail	Ramsey	St. Louis - Duluth
318	126	382	129	375	270

Court clerks employed by the respective counties were temporarily hired at each location to examine the court files and collect the desired data. Data collection was conducted during August and September, 1996.

Research and Evaluation, State Court Administration prepared a report entitled *Summary of Findings for the Six County Court File Review of CHIPS Cases* which analyzes the collected data. The data collection instrument and this report are on file with the Minnesota Supreme Court.

Research and Evaluation, State Court Administration also prepared an *Addendum to the Summary of Findings for the Six County Court File Review of CHIPS Cases* which analyzes county by county the time it took from first court-ordered placement out of the home to the date of the permanency hearing including an analysis of the number of cases which had a permanency hearing within 12 months, within 18 months, or more than 18 months after the first court-ordered placement. This report is on file with the Minnesota Supreme Court.

APPENDIX C

Appendix C contains model language to implement several of the Task Force recommendations. The language was developed during deliberations on the noted issues. This appendix is not inclusive of all statutory changes needed to enact the Task Force Recommendations.

A. Report of Maltreatment to "CHIPS" Petition

1. The notification police must give parents pursuant to Minn. Stat. § 260.165, subd. 3 upon taking a child into custody should include notice that the child may be placed with relatives or a designated parent pursuant to Minnesota Statutes § 257A.

Minn. Stat. § 260.165, Subd. 3:

Subd. 3. Notice to parent or custodian. Whenever a peace officer takes a child into custody for shelter care or relative placement pursuant to subdivision 1; section 260.135, subdivision 5; or section 260.145, the officer shall give the parent or custodian of the child a list of names, addresses, and telephone numbers of social service agencies that offer child welfare services and a notice that, pursuant to section 260.173, subd. 2, the parent or custodian may request that the child be placed with a relative or a designated parent under chapter 257A instead of in a shelter care facility. If the parent or custodian was not present when the child was removed from the residence,...

2. The Legislature should amend Minnesota Statutes § 260.015, subd. 2a to provide that grounds for CHIPS grounds exist where a child has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile petty or traffic offender proceeding, delinquency proceeding, extended jurisdiction juvenile proceeding or certification proceeding.

Minn. Stat. § 260.015, Subd. 2(A):

Subd. 2a. Child in need of protection or services. "Child in need of protection or services" means a child who is in need of protection or services because the child:..

...(13) is one whose custodial parent's parental rights to another child have been involuntarily terminated within the past five years; or

(14) has been found incompetent to proceed or found to be not guilty by reason of mental illness or mental deficiency in a juvenile petty or traffic offender proceeding, delinquency proceeding, extended jurisdiction juvenile proceeding or certification proceeding.

3. Minnesota Statutes § 260.191, subd. 4 should be amended to limit the time a child may be continued without adjudication to just one period not to exceed ninety (90) days. The statute should also provide that, at the end of that period, if both the parents and child prove they have complied with the terms of the continuance, the case should be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care.

Additionally, the statute should require that, if either the parents or the child have not complied with the terms of the continuance during that period, the court shall adjudicate the child in need of protection or services or neglected and in foster care. The court may only grant a continuance without adjudication at the first appearance and only if it is in the child's best interests; the best interests of the parent(s) are not a factor.

Minn. Stat. § 260.191, Subd. 4:

Subd. 4. Continuance of case. Upon an admission at the first appearance but before a finding of need for protection or services or a finding that a child is neglected and in foster care has been entered, the court may continue the case for a period not to exceed 90 days on any one order when it is in the best interests of the child ~~or the child's parents~~ to do so and when either the allegations contained in the petition have been admitted, or when a hearing has been held as provided in section 260.155 and the allegations contained in the petition have been duly proven. ~~before a finding of need for protection or services or a finding that a child is neglected and in foster care has been entered the court may continue the case for a period not to exceed 90 days on any one order. Such a continuance may be extended for one additional successive period not to exceed 90 days and only after the court has reviewed the case and entered its order for an additional continuance without a finding that the child is in need of protection or services or neglected and in foster care. During this continuance the court may enter any order otherwise permitted under the provisions of this section.~~ At the end of that period, if both the parents and child have complied with the terms of the continuance, the case shall be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care. If either the parents or the child have not complied with the terms of the continuance during that period, the court shall adjudicate the child in need of protection or services or neglected and in foster care.

B. Best Interests of the Child

1. The Legislature should amend Minnesota Statutes § 260.011, subd. 2(b) to 1) emphasize that the paramount consideration in all proceedings for the termination of parental rights is the best interests of the child; and 2) provide that the court should also consider what reasonable efforts have been made by the social service agency to reunite the child with the child's parents in a placement that is safe and permanent, bearing in mind that it may not be appropriate in all cases to provide reasonable efforts towards reunification.

Minn. Stat. § 260.011, subd. 2(b):

(b) The paramount consideration in all proceedings for the termination of parental rights is the best interests of the child. ~~The purpose of the laws relating to termination of parental rights is to ensure that:~~ The court should also consider:

(1) where appropriate, what reasonable efforts have been made by the social service agency to reunite the child with the child's parents in a placement that is safe and permanent; and

(2) if placement with the parents is not reasonably foreseeable, to secure for

the child a safe and permanent placement, preferably with adoptive parents.

~~The paramount consideration in all proceedings for the termination of parental rights is the best interests of the child.~~ In proceedings involving an American Indian child, as defined in section 257.351, subdivision 6, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et. seq.

2. Standard for Best Interest in CHIPS and TPR Cases

The Legislature should amend Minnesota Statutes § 260.015 by adding a subdivision which defines "best interests of the child".

Minn. Stat. § 260.015, adding subd. 4b:

Subd. 4b. Best interests of the child. The "best interests of the child" means all relevant factors to be considered and evaluated. Relevant factors to be considered and evaluated may include, but are not limited to, the following:

(1) The child's current functioning and behaviors;
(2) The medical, education and developmental needs of the child;
(3) The child's history and past experience;
(4) The child's religious and cultural needs;
(5) The child's connection with a community, school and or church;
(6) The child's interests and talents;
(7) The child's relationship to current caretakers, parents, siblings and relatives; and
(8) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

Minn. Stat. § 260.191, subd. 3b:

Subd. 3b. Review of court ordered placements; permanent placement determination. (a) If the court places a child in a residential facility, as defined in section 257.071, subdivision 1, the court shall conduct a hearing to determine the permanent status of the child not later than 12 months after the child was placed out of the home of the parent. Not later than ten days prior to this hearing, the responsible social service agency shall file pleadings to establish the basis for the permanent placement determination. Notice of the hearing and copies of the pleadings must be provided pursuant to section 260.141. If a termination of parental rights petition is filed before the date required for the permanency planning determination, no hearing need be conducted under this section. The court shall determine whether the child is to be returned home or, if not, what permanent placement is consistent with the child's best interests. ~~The "best interests of the child" means all relevant factors to be considered and evaluated.~~

C. Permanent Placement Dispositions

1. The permanent placement disposition options for runaways, truants and delinquents under age 10 should be expanded to include "foster care for a specified period of time" where 1) either truancy, running away or committing a delinquent act under age 10 was the sole basis for the CHIPS adjudication and 2) the court finds that "foster care for a specified period of time" is in the best interests of the child. The court

shall review a permanent placement of "foster care for a specified period of time" every six (6) months.

Minn. Stat. § 260.191, subd. 3b (a):

Subd. 3b. Review of court ordered placements; permanent placement determination. (a) If the court places a child in a residential facility, as defined in section 257.071, subdivision 1, the court shall conduct a hearing to determine the permanent status of the child not later than 12 months after the child was placed out of the home of the parent...

If the child is not returned to the home, the dispositions available for permanent placement determination are:

(1) permanent legal and physical custody to a relative pursuant to the standards and procedures applicable under chapter 257 or 518. The social service agency may petition on behalf of the proposed custodian;

(2) termination of parental rights and adoption; the social service agency shall file a petition for termination of parental rights under section 260.231 and all the requirements of sections 260.221 to 260.245 remain applicable; ~~or~~

(3) long-term foster care; transfer of legal custody and adoption are preferred permanency options for a child who cannot return home. The court may order a child into long-term foster care only if it finds that neither an award of legal and physical custody to a relative, nor termination of parental rights nor adoption is in the child's best interests. Further, the court may only order long-term foster care for the child under this section if it finds the following:

(i) the child has reached age 12 and reasonable efforts by the responsible social service agency have failed to locate an adoptive family for the child; or

(ii) the child is a sibling of a child described in clause (i) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home.or

(4) continued in foster care for a specified period of time but only if the court finds that:

(i) the sole basis for adjudicating the child a child in need of protection or services was Minnesota Statutes section 260.015, subd. 2a (10), (11) or (12); and

(ii) such a permanent placement disposition would serve the best interests of the child.

Minn. Stat. § 260.191, subd. 3b (d):

(d) Once a permanent placement determination has been made and permanent placement has been established, further reviews are only necessary if otherwise required by federal law, an adoption has not yet been finalized, ~~or~~ there is a disruption of the permanent or long-term placement, or if the child has been continued in foster care for a specified period of time pursuant to Minn. Stat. § 260.191, subd. 3a(4). If required, reviews must take place no less frequently than every six months.

D. Reasonable Efforts and Termination of Parental Rights

1. The Legislature should amend Minnesota Statutes § 260.012(b), § 260.012(c) and Minnesota Statutes § 260.221, subd. 5 (regarding the definition of reasonable efforts, factors to consider when determining whether reasonable efforts have been made and required findings as to reasonable efforts) to comply with the holding of In re the Welfare of S.Z., 547 N.W.2d 886 (Minn. 1996) which provides that, in some cases, any provision of services or further provision of services would be futile and therefore unreasonable. The Legislature should also amend Minnesota Statutes § 260.012 (b) to comply with the Child Abuse Prevention and Treatment Act Amendments of 1996 by providing that reunification of a surviving child with a parent is not required when that parent has been found by a court of competent jurisdiction to have committed certain crimes.

Minn. Stat. § 260.012 (b)(1994):

(b) "Reasonable efforts" means the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family; or upon removal, services to eliminate the need for removal and reunite the family. Services may include those listed under section 256F.07, subdivision 3, and other appropriate services available in the community. In some cases, any provision of services or further provision of services would be futile, and therefore unreasonable. The social services agency has the burden of demonstrating that it has made reasonable efforts. Reunification of a surviving child with a parent is not required when that parent has been found by a court of competent jurisdiction

(1) to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(2) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(3) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

(4) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

Minn. Stat. § 260.012(c) (1994):

(c) The juvenile court, in proceedings under sections 260.172, 260.191, and 260.221 shall make findings and conclusions as to the provision of reasonable efforts or that any provision of services or further provision of services would be futile, and therefore unreasonable. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

(1) relevant to the safety and protection of the child;
(2) adequate to meet the needs of the child and family;
(3) culturally appropriate;
(4) available and accessible;
(5) consistent and timely; and
(6) realistic under the circumstances.

Minn. Stat. § 260.221, subd. 5 (1994):

Subd. 5. In any proceeding under this section, the court shall make specific findings regarding the nature and extent of efforts made by the social service agency to rehabilitate the parent and reunite the family or that any provision of services or further provision of services would be futile, and therefore unreasonable.

2. The Legislature should modify the presumption regarding "palpable unfitness" as follows:

Minn. Stat. § 260.221, subd. 1 (b)(4):

...It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that:

(i) the child was adjudicated in need of protection or services due to circumstances described in 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); and

(ii) ~~within the three year period immediately prior to that adjudication,~~ the parent's parental rights to one or more other children were involuntarily terminated under clause (1), (2), (4), or (7), or under clause (5) if the child was initially determined to be in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8);....

E. Adoption of Children Under State Guardianship

1. Relative Searches Prior to Adoption and Time Frames for Completing Adoption Subsidy Agreement.

a. A thorough relative search should be done within the first six (6) months of the time a child is first placed out of the home. The relatives identified should be given certain notices about being considered as a permanent placement.

b. At the point that the county or the juvenile court determines that it is necessary to prepare for the permanent placement determination hearing or in anticipation of filing a termination of parental rights petition, the county should send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. (Notice need not be sent to a parent whose rights to the child have been terminated.)

c. Those entitled to notice shall have 30 days from the mailing of the notice to respond.

Minn. Stat. § 260.191, subd. 3a:

Subd. 3a. Court review of out-of-home placements. If the court places a child

in a residential facility, as defined in section 257.071, subdivision 1, the court shall review the out-of-home placement at least every six months to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. The court shall review agency efforts pursuant to section 257.072, subdivision 1, and order that the efforts continue if the agency has failed to perform the duties under that section. The court shall review the case plan and may modify the case plan as provided under subdivisions 1e and 2. If the court orders continued out-of-home placement, the court shall notify the parents of the provisions of subdivision 3b. When the court determines that a permanent placement determination hearing is necessary because there is a likelihood that the child will not return to a parent's care, the court may authorize sending notice to any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan or any relative that has provided the social services agency with a current address stating that the child may not be returning to a parent's care and that a permanent home is sought for the child. Persons receiving this notice shall be notified that they have thirty (30) days from the date the notice is mailed to them to advise the responsible social service agency of their interest in providing a permanent home for the child.

Minn. Stat. § 259.33:

~~When a termination of parental rights order regarding a child becomes final, the agency with guardianship of the child shall give the notice provided in this section to any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan for the child or demonstrated an interest in the child. This notice must not be provided to a parent whose parental rights to the child have been terminated under section 260.221, subdivision 1. The notice must state that a permanent home is sought for the child and that individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The agency with guardianship of the child shall review the child's custodial history and relationships with siblings, relatives, foster parents, and any other person who may significantly affect the child in determining an appropriate permanent placement.~~

d. Minnesota Statutes § 257.072, subd. 1 and Minnesota Rule 9560.0535, subpart 3 currently require social services to do a relative search for six months even though the child has been placed in foster care with a relative who is interested in being a permanent placement option. These provisions should be amended to provide that the relative search may stop if the child is placed with a relative who is interested in being a permanent placement option.

Minn. Stat. § 257.072, subd. 1:

Subdivision 1. Recruitment of foster families. Each authorized child-placing agency shall make special efforts to recruit a foster family from among the child's relatives, except as authorized in section 260.181, subdivision 3. Each agency shall provide for diligent recruitment of potential foster families that reflect the ethnic and racial diversity of the children in the state for whom foster homes are needed. Special efforts include contacting and working with community organizations and religious organizations and may include contracting with these organizations, utilizing local

media and other local resources, conducting outreach activities, and increasing the number of minority recruitment staff employed by the agency. The requirement of special efforts to locate relatives in this section is satisfied if the responsible child-placing agency has made appropriate efforts for six months following the child's placement in a residential facility and the court approves the agency's efforts pursuant to section 260.191, subdivision 3a or when the child is placed with a relative who is interested in being a permanent placement option, whichever occurs first. The agency may accept any gifts, grants, offers of services, and other contributions to use in making special recruitment efforts.

2. The Legislature should amend Minnesota Statutes § 257.071 by adding a new subdivision which provides that if a child is removed from a new placement in a pre-adoptive home or other permanent placement within the first year after the child is placed in the new placement and the child is not returned to the foster home in which the child was placed immediately preceding the child's placement in the new placement, the court shall hold a hearing within ten (10) days of the time the child was taken into custody to determine where the child should be placed. The amendment should also provide that the child shall be appointed a guardian ad litem for this hearing.

Minn. Stat. § 257.071, by adding Subd. 1c:

Subd. 1c. New Placement as a Pre-adoptive Home or other Permanent Placement. If a child is removed from a new placement in a pre-adoptive home or other permanent placement within the first year after the child is placed in the new placement and the child is not returned to the foster home in which the child was placed immediately preceding the child's placement in the new placement, the court shall hold a hearing within ten (10) days of the time the child was taken into custody. The child shall be appointed a guardian ad litem for this hearing.

E. Adoptions and a Putative Father Registry

1. Minnesota Statutes should be amended to establish a putative father registry.

Minn. Stat. § 259.21, subd. 12:

Subd. 12. Putative Father. A "putative father" is any man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born and (2) has not established paternity of the child in a court proceeding before the filing of a petition for the adoption of the child. The term includes a male who is less than 18 years of age.

Minn. Stat. § 259.49, subd. 1:

Subdivision 1. To whom given. Except as provided in subdivision 3, and subject to section 259.51, notice of the hearing upon a petition to adopt a child shall be given to:

(1) The guardian, if any, of a child;
(2) The parent of a child if
(a) The person's name appears on the child's birth certificate, as a

parent, or

(b) The person has substantially supported the child, or

(c) The person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth, or

(d) The person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both, or

(e) The person has been adjudicated the child's parent, or

~~(f) The person has filed an affidavit pursuant to section 259.51.~~

(f) The person has filed a paternity action within sixty (60) days after the child's birth and the action is still is pending;

(g) The person and the mother of the child have signed a declaration of parentage pursuant to section § 257.34 before August 1, 1995 which has not been revoked or a recognition of parentage pursuant to section § 257.75 which has not been revoked; or

(h) The person

(i) is not otherwise entitled to notice pursuant to Minnesota Statutes § 259.49;

(ii) has registered with the putative father registry; and

(iii) after receiving a Putative Father Registry Notice, has timely filed an INTENT TO RETAIN PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM pursuant to Minnesota Statutes § 259.51;and

(iv) within thirty (30) days of receipt of the P.F.R. notice has initiated a paternity action (unless for good cause shown, he is unable to do so within the thirty (30) days).

This notice need not be given to any above named person whose parental rights have been terminated. ~~whose notice of intention to retain parental rights filed pursuant to section 259.51 has been successfully challenged, who has consented to the adoption or who has waived notice of the hearing.~~ The notice of the hearing may be waived by a parent, guardian or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver shall be filed in the adoption proceedings at any time before the matter is heard.

Subd. 2. Service. Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication. The petitioner or petitioner's attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Service, guardian only. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

Subd. 4. Putative Father Registry Notice. All putative fathers registered with

the Putative Father Registry must be served a Putative Father Registry Notice unless they are already entitled to notice of the pending adoption proceeding pursuant to section 259.49, subdivision 1 (1) and (2)(a) - (g). Any time after conception, but prior to service of notice of the hearing pursuant to subdivision 2, any interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may, file with the court administrator a written request stating the putative father(s) to be served with a PUTATIVE FATHER REGISTRY NOTICE, the INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM, and the DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION FORM pursuant to this section. The Putative Father Registry Notice shall contain the information contained in section 259.49, subdivision 5. These documents may be served on a putative father in the same manner as a Summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

(a) The person requesting notice shall pay to the court administrator a mailing fee of $___ plus the cost of U.S. postage for certified or registered mail and furnish to the court administrator an original and one copy of the PUTATIVE FATHER REGISTRY NOTICE, the INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM and the DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION FORM together with an Affidavit setting forth the putative father's last known address. The court administrator shall retain the originals of these forms

(b) The court administrator shall forthwith mail to the putative father, at the address appearing in the Affidavit, the copy of the PUTATIVE FATHER REGISTRY NOTICE, the INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM and the DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION FORM by certified mail, return receipt requested; and the envelope and return receipt shall bear the return address of the court administrator. The receipt for certified mail shall state the name and address of the addressee, and the date of mailing, and shall be attached to the original notice.

(c) The return receipt, when returned to the court administrator, shall be attached to the original PUTATIVE FATHER REGISTRY NOTICE, the INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM and the DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION FORM and shall constitute proof of service.

(d) The court administrator shall note the fact of service in a permanent record.

Subd. 5. Response to Putative Father Registry Notice; Limitation of Rights for Failure to Respond and Upon Filing of a Denial of Paternity with Entry of Appearance and Consent to Adoption form. Within thirty (30) days of receipt of the PUTATIVE FATHER REGISTRY NOTICE, the INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM and the DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND CONSENT TO ADOPTION FORM, the putative father must file a completed INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM with the court administrator stating that he intends to initiate a paternity action within thirty (30) days of receipt the PUTATIVE FATHER REGISTRY NOTICE in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Where there is good cause shown, the putative father shall be allowed more time to initiate the paternity action. A putative father who files a completed DENIAL OF PATERNITY WITH ENTRY OF

APPEARANCE AND CONSENT TO ADOPTION FORM or who fails to timely file an INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM with the court

(a) is barred thereafter from bringing or maintaining any action to assert any interest in the child during the pending adoption proceeding concerning the child;

(b) shall be deemed to have waived and surrendered any right to notice of any hearing in the pending judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required in the pending proceeding; and

(c) shall be considered to have abandoned the child. Failure to register shall be prima facie evidence of sufficient grounds to support termination of such father's parental rights.

Minn. Stat. § 259.51:

259.51. Putative Father Registry ~~**Retention of rights**~~

~~Subdivision 1. Notice by illegitimate parent. Any person not entitled to notice under section 259.49, shall lose parental rights and not be entitled to notice at termination, adoption, or other proceedings affecting the child, unless within 90 days of the child's birth or within 60 days of the child's placement with prospective adoptive parents, whichever is sooner, that person gives to the division of vital statistics of the Minnesota department of health an affidavit stating intention to retain parental rights.~~

~~Subd. 2. Notice, contents. Such affidavit shall contain the claimant's name and address, the name and the last known address of the other parent of the child and the month and the year of the birth of the child, if known.~~

~~Subd. 3. Notice, effect. Upon receipt of the aforementioned affidavit the division of vital statistics of the Minnesota department of health shall notify the other parent of same within seven days. This notice to the parent shall constitute conclusive evidence of parenthood for the purposes of this statute, unless within 60 days of its receipt, either the notified parent or some other interested petitioner denies that claimant is the parent of the child and files a petition pursuant to chapter 260 to challenge such notice of parenthood.~~

Subdivision 1. Establishment of Registry; Purpose; Fees. The Commissioner of the Department of Health shall establish a Putative Father Registry for the purpose of determining the identity and location of putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of such proceeding to the putative father who is not otherwise entitled to notice pursuant to section 259.49, subd. 1(1) and (2)(a)-(g). The Commissioner shall establish rules, informational material and public service announcements necessary to implement the provisions of this section. The Department shall have the authority to set reasonable fees for the use of the Registry, however, no fee shall be charged the putative father for registering. Any limitation on a putative father's right to assert an interest in the child for failure to register with the putative father registry as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent pursuant to section 259.49, subd. 1 (1) and (2)(a)-(g) and section 259.24. The Department of Health shall have no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update the registrant's personal information on the registry. The Putative Father Registry shall contain the following information:

(a) With respect to the putative father:

(1) Name, including any other names by which the putative father

may be known and that he may provide to the Registry;

(2) Address at which he may be served with notice of a petition under this Act, including any change of address;

(3) Social Security Number, if known;

(4) Date of birth; and

(5) If applicable, a certified copy of an order by court of another state or territory of the United States adjudicating the putative father to be the father of this child.

(b) With respect to the mother of the child:

(1) Name, including all other names known to the putative father by which the mother may be known;

(2) If known to the putative father, her last address;

(3) Social Security Number, if known; and

(4) Date of birth.

(c) If known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child.

(d) The date that the Department received the putative father's registration.

(e) Other information as the Department may by rule determine necessary for the orderly administration of the Registry.

Subd. 2. Requirement to Search Registry Before Adoption Petition Can Be Granted; Proof of Search. No petition for adoption may be granted unless an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of the child, or an attorney representing an interested party requests that the Department search the Registry to determine whether a putative father is registered in relation to a child who is or may be the subject of an adoption petition. A search of the Registry may be proven by the production of a certified copy of the registration form, or by the certified statement of the administrator of the Registry form, or by the certified statement of the administrator of the Registry that after a search, no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that a putative father has consented to or waived his rights regarding the proposed adoption, certification that the Putative Father Registry has been searched and no putative father exists shall be filed with the court prior to entry of a final order of adoption.

Subd. 3. Search of Registry for Other Purposes. An individual or agency attempting to establish a child support obligation may search the Putative Father Registry to locate putative fathers.

Subd. 4. Confidentiality of Registry; Criminal Penalty for Unlawful Disclosure. Except, as otherwise provided, information contained within the Registry is confidential and shall not be published or open to public inspection. A person who knowingly or intentionally releases confidential information in violation of this Section is guilty of a misdemeanor.

Subd. 5. Criminal Penalty for Registering False Information. A person who knowingly or intentionally registers false information under this Section is guilty of a misdemeanor.

Subd. 6. Who May Register. Any putative father may register with the Putative Father Registry. However, any limitation on a putative father's right to assert an interest in the child for failure to register with the Putative Father Registry applies during pending adoption proceedings and only to those putative fathers not entitled to notice and consent pursuant to sections 259.49, subd. 1 (1) and (2)(a)-(g) and 259.24.

Subd. 7. When and How to Register. A putative father may register with the Department of Health before the birth of the child but shall register no later than 30 days after the birth of the child. All registrations shall be in writing and signed by the putative father. A putative father who has not timely registered will be deemed to have timely registered if he proves by clear and convincing evidence that

(a) it was not possible for him to register within the period of time specified in section 259.51, subd. 7; and

(b) his failure to register was through no fault of his own; and

(c) he registered within 10 days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Subd. 8. Failure to Register. Except for a putative father who is entitled to notice and consent pursuant to sections 259.49, subd. 1 (1) and (2)(a)-(g) and 259.24, a putative father who fails to timely register with the Putative Father Registry pursuant to section 259.51, subd. 7

(a) is barred thereafter from bringing or maintaining any action to assert any interest in the child during the pending adoption proceeding concerning the child;

(b) shall be deemed to have waived and surrendered any right to notice of any hearing in the pending judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required in the pending proceeding; and

(c) shall be considered to have abandoned the child. Failure to register shall be prima facie evidence of sufficient grounds to support termination of such father's parental rights.

Minn. Stat. § 260.221, subd. 1 (b) (1):

Subdivision 1. Voluntary and involuntary. The juvenile court may upon petition, terminate all rights of a parent to a child in the following cases:

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

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

(1) That the parent has abandoned the child. Abandonment is presumed when:

(i) the parent has had no contact with the child on a regular basis and no demonstrated, consistent interest in the child's well-being for six months; and

(ii) the social service agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from making contact with the child. This presumption does not apply to children whose custody has been determined under chapter 257 or 518. The court is not prohibited from finding abandonment in the absence of this presumption; or

The following constitute prima facia evidence of abandonment where adoption proceedings are pending and there has been a showing that the person was not entitled to notice of an adoption proceeding pursuant to Minnesota Statutes § 259.49, subd. 1 (1) and (2) (a) - (g):

(i) failure to register with the Putative Father Registry pursuant to section 259.51; or

(ii) if the father registered with the Putative Father Registry pursuant to section 259.51,

(a) filing a denial of paternity within 30 days of receipt of notice pursuant to Minn. Stat. 259.51, subd. 8; or

(b) failing to timely file an INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM within 30 days of receipt of notice pursuant to Minn. Stat. 259.51, subd. 8.

G. Open Adoptions

1. The Legislature should amend Minnesota Statutes § 257.022 and § 259.59 to provide for the legal enforceability of certain open adoption agreements.

Minn. Stat. § 257.022 ("Rights of Visitation to Unmarried Persons"):

Subdivision 1. When parent is deceased. If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried minor child during minority by the district or county court upon finding that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

Subd. 2. Family court proceedings. In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after the commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

Subd. 2a. When child has resided with grandparents. If an unmarried minor has resided with grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by the minor's parents, the grandparents or great-grandparents may petition the district or county court for an order granting them reasonable visitation rights to the child during minority. The court shall grant the petition if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent and child relationship.

Subd. 2b. When child has resided with other person. If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority. The court shall grant the petition if it finds that:

(1) visitation rights would be in the best interests of the child;

(2) the petitioner and child had established emotional ties creating a parent

and child relationship; and

(3) visitation rights would not interfere with the relationship between the custodial parent and the child.

The court shall consider the reasonable preference of the child, if the court considers the child to be of sufficient age to express a preference.

Subd. 2c. Communication, Contact or Visitation With Birth Parents and Birth Relatives, After Termination of Parental Rights.

(1) Before the issuance of a final adoption decree, adoptive parents and birth parents and birth relatives may enter into a written agreement regarding communication, contact and visitation rights between the child and birth parents or birth relatives with whom the child has established emotional ties. For the purpose of this section "birth relatives" has the same meaning as "relatives," as defined in Minn. Stat. § 260.015, subd. 13. The court may incorporate the terms of such an agreement in a written order if it finds that the agreement is in the best interests of the child at the time the order is entered and the agreement is signed before a notary public by the prospective adoptive parents, the birth parents and birth relatives who are parties to the agreement and, if the child is in the custody of an agency, a representative of the agency.

(2) Enforcement and Modification.

(a) The family court shall have jurisdiction over the enforcement and modification of an order for communication, contact and visitation. Jurisdiction by the family court shall arise upon the filing of a certified copy of the order granting the communication, contact and visitation and an affidavit stating that the parties have mediated or attempted to mediate prior to filing. All subsequent motions to modify must be accompanied by an affidavit stating that the parties have mediated or attempted to mediate prior to filing.

(b) Upon the adoptive parent's denial of communication, contact and visitation pursuant to the terms the order, the birth parent or birth relative has the burden to prove by clear and convincing evidence that enforcement or modification is in the child's best interests.

(3) Failure to comply with the terms of an order issued under this section is not grounds for setting aside or vacating an adoption decree or revoking a written consent by a birth parent to an adoption, after the consent has become irrevocable under Minn. Stat. § 259.24, subd. 6a.

(4) The court shall not modify an order granting communication, contact and visitation unless it finds that the modification is necessary to serve the best interests of the child. The court may restrict the communication, contact and visitation without a finding that the communication, contact and visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, if the court finds that such restriction would serve the best interest of the child.

(5) Records. All records filed with the court under this section must be permanently maintained by the agency which completed the adoption study. Notwithstanding the provisions of section 259.61, an agency and the adoptive parents and any birth parent or birth relative who has been granted communication, contact or visitation with a child pursuant to Minn. Stat. § 257.022, subd. 2c shall, upon request, be given any court records needed to provide postadoption services pursuant to section 259.83 at the request of adoptive parents, birth parents, or adopted individuals age 19 or older or any court records needed to establish the jurisdiction of the family

court in order to enforce or modify communication, contact or visitation with a child pursuant to Minn. Stat. § 257.022, subd. 2c(3).

Subd. 3. Exception for adopted children. Except with regard to subdivision 2c, this section shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Except as to an order issued pursuant to subdivision 2c, any communication, contact or visitation granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.

Subd. 4. Establishment of interference with parent and child relationship. The court may not deny visitation rights under this section based on allegations that the visitation rights would interfere with the relationship between the custodial parent and the child unless after a hearing the court determines by a preponderance of the evidence that interference would occur.

Subd. 5. Visitation proceeding may not be combined with proceeding under chapter 518b. Proceedings under this section may not be combined with a proceeding under chapter 518B.

Minn. Stat. § 259.59:

Subdivision 1. Upon adoption, the child shall become the legal child of the adopting persons and they shall become the legal parents of the child with all the rights and duties between them of birth parents and legitimate child. By virtue of the adoption the child shall inherit from the adoptive parents or their relatives the same as though the child were the natural child of the parents, and in case of the child's death intestate the adoptive parents and their relatives shall inherit the child's estate as if they had been the child's birth parents and relatives. After a decree of adoption is entered the birth parents of an adopted child shall be relieved of all parental responsibilities for the child, and they shall not exercise or have any rights over the adopted child or the child's property. The child shall not owe the birth parents or their relatives any legal duty nor shall the child inherit from the birth parents or kindred, except as provided in subdivision 1a.

Subd. 1a. Notwithstanding any other provisions to the contrary in this section, the adoption of a child by a stepparent shall not in any way change the status of the relationship between the child and the child's birth parent who is the spouse of the petitioning stepparent. If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

Subd. 2. Notwithstanding the provisions of subdivision 1, the adoption of a child whose birth parent or parents are enrolled in an American Indian tribe shall not change the child's enrollment in that tribe.

Subd. 3. This section does not prohibit prospective adoptive parents and birth parents and birth relatives from entering into an agreement regarding communication, contact and visitation between the child, the birth parents and the birth relatives, under Minn. Stat. § 257.022, subd. 2c.

H. Representation and Rights of Parties

Representation of Children:

1. The Legislature should amend Minnesota Statutes § 260.155, subd. 8(a)

to provide that a parent, guardian or custodian of a child does not have the right to give any waiver or offer objections on behalf of the child. The statute should instead provide that where the child is not represented by counsel, the guardian ad litem, with the advice of counsel, shall give any waiver or offer any objection under Minnesota Statutes, Chapter 260.

Minn. Stat. § 260.155, subd. 8(a):

Subd. 8. Waiver. (a) Waiver of any right which a child has under this chapter must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived. ~~If a child is under 12 years of age, the child's parent, guardian or custodian shall give any waiver or offer any objection contemplated by this chapter.~~ Where the child is not represented by counsel, the guardian ad litem for child, with the advice of counsel, shall give any waiver or offer any objection under Minnesota Statutes, Chapter 260.

6. The Legislature should amend Minnesota Statutes § 260.155, subd. 3 to clarify that the role of the county attorney in all child in need of protection or services, termination of parental rights and other permanency proceedings is to represent both the social service agency and the public interest in the welfare of the child.

Minn. Stat. § 260.155, subd. 3:

Subd. 3. County attorney. ~~Except in adoption proceedings, the county attorney shall present evidence upon request of the court.~~ In all child in need of protection or services, termination of parental rights, and other permanency proceedings, the local social service agency has the right to participate through the county attorney. The county attorney shall advise the local social service agency of its legal obligations regarding the best interests and the welfare of the child and shall represent the agency in meeting these obligations. In representing the agency, the county attorney shall also have the responsibility for advancing the public interest in the welfare of the child.

7. Party Status / Participation Rights of Foster Parents

Unless permitted by the court, foster parents should not be allowed to participate as parties in a CHIPS or TPR proceeding. The foster parent should be allowed party status either 1) through the process of permissive intervention or 2) at the judge's discretion only if granting the foster parent party status would serve the best interests of the child. The Juvenile Rules Committee should determine which standard would be most appropriate. Foster parents should be allowed to be present at all hearings if it is in the best interests of the child, regardless of whether the foster parents have the right to participate. To supercede the effect of Welfare of C.J., 481 N.W. 2d 861 (Minn. App. 1992), which held that foster parents as "lawful custodians" have a right to participate pursuant to Minnesota Statutes § 260.155, subd. 1a, the Legislature should amend Minnesota Statutes § 260.155, subd. 1a to provide that "legal custodians," not "lawful custodians," have a right to

participate in all proceedings on a petition.

Minn. Stat. § 260.155, subd. 1a:

Subd. 1a. Right to participate in proceedings. A child who is the subject of a petition, and the parents, guardian, or ~~lawful~~ legal custodian of the child have the right to participate in all proceedings on a petition. Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. At the first hearing following the filing of a petition, the court shall ask whether the child has lived with a grandparent within the last two years, except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

APPENDIX D

FOSTER CARE AND ADOPTION TASK FORCE
OPEN HEARINGS
MINORITY REPORT

Chris Reardon, Assistant Ramsey County Attorney
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Opening child protection proceedings in Juvenile Court to the public and media is not in the best interests of children. We agree with the majority's goal of improving the system and making it more accountable, however the benefits of opening the hearings and court records to the public do not outweigh the risks of emotional harm and embarrassment to the children who are the subject of these proceedings. The goal of the child protection system is to rehabilitate and reunite families. The majority of these children will continue to be a part of their families and communities long after the case has closed. Exposing their families' dysfunctions to the public will not serve, and may actually deter this goal.

One of the greatest concerns to us are the cases where the media will attend the hearings with cameras and reporters. Although the majority feels that this will reveal and correct faults in the system, it will be the children that will suffer from the media sensationalizing their most personal family secrets. A child who is the victim of incest will now be even more reluctant to report abuse for fear of her family, friends and everyone in her school, church, and neighborhood learning of her most shameful experience, marking her for life. The majority recognizes this as a potential problem, thus its recommendation for advance preparation and training for the media. But the reality is that there are no means to ensure that children's names, pictures or other identifying information, are not published and broadcast for all the world to see. The majority looked to the State of Michigan, which has had open hearings since 1988, in reaching its opinion. The Michigan representative who appeared before the Task Force claimed that the reporter from the Detroit newspaper had a personally imposed ethic of not publishing the pictures or names of children in the covered stories. However, a review of several of these news articles revealed that in some cases children's real names were used, as well as their photographs, when describing cases of foster care abuse, termination of parental rights and child protection matters.

The majority recognizes that open hearings may chill admissions in child protection matters when the press and other non-parties are present. It is obvious that parents

would be uncomfortable admitting to specific facts under those circumstances. Therefore the majority is proposing that "no contest" pleas be allowed in juvenile court. This troubling solution flies in the face of the goal of holding the adults accountable. The first step in any successful reunification is for parents to acknowledge and admit the problems which led to the initiation of child protection proceedings. Public disclosure will do nothing to increase the likelihood of parents acknowledging their issues and is likely to discourage admissions. We have already learned from therapists that when defendants make similar pleas in what is known in criminal court as Alford-Goulette pleas, therapy and treatment is rarely successful because defendants continue to deny any criminal behavior. There is no reason to believe this result would be any different in juvenile court. By giving the parents an option to plead no contest, children will suffer the consequences when their parents fail at therapy by stating that they did nothing wrong because they did not have to admit to any wrongdoing or negligence in court.

Children in the child protection system rarely, if ever, benefit from adversarial proceedings. The sooner the adversarial relationships can be decreased and resolution reached, the greater the benefit for those children. Open hearings will discourage settlement agreements, but not for the reasons that the proponents of open hearings would suggest. The majority of settlement agreements are clearly in the best interest of children, but this is only apparent when all the facts and reasoning behind the agreement are disclosed. If the media chooses to censor some information, or if sensitive material is not released to the public, any settlement agreement, no matter how appropriate, can be portrayed as a cop-out or sell-out of the children. Less than responsible media scrutiny will squelch creative and effective resolutions of these cases.

It is not reasonable to expect the media to fully report all the cases or even to fully report on each case. Without full reporting, an accurate picture of the case and system is unlikely. Therefore families and the system will be judged by the aberrant cases involving well-known individuals or other cases where the media believes the story will appeal to the prurient interests of the public. Opening these hearings will make it easy for special interest groups and disenfranchised family members to use the media to further their purposes at the expense of the children that we are trying to protect.

The majority is proposing that the open hearings can be closed under "exceptional circumstances." However, this may also be abused to protect prominent members of the community. At best these exceptional circumstance closed hearings will result in further mistrust of the system.

We agree that there are people who have a legitimate need and right to have information about individual child protection cases. If the court process is opened only to these people with a genuine interest in the best interest of the child, it is more likely the child's privacy and dignity will be protected. One of the goals of open hearings is to increase public awareness and generate public response, but there are other more effective and accurate ways of informing the public of the nature and degree of child maltreatment in our communities.

Alternative methods of achieving the goal of an improved and more accountable system have already been proposed by this Task Force, which would do a better job of serving children than open hearings could ever accomplish. The Task Force is proposing that all children be appointed an attorney. This will ensure that the child's voice and wishes will be zealously advocated for while the child is involved in the "system". The Task Force is also proposing a mandate that all children be appointed a guardian ad litem in all child protection matters. Through this guardian, the eyes of the community will be present in the courtroom. Most of Minnesota's guardians ad litem are volunteers and are not a part of the "system". It is their role to inform the court of what is in the best interest of the children. That includes advising the court of children who are languishing in foster care, reporting maltreatment occurring in foster homes and, if necessary, bringing their own petitions on behalf of children. This is a far better means with which to keep an eye on the system than through the media whose role is to inform the public, possibly at the expense of the child. These alternatives should be given a fair chance before we seriously consider turning to the media to correct the problems in the child protection system.