

CHAPTER 260C

CHILD PROTECTION

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260C.007 DEFINITIONS.

Subdivision 1. **Scope.** As used in this chapter, the terms defined in this section have the same meanings given to them.

Subd. 2. **Agency.** "Agency" means the responsible social services agency or a licensed child-placing agency.

Subd. 3. [Renumbered subd 4]

Subd. 3. **Case plan.** "Case plan" means any plan for the delivery of services to a child and parent or guardian, or, when reunification is not required, the child alone, that is developed according to the requirements of section 245.4871, subdivision 19 or 21; 245.492, subdivision 16; 256B.092; 256E.08; 260C.212, subdivision 1; or 626.556, subdivision 10.

Subd. 4. [Renumbered subd 6]

Subd. 4. **Child.** "Child" means an individual under 18 years of age.

Subd. 5. [Renumbered subd 7]

Subd. 5. **Child abuse.** "Child abuse" means an act that involves a minor victim and that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322, 609.323, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

Subd. 6. [Renumbered subd 9]

Subd. 6. **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:

- (1) is abandoned or without parent, guardian, or custodian;
- (2)(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 5, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 5, or (iv) is a victim of emotional maltreatment as defined in subdivision 8;
- (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care, including a child in voluntary placement due solely to the child's developmental disability or emotional disturbance;

(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;

(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child in placement according to voluntary release by the parent under section 260C.212, subdivision 8;

(7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;

(10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;

(11) has engaged in prostitution as defined in section 609.321, subdivision 9;

(12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;

(13) is a runaway;

(14) is a habitual truant;

(15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense; or

(16) has been found by the court to have committed domestic abuse perpetrated by a minor under Laws 1997, chapter 239, article 10, sections 2 to 26, has been ordered excluded from the child's parent's home by an order for protection/minor respondent, and the parent or guardian is either unwilling or unable to provide an alternative safe living arrangement for the child.

Subd. 7. [Renumbered subd 11]

Subd. 7. **Child-placing agency.** "Child-placing agency" means anyone licensed under sections 245A.01 to 245A.16 and 252.28, subdivision 2.

Subd. 8. [Renumbered subd 15]

Subd. 8. **Compelling reasons.** "Compelling reasons" means an individualized determination by the responsible social services agency, which is approved by the court, not to initiate proceedings to terminate parental rights or transfer permanent legal and physical custody of a child to the child's relative or former noncustodial parent.

Subd. 9. [Renumbered subd 18]

Subd. 9. **Court.** "Court" means juvenile court unless otherwise specified in this section.

Subd. 10. [Renumbered subd 22]

Subd. 10. **Custodian.** "Custodian" means any person who is under a legal obligation to provide care and support for a minor or who is in fact providing care and support for a minor. This subdivision does not impose upon persons who are not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care a duty to provide that care. For an Indian child, 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 the child, as provided in section 260.755, subdivision 10.

Subd. 11. [Renumbered subd 23]

Subd. 11. **Delinquent child.** "Delinquent child" means a child:

(1) who has violated any state or local law, except as provided in section 260B.225, subdivision 1, and except for juvenile offenders as described in subdivisions 19 and 28; or

(2) who has violated a federal law or a law of another state and whose case has been referred to the juvenile court if the violation would be an act of delinquency if committed in this state or a crime or offense if committed by an adult.

Subd. 12. [Renumbered subd 25]

Subd. 12. **Developmental disability.** "Developmental disability" means developmental disability as defined in United States Code, title 42, section 6001(8).

Subd. 13. [Renumbered subd 26]

Subd. 13. **Domestic child abuse.** "Domestic child abuse" means:

(1) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means; or

(2) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections 609.321 to 609.324, 609.342, 609.343, 609.344, 609.345, or 617.246.

Subd. 14. [Renumbered subd 27]

Subd. 14. **Egregious harm.** "Egregious harm" means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. The egregious harm need not have occurred in the state or in the county where a termination of parental rights action is otherwise properly venued. Egregious harm includes, but is not limited to:

(1) conduct towards a child that constitutes a violation of sections 609.185 to 609.21, 609.222, subdivision 2, 609.223, or any other similar law of any other state;

(2) the infliction of "substantial bodily harm" to a child, as defined in section 609.02, subdivision 7a;

(3) conduct towards a child that constitutes felony malicious punishment of a child under section 609.377;

(4) conduct towards a child that constitutes felony unreasonable restraint of a child under section 609.255, subdivision 3;

(5) conduct towards a child that constitutes felony neglect or endangerment of a child under section 609.378;

(6) conduct towards a child that constitutes assault under section 609.221, 609.222, or 609.223;

(7) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under section 609.322;

(8) conduct towards a child that constitutes murder or voluntary manslaughter as defined by United States Code, title 18, section 1111(a) or 1112(a);

(9) conduct towards a child that constitutes aiding or abetting, attempting, conspiring, or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of United States Code, title 18, section 1111(a) or 1112(a); or

(10) conduct toward a child that constitutes criminal sexual conduct under sections 609.342 to 609.345.

Subd. 15. [Renumbered subd 10]

Subd. 15. **Emotional maltreatment.** "Emotional maltreatment" means 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. "Emotional maltreatment" does not include reasonable training or discipline administered by the person responsible for the child's care or the reasonable exercise of authority by that person.

Subd. 16. [Renumbered subd 29]

Subd. 16. **Emotionally disturbed.** "Emotionally disturbed" means emotional disturbance as described in section 245.4871, subdivision 15.

Subd. 17. [Renumbered subd 30]

Subd. 17. **Family or household members.** "Family or household members" means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Subd. 18. [Renumbered subd 24]

Subd. 18. **Foster care.** "Foster care" means the 24 hour a day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision or treatment they need but which for any reason cannot be furnished by their parents or legal guardians in their homes.

Subd. 19. **Habitual truant.** "Habitual truant" means a child under the age of 16 years who is absent from attendance at school without lawful excuse for seven school days if the child is in elementary school or for one or more class periods on seven school days if the child is in middle school, junior high school, or high school, or a child who is 16 or 17 years of age who is absent from attendance at school without lawful excuse for one or more class periods on seven school days and who has not lawfully withdrawn from school under section 120A.22, subdivision 8.

Subd. 20. [Renumbered subd 28]

Subd. 20. **Indian.** "Indian," consistent with section 260.755, subdivision 7, means a person who is a member of an Indian tribe or who is an Alaskan native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act, United States Code, title 43, section 1606.

Subd. 21. [Renumbered subd 13]

Subd. 21. **Indian child.** "Indian child," consistent with section 260.755, subdivision 8, means an unmarried person who is under age 18 and is:

- (1) a member of an Indian tribe; or
- (2) eligible for membership in an Indian tribe.

Subd. 22. [Renumbered subd 17]

Subd. 22. **Legal custody.** "Legal custody" means the right to the care, custody, and control of a child who has been taken from a parent by the court in accordance with the provisions of section 260C.201 or 260C.317. The expenses of legal custody are paid in accordance with the provisions of section 260C.331.

Subd. 23. [Renumbered subd 20]

Subd. 23. **Minor.** "Minor" means an individual under 18 years of age.

Subd. 24. [Renumbered subd 21]

Subd. 24. **Neglected and in foster care.** "Neglected and in foster care" means a child

- (a) Who has been placed in foster care by court order; and

(b) Whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and

(c) Whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Subd. 25. [Renumbered subd 5]

Subd. 25. **Parent.** "Parent" means the birth or adoptive parent of a minor. For an Indian child, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in section 260.755, subdivision 14.

Subd. 26. [Renumbered subd 14]

Subd. 26. **Person.** "Person" includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

Subd. 27. **Relative.** "Relative" means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law 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.

Subd. 28. **Runaway.** "Runaway" means an unmarried child under the age of 18 years who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian.

Subd. 29. **Secure detention facility.** "Secure detention facility" means a physically restricting facility, including but not limited to a jail, a hospital, a state institution, a residential treatment center, or a detention home used for the temporary care of a child pending court action.

Subd. 30. **Shelter care facility.** "Shelter care facility" means a physically unrestricting facility, such as but not limited to, a hospital, a group home or a licensed facility for foster care, used for the temporary care of a child pending court action.

History: 2001 c 73 s 1; 2001 c 178 art 1 s 5-10,44

260C.141 PETITION.

Subdivision 1. **Who may file; required form.** (a) Any reputable person, including but not limited to any agent of the commissioner of human services, having knowledge of a child in this state or of a child who is a resident of this state, who appears to be in need of protection or services or neglected and in foster care, may petition the juvenile court in the manner provided in this section.

(b) A petition for a child in need of protection filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator and provided to court administrators. Copies of the form may be obtained from the court administrator in each county. The court administrator shall review the petition before it is filed to determine that it is completed. The court administrator may reject the petition if it does not indicate that the petitioner has contacted the responsible social services agency.

An individual may file a petition under this subdivision without seeking internal review of the responsible social services agency's decision. The court shall determine whether there is probable cause to believe that a need for protection or services exists before the matter is set for hearing. If the matter is set for hearing, the court administrator shall notify the responsible social services agency by sending notice to the county attorney.

The petition must contain:

(1) a statement of facts that would establish, if proven, that there is a need for protection or services for the child named in the petition;

(2) a statement that petitioner has reported the circumstances underlying the petition to the responsible social services agency, and protection or services were not provided to the child;

(3) a statement whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court concerning the child; and

(4) a statement of the relationship of the petitioner to the child and any other parties.

The court may not allow a petition to proceed under this paragraph if it appears that the sole purpose of the petition is to modify custody between the parents.

Subd. 2. Review of foster care status. The social services agency responsible for the placement of a child in a residential facility, as defined in section 260C.212, subdivision 1, pursuant to a voluntary release by the child's parent or parents must proceed in juvenile court to review the foster care status of the child in the manner provided in this section.

(a) Except for a child in placement due solely to the child's developmental disability or emotional disturbance, when a child continues in voluntary placement according to section 260C.212, subdivision 8, a petition shall be filed alleging the child to be in need of protection or services or seeking termination of parental rights or other permanent placement of the child away from the parent within 90 days of the date of the voluntary placement agreement. The petition shall state the reasons why the child is in placement, the progress on the out-of-home placement plan required under section 260C.212, subdivision 1, and the statutory basis for the petition under section 260C.007, subdivision 6, 260C.201, subdivision 11, or 260C.301.

(1) In the case of a petition alleging the child to be in need of protection or services filed under this paragraph, if all parties agree and the court finds it is in the best interests of the child, the court may find the petition states a prima facie case that:

- (i) the child's needs are being met;
- (ii) the placement of the child in foster care is in the best interests of the child;
- (iii) reasonable efforts to reunify the child and the parent or guardian are being made; and
- (iv) the child will be returned home in the next three months.

(2) If the court makes findings under paragraph (1), the court shall approve the voluntary arrangement and continue the matter for up to three more months to ensure the child returns to the parents' home. The responsible social services agency shall:

(i) report to the court when the child returns home and the progress made by the parent on the out-of-home placement plan required under section 260C.212, in which case the court shall dismiss jurisdiction;

(ii) report to the court that the child has not returned home, in which case the matter shall be returned to the court for further proceedings under section 260C.163; or

(iii) if any party does not agree to continue the matter under paragraph (1) and this paragraph, the matter shall proceed under section 260C.163.

(b) In the case of a child in voluntary placement due solely to the child's developmental disability or emotional disturbance according to section 260C.212, subdivision 9, the following procedures apply:

(1) **Report to court.** (i) Unless the county attorney determines that a petition under subdivision 1 is appropriate, without filing a petition, a written report shall be forwarded to the court within 165 days of the date of the voluntary placement agreement. The written report shall contain necessary identifying information for the court to proceed, a copy of the out-of-home placement plan required under section 260C.212, subdivision 1, a written summary of the proceedings of any administrative review required under section 260C.212, subdivision 7, and any other information the responsible social services agency, parent or guardian, the child or the foster parent or other residential facility wants the court to consider.

(ii) The responsible social services agency, where appropriate, must advise the child, parent or guardian, the foster parent, or representative of the residential facility of the requirements of this section and of their right to submit information to the court. If the child, parent or guardian, foster parent, or representative of the residential facility wants to send information to the court, the responsible social services agency shall advise those persons of the reporting date and the identifying information necessary for the court administrator to accept the information and submit it to a judge with the agency's report. The responsible social services agency must also notify those persons that they have the right to be heard in person by the court and how to exercise that right. The responsible social services agency must also provide notice that an in-court hearing will not be held unless requested by a parent or guardian, foster parent, or the child.

(iii) After receiving the required report, the court has jurisdiction to make the following determinations and must do so within ten days of receiving the forwarded report: (A) whether or not the placement of the child is in the child's best interests; and (B) whether the parent and agency are appropriately planning for the child. Unless requested by a parent or guardian, foster parent, or child, no in-court hearing need be held in order for the court to make findings and issue an order under this paragraph.

(iv) If the court finds the placement is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The court shall send a copy of the order to the county attorney, the responsible social services agency, the parent or guardian, the child, and the foster parents. The court shall also send the parent or guardian, the child, and the foster parent notice of the required review under clause (2).

(v) If the court finds continuing the placement not to be in the child's best interests or that the agency or the parent or guardian is not appropriately planning for the child, the court shall notify the county attorney, the responsible social services agency, the parent or guardian, the foster parent, the child, and the county attorney of the court's determinations and the basis for the court's determinations.

(2) **Permanency review by petition.** If a child with a developmental disability or an emotional disturbance continues in out-of-home placement for 13 months from the date of a voluntary placement, a petition alleging the child to be in need of protection or services, for termination of parental rights, or for permanent placement of the child away from the parent under section 260C.201 shall be filed. The court shall conduct a permanency hearing on the petition no later than 14 months after the date of the voluntary placement. At the permanency hearing, the court shall determine the need for an order permanently placing the child away from the parent or determine whether there are compelling reasons that continued voluntary placement is in the child's best interests. A petition alleging the child to be in need of protection or services shall state the date of the voluntary placement agreement, the nature of the child's developmental disability or emotional disturbance, the plan for the ongoing care of the child, the parents' participation in the plan, and the statutory basis for the petition.

(i) If a petition alleging the child to be in need of protection or services is filed under this paragraph, the court may find, based on the contents of the sworn petition, and the agreement of all parties, including the child, where appropriate, that there are compelling reasons that the voluntary arrangement is in the best interests of the child, approve the continued voluntary placement, and continue the matter under the court's jurisdiction for the purpose of reviewing the child's placement as a continued voluntary arrangement every 12 months as long as the child continues in out-of-home placement. The matter must be returned to the court for further review every 12 months as long as the child remains in placement. The court shall give notice to the parent or guardian of the continued review requirements under this section. Nothing in this paragraph shall be construed to mean the court must order permanent placement for the child under section 260C.201, subdivision 11, as long as the court finds compelling reasons at the first review required under this section.

(ii) If a petition for termination of parental rights, for transfer of permanent legal and physical custody to a relative, for long-term foster care, or for foster care for a specified period of time is filed, the court must proceed under section 260C.201, subdivision 11.

(3) If any party, including the child, disagrees with the voluntary arrangement, the court shall proceed under section 260C.163.

Subd. 3. **Child in need of protection or services; habitual truant.** If there is a school attendance review board or county attorney mediation program operating in the child's school district, a petition alleging that a child is in need of protection or services as a habitual truant under section 260C.007, subdivision 6, clause (14), may not be filed until the applicable procedures under section 260A.06 or 260A.07 have been followed.

[For text of subs 4 to 6, see M.S.2000]

History: 2001 c 178 art 1 s 11,44

260C.143 PROCEDURE; HABITUAL TRUANTS, RUNAWAYS, OFFENDERS.

Subdivision 1. **Notice.** When a peace officer, or attendance officer in the case of a habitual truant, has probable cause to believe that a child is in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), the officer may issue a notice to the child to appear in juvenile court in the county in which the child is found or in the county of the child's residence. If there is a school attendance review board or county attorney mediation program operating in the child's school district, a notice to appear in juvenile court for a habitual truant may not be issued until the applicable procedures under section 260A.06 or 260A.07 have been followed. The officer shall file a copy of the notice to appear with the juvenile court of the appropriate county. If a child fails to appear in response to the notice, the court may issue a summons notifying the child of the nature of the offense alleged and the time and place set for the hearing. If the peace officer finds it necessary to take the child into custody, sections 260C.175 and 260C.176 shall apply.

[For text of subd 2, see M.S.2000]

Subd. 3. **Notice to parent.** Whenever a notice to appear or petition is filed alleging that a child is in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), the court shall summon and notify the person or persons having custody or control of the child of the nature of the offense alleged and the time and place of hearing. This summons and notice shall be served in the time and manner provided in section 260C.151, subdivision 1.

[For text of subd 4, see M.S.2000]

History: 2001 c 178 art 1 s 44

260C.151 SUMMONS; NOTICE.

[For text of subs 1 to 3, see M.S.2000]

Subd. 4. **Termination of parental rights.** If a petition alleging a child's need for protection or services, or a petition to terminate parental rights is initiated by a person other than a representative of the department of human services or responsible social services agency, the court administrator shall notify the responsible social services agency of the pendency of the case and of the time and place appointed.

[For text of subd 5, see M.S.2000]

Subd. 6. **Immediate custody.** If the court makes individualized, explicit findings, based on the notarized petition or sworn affidavit, that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child's health, safety, or welfare that require that the child's custody be immediately assumed by the court and that continuation of the child in the custody of the parent or guardian is

contrary to the child's welfare, the court may order that the officer serving the summons take the child into immediate custody.

History: 2001 c 178 art 1 s 12,44

260C.157 INVESTIGATION; PHYSICAL AND MENTAL EXAMINATION.

Subdivision 1. **Investigation.** Upon request of the court the responsible social services agency or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under section 260C.101 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court.

Adoption investigations shall be conducted in accordance with the laws relating to adoptions. Any funds received under the provisions of this subdivision shall not cancel until the end of the fiscal year immediately following the fiscal year in which the funds were received. The funds are available for use by the commissioner of corrections during that period and are hereby appropriated annually to the commissioner of corrections as reimbursement of the costs of providing these services to the juvenile courts.

[For text of subd 2, see M.S.2000]

Subd. 3. **Juvenile treatment screening team.** (a) The responsible social services agency shall establish a juvenile treatment screening team to conduct screenings and prepare case plans under this subdivision. The team, which may be the team constituted under section 245.4885 or 256B.092 or Minnesota Rules, parts 9530.6600 to 9530.6655, shall consist of social workers, juvenile justice professionals, and persons with expertise in the treatment of juveniles who are emotionally disabled, chemically dependent, or have a developmental disability. The team shall involve parents or guardians in the screening process as appropriate. The team may be the same team as defined in section 260B.157, subdivision 3.

(b) If the court, prior to, or as part of, a final disposition, proposes to place a child:

(1) for the primary purpose of treatment for an emotional disturbance, a developmental disability, or chemical dependency in a residential treatment facility out of state or in one which is within the state and licensed by the commissioner of human services under chapter 245A; or

(2) in any out-of-home setting potentially exceeding 30 days in duration, including a postdispositional placement in a facility licensed by the commissioner of corrections or human services, the court shall notify the county welfare agency. The county's juvenile treatment screening team must either: (i) screen and evaluate the child and file its recommendations with the court within 14 days of receipt of the notice; or (ii) elect not to screen a given case and notify the court of that decision within three working days.

(c) If the screening team has elected to screen and evaluate the child, the child may not be placed for the primary purpose of treatment for an emotional disturbance, a developmental disability, or chemical dependency, in a residential treatment facility out of state nor in a residential treatment facility within the state that is licensed under chapter 245A, unless one of the following conditions applies:

(1) a treatment professional certifies that an emergency requires the placement of the child in a facility within the state;

(2) the screening team has evaluated the child and recommended that a residential placement is necessary to meet the child's treatment needs and the safety needs of the community, that it is a cost-effective means of meeting the treatment needs, and that it will be of therapeutic value to the child; or

(3) the court, having reviewed a screening team recommendation against placement, determines to the contrary that a residential placement is necessary. The court shall state the reasons for its determination in writing, on the record, and shall respond

specifically to the findings and recommendation of the screening team in explaining why the recommendation was rejected. The attorney representing the child and the prosecuting attorney shall be afforded an opportunity to be heard on the matter.

History: 2001 c 178 art 1 s 44

260C.163 HEARING.

[For text of subd 1, see M.S.2000]

Subd. 2. **Right to participate in proceedings.** A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

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.

If, in a proceeding involving a child in need of protection or services, the responsible social services agency recommends transfer of permanent legal and physical custody to a relative, the relative has a right to participate as a party, and thereafter shall receive notice of any hearing in the proceedings.

[For text of subs 3 and 4, see M.S.2000]

Subd. 5. **Guardian ad litem.** (a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under section 260C.007, subdivision 6. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. The court may appoint separate counsel for the guardian ad litem if necessary.

(b) A guardian ad litem shall carry out the following responsibilities:

(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.

(c) Except in cases where the child is alleged to have been abused or neglected, the court may waive the appointment of a guardian ad litem pursuant to clause (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected.

(d) In appointing a guardian ad litem pursuant to clause (a), the court shall not appoint the party, or any agent or employee thereof, filing a petition pursuant to section 260C.141.

(e) The following factors shall be considered when appointing a guardian ad litem in a case involving an Indian or minority child:

(1) whether a person is available who is the same racial or ethnic heritage as the child or, if that is not possible;

(2) whether a person is available who knows and appreciates the child's racial or ethnic heritage.

[For text of subds 6 to 10, see M.S.2000]

Subd. 11. **Presumptions regarding truancy or educational neglect.** (a) A child's absence from school is presumed to be due to the parent's, guardian's, or custodian's failure to comply with compulsory instruction laws if the child is under 12 years old and the school has made appropriate efforts to resolve the child's attendance problems; this presumption may be rebutted based on a showing by clear and convincing evidence that the child is habitually truant. A child's absence from school without lawful excuse, when the child is 12 years old or older, is presumed to be due to the child's intent to be absent from school; this presumption may be rebutted based on a showing by clear and convincing evidence that the child's absence is due to the failure of the child's parent, guardian, or custodian to comply with compulsory instruction laws, sections 120A.22 and 120A.24.

(b) Consistent with section 125A.09, subdivision 3, a parent's refusal to provide the parent's child with sympathomimetic medications does not constitute educational neglect.

History: 2001 c 178 art 1 s 44; 1Sp2001 c 6 art 3 s 15

260C.171 RECORDS.

[For text of subd 1, see M.S.2000]

Subd. 2. **Public inspection of records.** (a) The following records from proceedings or portions of proceedings involving a child in need of protection or services that are open to the public as authorized by supreme court order and court rules are accessible to the public unless the court determines that access should be restricted because of the intensely personal nature of the information:

- (1) the summons and petition;
- (2) affidavits of publication and service;
- (3) certificates of representation;
- (4) court orders;
- (5) hearing and trial notices, witness lists, and subpoenas;
- (6) motions and legal memoranda;
- (7) exhibits introduced at hearings or trial that are not inaccessible under paragraph (b);
- (8) birth records; and
- (9) all other documents not listed as inaccessible to the public under paragraph (b).

(b) The following records are not accessible to the public under paragraph (a):

- (1) written, audiotaped, or videotaped information from the social services agency, except to the extent the information appears in the petition, court orders, or other documents that are accessible under paragraph (a);
- (2) child protection intake or screening notes;
- (3) documents identifying reporters of maltreatment, unless the names and other identifying information are redacted;
- (4) guardian ad litem reports;

- (5) victim statements and addresses and telephone numbers;
- (6) documents identifying nonparty witnesses under the age of 18, unless the names and other identifying information are redacted;
- (7) transcripts of testimony taken during closed hearing;
- (8) fingerprinting materials;
- (9) psychological, psychiatric, and chemical dependency evaluations;
- (10) presentence evaluations of juveniles and probation reports;
- (11) medical records and test results;
- (12) reports issued by sexual predator programs;
- (13) diversion records of juveniles;
- (14) any document which the court, upon its own motion or upon motion of a party, orders inaccessible to serve the best interests of the child; and
- (15) any other records that are not accessible to the public under rules developed by the courts.

In addition, records that are accessible to the public under paragraph (a) become inaccessible to the public if one year has elapsed since either the proceeding was dismissed or the court's jurisdiction over the matter was terminated.

(c) Except as otherwise provided by this section, none of the records of the juvenile court and none of the records relating to an appeal from a nonpublic juvenile court proceeding, except the written appellate opinion, shall be open to public inspection or their contents disclosed except by order of a court.

(d) The records of juvenile probation officers are records of the court for the purposes of this subdivision. This subdivision applies to all proceedings under this chapter, including appeals from orders of the juvenile court. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions. In juvenile court proceedings any report or social history furnished to the court shall 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.

(e) When a judge of a juvenile court, or duly authorized agent of the court, determines under a proceeding under this chapter that a child has violated a state or local law, ordinance, or regulation pertaining to the operation of a motor vehicle on streets and highways, except parking violations, the judge or agent shall immediately report the violation to the commissioner of public safety. The report must be made on a form provided by the department of public safety and must contain the information required under section 169.95.

Subd. 3. Attorney access to records. An attorney representing a child, parent, or guardian ad litem in a proceeding under this chapter shall be given access to records, responsible social services agency files, and reports which form the basis of any recommendation made to the court. An attorney does not have access under this subdivision to the identity of a person who made a report under section 626.556. The court may issue protective orders to prohibit an attorney from sharing a specified record or portion of a record with a client other than a guardian ad litem.

[For text of subs 4 and 5, see M.S.2000]

History: 2001 c 178 art 1 s 44; 1Sp2001 c 9 art 15 s 32

260C.178 DETENTION HEARING.

Subdivision 1. Hearing and release requirements. (a) If a child was taken into custody under section 260C.175, subdivision 1, clause (a) or (b)(2), the court shall hold a hearing within 72 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, to determine whether the child should continue in custody.

(b) Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260C.157, subdivision 1. In determining whether the child's health or welfare would be immediately endangered, the court shall consider whether the child would reside with a perpetrator of domestic child abuse.

(c) The court, before determining whether a child should continue in custody, shall also make a determination, consistent with section 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall also determine whether there are available services that would prevent the need for further detention. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under paragraph (e) exists.

If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

(d) The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or guardian would be contrary to the welfare of the child.

(e) At the detention hearing, or at any time during the course of the proceeding, and upon notice and request of the county attorney, the court shall make the following determinations:

(1) whether a termination of parental rights petition has been filed stating a prima facie case that:

(i) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

(ii) the parental rights of the parent to another child have been involuntarily terminated; or

(iii) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);

(2) that the county attorney has determined not to proceed with a termination of parental rights petition under section 260C.307; or

(3) whether a termination of parental rights petition or other petition according to section 260C.201, subdivision 11, has been filed alleging a prima facie case that the provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.

If the court determines that the county attorney is not proceeding with a termination of parental rights petition under section 260C.307, but is proceeding with a petition under section 260C.201, subdivision 11, the court shall schedule a permanency hearing within 30 days. If the county attorney has filed a petition under section 260C.307, the court shall schedule a trial under section 260C.163 within 90 days of the filing of the petition except when the county attorney determines that the criminal case shall proceed to trial first under section 260C.201, subdivision 3.

(f) If the court determines the child should be ordered into out-of-home placement and the child's parent refuses to give information to the responsible social services agency regarding the child's father or relatives of the child, the court may order the parent to disclose the names, addresses, telephone numbers, and other identifying information to the responsible social services agency for the purpose of complying with the requirements of sections 260C.151, 260C.212, and 260C.215.

(g) If a child ordered into out-of-home placement has siblings, whether full, half, or step, who are also ordered into placement, the court shall inquire of the responsible social services agency of the efforts to place the children together as required by section 260C.212, subdivision 2, paragraph (d), if placement together is in each child's best interests, unless a child is in placement due solely to the child's own behavior or a child is placed with a previously noncustodial parent who is not parent to all siblings. If the children are not placed together at the time of the hearing, the court shall inquire at each subsequent hearing of the agency's efforts to place the siblings together. If any sibling is not placed with another sibling or siblings, the agency must develop a plan for visitation among the siblings as required under section 260C.212, subdivision 1.

[For text of subs 2 to 6, see M.S.2000]

Subd. 7. Out-of-home placement plan. (a) An out-of-home placement plan required under section 260C.212 shall be filed with the court within 30 days of the filing of a petition alleging the child to be in need of protection or services under section 260C.141, subdivision 1, or filed with the petition if the petition is a review of a voluntary placement under section 260C.141, subdivision 2.

(b) Upon the filing of the out-of-home placement plan, the court may approve the plan based on the allegations contained in the petition. The court shall send written notice of the approval of the out-of-home placement plan to all parties and the county attorney or may state such approval on the record at a hearing. A parent may agree to comply with the terms of the plan filed with the court.

(c) Upon notice and motion by a parent who agrees to comply with the terms of an out-of-home placement plan, the court may modify the plan and order the responsible social services agency to provide other or additional services for reunification, if reunification efforts are required, and the court determines the agency's plan inadequate under section 260.012.

(d) Unless the parent agrees to comply with the terms of the out-of-home placement plan, the court may not order a parent to comply with the provisions of the plan until the court makes a determination under section 260C.201, subdivision 1. However, the court may find that the responsible social services agency has made reasonable efforts for reunification if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this section.

History: 2001 c 178 art 1 s 13,14,44

260C.181 PLACE OF TEMPORARY CUSTODY; SHELTER CARE FACILITY.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. Placement. If the child had been taken into custody and detained as one who is alleged to be in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), by reason of having been adjudicated, in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), or conditionally released by the juvenile court without adjudication, has violated probation, parole, or other field supervision under which the child had been placed as a result of behavior described in this subdivision, the child may be placed only in a shelter care facility.

History: 2001 c 178 art 1 s 44

260C.193 DISPOSITIONS; GENERAL PROVISIONS.

[For text of subd 1, see M.S.2000]

Subd. 2. Consideration of reports. Before making a disposition in a case, terminating parental rights, or appointing a guardian for a child, the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, or other authorized advocate for the child or child's family, a school district concerning the effect on student transportation of placing a child in a school district in

which the child is not a resident, or any other information deemed material by the court.

Subd. 3. **Best interest of the child in foster care or residential care.** (a) The policy of the state is to ensure that the best interests of children in foster or residential care are met by requiring individualized determinations under section 260C.212, subdivision 2, paragraph (b), of the needs of the child and of how the selected placement will serve the needs of the child in foster care placements.

(b) The court shall review whether the responsible social services agency made efforts as required under section 260C.212, subdivision 5, and made an individualized determination as required under section 260C.212, subdivision 2. If the court finds the agency has not made efforts as required under section 260C.212, subdivision 5, and there is a relative who qualifies to be licensed to provide family foster care under chapter 245A, the court may order the child placed with the relative consistent with the child's best interests.

(c) If the child's birth parent or parents explicitly request that a relative or important friend not be considered, the court shall honor that request if it is consistent with the best interests of the child. If the child's birth parent or parents express a preference for placing the child in a foster or adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

(d) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(e) Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a sibling. If siblings are not placed together according to section 260C.212, subdivision 2, paragraph (d), the responsible social services agency shall report to the court the efforts made to place the siblings together and why the efforts were not successful. If the court is not satisfied with the agency's efforts to place siblings together, the court may order the agency to make further efforts. If siblings are not placed together the court shall review the responsible social services agency's plan for visitation among siblings required as part of the out-of-home placement plan under section 260C.212.

(f) This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.

[For text of subds 4 and 5, see M.S.2000]

Subd. 6. **Termination of jurisdiction.** The court may dismiss the petition or otherwise terminate its jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court, and except as otherwise provided in this subdivision, the jurisdiction of the court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so. Court jurisdiction under section 260C.007, subdivision 6, clause (14), may not continue past the child's 18th birthday.

History: 2001 c 178 art 1 s 15,44

260C.201 DISPOSITIONS; CHILDREN WHO ARE IN NEED OF PROTECTION OR SERVICES OR NEGLECTED AND IN FOSTER CARE.

Subdivision 1. **Dispositions.** (a) If the court finds that the child is in need of protection or services or neglected and in foster care, it shall enter an order making any of the following dispositions of the case:

(1) place the child under the protective supervision of the responsible social services agency or child-placing agency in the home of a parent of the child under conditions prescribed by the court directed to the correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who is not adjudicated, he must cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home;

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) transfer legal custody to one of the following:

(i) a child-placing agency; or

(ii) the responsible social services agency. In placing a child whose custody has been transferred under this paragraph, the agencies shall make an individualized determination of how the placement is in the child's best interests using the consideration for relatives and the best interest factors in section 260C.212, subdivision 2, paragraph (b); or

(3) if the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability, the court may order the child's parent, guardian, or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Section 62Q.535 applies to an order for mental health services directed to the child's health plan company. If the health plan, parent, guardian, or custodian fails or is unable to provide this treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

(4) if the court believes that the child has sufficient maturity and judgment and that it is in the best interests of the child, the court may order a child 16 years old or older to be allowed to live independently, either alone or with others as approved by the court under supervision the court considers appropriate, if the county board, after consultation with the court, has specifically authorized this dispositional alternative for a child.

(b) If the child was adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions authorized under paragraph (a):

(1) counsel the child or the child's parents, guardian, or custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child; or with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

(3) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character. No person may receive custody of two or more unrelated children unless licensed to operate a residential program under sections 245A.01 to 245A.16; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;

(4) require the child to pay a fine of up to \$100. The court shall order payment of the fine in a manner that will not impose undue financial hardship upon the child;

(5) require the child to participate in a community service project;

(6) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(7) if the court believes that it is in the best interests of the child and of public safety that the child's driver's license or instruction permit be canceled, the court may order the commissioner of public safety to cancel the child's license or permit for any period up to the child's 18th birthday. If the child does not have a driver's license or permit, the court may order a denial of driving privileges for any period up to the child's 18th birthday. The court shall forward an order issued under this clause to the commissioner, who shall cancel the license or permit or deny driving privileges without a hearing for the period specified by the court. At any time before the expiration of the period of cancellation or denial, the court may, for good cause, order the commissioner of public safety to allow the child to apply for a license or permit, and the commissioner shall so authorize;

(8) order that the child's parent or legal guardian deliver the child to school at the beginning of each school day for a period of time specified by the court; or

(9) require the child to perform any other activities or participate in any other treatment programs deemed appropriate by the court.

To the extent practicable, the court shall enter a disposition order the same day it makes a finding that a child is in need of protection or services or neglected and in foster care, but in no event more than 15 days after the finding unless the court finds that the best interests of the child will be served by granting a delay. If the child was under eight years of age at the time the petition was filed, the disposition order must be entered within ten days of the finding and the court may not grant a delay unless good cause is shown and the court finds the best interests of the child will be served by the delay.

(c) If a child who is 14 years of age or older is adjudicated in need of protection or services because the child is a habitual truant and truancy procedures involving the child were previously dealt with by a school attendance review board or county attorney mediation program under section 260A.06 or 260A.07, the court shall order a cancellation or denial of driving privileges under paragraph (b), clause (7), for any period up to the child's 18th birthday.

(d) In the case of a child adjudicated in need of protection or services because the child has committed domestic abuse and been ordered excluded from the child's parent's home, the court shall dismiss jurisdiction if the court, at any time, finds the parent is able or willing to provide an alternative safe living arrangement for the child, as defined in Laws 1997, chapter 239, article 10, section 2.

(e) When a parent has complied with a case plan ordered under subdivision 6 and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

Subd. 2. **Written findings.** (a) Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition and case plan ordered and shall also set forth in writing the following information:

(1) Why the best interests and safety of the child are served by the disposition and case plan ordered;

(2) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;

(3) When legal custody of the child is transferred, the appropriateness of the particular placement made or to be made by the placing agency using the factors in section 260C.212, subdivision 2, paragraph (b); and

(4) Whether reasonable efforts consistent with section 260.012 were made to prevent or eliminate the necessity of the child's removal and to reunify the family after removal. The court's findings must include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under section 260.012 or 260C.178, subdivision 1.

(b) If the court finds that the social services agency's preventive or reunification efforts have not been reasonable but that further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

(c) If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review the reasonable efforts of the agency to recruit, identify, and make a placement in a home where the foster parent or relative that has committed to being the legally permanent home for the child in the event reunification efforts are not successful.

Subd. 3. **Domestic child abuse.** (a) If the court finds that the child is a victim of domestic child abuse, as defined in section 260C.007, subdivision 28, it may order any of the following dispositions of the case in addition to or as alternatives to the dispositions authorized under subdivision 1:

- (1) restrain any party from committing acts of domestic child abuse;
- (2) exclude the abusing party from the dwelling which the family or household members share or from the residence of the child;
- (3) on the same basis as is provided in chapter 518, establish temporary visitation with regard to minor children of the adult family or household members;
- (4) on the same basis as is provided in chapter 518, establish temporary support or maintenance for a period of 30 days for minor children or a spouse;
- (5) provide counseling or other social services for the family or household members; or
- (6) order the abusing party to participate in treatment or counseling services.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

(b) No order excluding the abusing party from the dwelling may be issued unless the court finds that:

- (1) the order is in the best interests of the child or children remaining in the dwelling;
- (2) a remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party; and
- (3) the local welfare agency has developed a plan to provide appropriate social services to the remaining family or household members.

(c) Upon a finding that the remaining parent is able to care adequately for the child and enforce an order excluding the abusing party from the home and that the provision of supportive services by the responsible social services agency is no longer necessary, the responsible social services agency may be dismissed as a party to the proceedings. Orders entered regarding the abusing party remain in full force and effect and may be renewed by the remaining parent as necessary for the continued protection of the child for specified periods of time, not to exceed one year.

[For text of subd 4, see M.S.2000]

Subd. 5. **Visitation.** If the court orders that the child be placed outside of the child's home or present residence, it shall set reasonable rules for supervised or unsupervised parental visitation that contribute to the objectives of the court order and

the maintenance of the familial relationship. No parent may be denied visitation unless the court finds at the disposition hearing that the visitation would act to prevent the achievement of the order's objectives or that it would endanger the child's physical or emotional well-being. The court shall set reasonable rules for visitation for any relatives as defined in section 260C.007, subdivision 27, and with siblings of the child, if visitation is consistent with the best interests of the child.

Subd. 6. **Case plan.** (a) For each disposition ordered where the child is placed away from a parent or guardian, the court shall order the responsible social services agency to prepare a written out-of-home placement plan according to the requirements of section 260C.212, subdivision 1.

(b) In cases where the child is not placed out of the home or is ordered into the home of a noncustodial parent, the responsible social services agency shall prepare a plan for delivery of social services to the child and custodial parent under section 626.556, subdivision 10, or any other case plan required to meet the needs of the child. The plan shall be designed to safely maintain the child in the home or to reunite the child with the custodial parent.

(c) The court may approve the case plan as presented or modify it after hearing from the parties. Once the plan is approved, the court shall order all parties to comply with it. A copy of the approved case plan shall be attached to the court's order and incorporated into it by reference.

(d) A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change of circumstances.

Subd. 7. **Order duration.** Subject to subdivisions 10 and 11, all orders under this section shall be for a specified length of time set by the court not to exceed one year. However, before the order has expired and upon its own motion or that of any interested party, the court shall, after notice to the parties and a hearing, renew the order for another year or make some other disposition of the case, until the individual is no longer a minor. Any responsible social services agency receiving legal custody of a child shall report to the court at such periods as the court may direct and as required under juvenile court rules.

[For text of subd 8, see M.S.2000]

Subd. 9. **Transfer of legal custody orders.** When the court transfers legal custody of a child to any licensed child-placing agency or the responsible social services agency, it shall transmit with the order transferring legal custody a copy of its findings and a summary of its information concerning the child.

Subd. 10. **Court review of out-of-home placements.** (a) If the court places a child in a residential facility, as defined in section 260C.212, subdivision 1, the court shall review the out-of-home placement as required in juvenile court rules to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home.

(b) No later than six months after the child's out-of-home placement, the court shall review agency efforts pursuant to section 260C.212, subdivision 2, and order that the efforts continue if the agency has failed to perform the duties under that section.

(c) The court shall review the out-of-home placement plan and may modify the plan as provided under subdivisions 6 and 7.

(d) When the court orders out-of-home placement, the court shall notify the parents of the provisions of subdivisions 11 and 11a as required under juvenile court rules.

Subd. 11. **Review of court ordered placements; permanent placement determination.** (a) Except for cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, and where custody has not been transferred to the responsible social services agency, and the court finds compelling reasons under section 260C.007, subdivision 8, the court shall conduct a hearing to determine the permanent status of a child not later than 12 months after the child is placed out of the home of the parent.

For purposes of this subdivision, the date of the child's placement out of the home of the parent is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed out of the home.

For purposes of this subdivision, 12 months is calculated as follows:

(1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated;

(2) if a child has been placed out of the home of the parent within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed out of the home within the previous five years are cumulated. If a child under this clause has been out of the home for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.

(b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to this hearing, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152. If a termination of parental rights petition is filed before the date required for the permanency planning determination and there is a trial under section 260C.163 scheduled on that petition within 90 days of the filing of the petition, no hearing need be conducted under this subdivision.

(c) At the conclusion of the hearing, the court shall order the child returned to the care of the parent or guardian from whom the child was removed or order a permanent placement in the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated. Transfer of permanent legal and physical custody, termination of parental rights, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.

(d) If the child is not returned to the home, the court must order one of the following dispositions:

(1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

(i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;

(ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards and procedures applicable under this chapter, chapters 260 and 518, and juvenile court rules;

(iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may petition on behalf of the proposed custodian; and

(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights according to the following conditions:

(i) unless the social services agency has already filed a petition for termination of parental rights under section 260C.307, the court may order such a petition filed and all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests; and

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and reasonable efforts by the responsible social services agency have failed to locate an adoptive family for the child; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; or

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24;

(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;

(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner; and

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including 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.

(f) Once a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if:

(1) the placement is long-term foster care or foster care for a specified period of time;

(2) the court orders further hearings because it has retained jurisdiction of a transfer of permanent legal and physical custody matter;

(3) an adoption has not yet been finalized; or

(4) there is a disruption of the permanent or long-term placement.

(g) Court reviews of an order for long-term foster care, whether under this section or section 260C.317, subdivision 3, paragraph (d); or foster care for a specified period of time must be conducted at least yearly and must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

(1) identify a specific long-term foster home for the child or a specific foster home for the time the child is specified to be out of the care of the parent, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of long-term foster care or foster care for a specified period of time;

(4) plan for the child's independence upon the child's leaving long-term foster care living as required under section 260C.212, subdivision 1; and

(5) where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

(h) An order under this subdivision must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or parents;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) whether the conditions which led to the out-of-home placement have been corrected so that the child can return home.

(i) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(j) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

Subd. 11a. Permanency review for children under eight. (a) Hearing to review progress of the case. If the child was under eight years of age at the time the petition was filed alleging the child was in need of protection or services, and the child continues in placement out of the home of the parent or guardian from whom the child was removed, no later than six months after the child's placement the court shall conduct a permanency hearing to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services.

(b) County attorney and responsible agency's duties. Based on its assessment of the parent's or guardian's progress on the out-of-home placement plan, the responsible social services agency must ask the county attorney to file a petition for termination of parental rights, a petition for transfer of permanent legal and physical custody to a relative, or the report required under juvenile court rules.

(c) **Court's findings.** (1) If the parent or guardian has maintained contact with the child and is complying with the court-ordered out-of-home placement plan, and if the child would benefit from reunification with the parent, the court may either:

(i) return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated that it is safe and in the child's best interests to return home; or

(ii) continue the matter up to a total of six additional months. If the child has not returned home by the end of the additional six months, the court must conduct a hearing according to subdivision 11.

(2) If the court determines that the parent or guardian is not complying with the out-of-home placement plan or is not maintaining regular contact with the child as outlined in the visitation plan required as part of the out-of-home placement plan under section 260C.212, the court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent and to file a petition to support an order for the permanent placement plan.

(d) **Responsible agency's or county attorney's duties.** Following the review under paragraphs (b) and (c):

(1) if the court has either returned the child home or continued the matter up to a total of six additional months, the agency shall continue to provide services to support the child's return home or to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

(2) if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within 30 days of the filing of the pleadings; or

(3) if the court orders the agency to file a termination of parental rights, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within 90 days of the filing of the petition.

[For text of subd 12, see M.S.2000]

History: 2001 c 178 art 1 s 16-23,44; 1Sp2001 c 9 art 9 s 47

260C.205 DISPOSITIONS; VOLUNTARY FOSTER CARE PLACEMENTS.

Unless the court disposes of the petition under section 260C.141, subdivision 2, upon a petition for review of the foster care status of a child, the court may:

(a) Find that the child's needs are not being met, in which case the court shall order the social services 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 services agency of services to the parents which would enable the child to live at home, and order a disposition under section 260C.201.

(b) 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 services agency to file an appropriate petition pursuant to section 260C.141, subdivision 1, or 260C.307.

(c) When a child is in placement due solely to the child's developmental disability or emotional disturbance and the court finds that there are compelling reasons which permit the court to approve the continued voluntary placement of the child and retain jurisdiction to conduct reviews as required under section 260C.141, subdivision 2, the court shall give the parent notice of the review requirements of section 260C.141, subdivision 2, in the event the child continues in placement 12 months or longer.

Nothing in this section shall be construed to prohibit bringing a petition pursuant to section 260C.141, subdivision 1 or 4, sooner than required by court order pursuant to this section.

History: 2001 c 178 art 1 s 24

260C.208 INFORMATION FOR CHILD PLACEMENT.

Subdivision 1. **Agency with placement authority.** An agency with legal responsibility for the placement of a child may request and shall receive all information pertaining to the child that it considers necessary to appropriately carry out its duties. That information must include educational, medical, psychological, psychiatric, and social or family history data retained in any form by any individual or entity. The agency may gather appropriate data regarding the child's parents in order to develop and implement a case plan required by section 260C.212. Upon request of the court responsible 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 social services agency or tribal social services agency shall provide appropriate written or oral reports from any individual or entity that has provided services to the child or family. The reports must 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 shall report all observations and information upon which it bases its report as well as its conclusions. If necessary to facilitate the receipt of the reports, the court may issue appropriate orders.

[For text of subd 2, see M.S.2000]

History: 2001 c 178 art 1 s 44

260C.212 CHILDREN IN PLACEMENT.

Subdivision 1. **Out-of-home placement; plan.** (a) An out-of-home placement plan shall be prepared within 30 days after any child is placed in a residential facility by court order or by the voluntary release of the child by the parent or parents.

For purposes of this section, a residential facility means 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 260C.007, subdivision 18.

(b) An out-of-home placement plan means a written document which is prepared by the responsible social services agency jointly with the parent or parents or guardian of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the residential facility, and, where appropriate, the child. As appropriate, the plan shall be:

- (1) submitted to the court for approval under section 260C.178, subdivision 7;
- (2) ordered by the court, either as presented or modified after hearing, under section 260C.178, subdivision 7, or 260C.201, subdivision 6; and
- (3) signed by the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social services agency, and, if possible, the child.

(c) The out-of-home placement plan shall be explained to all persons involved in its implementation, including the child who has signed the plan, and shall set forth:

- (1) a description of the residential facility including how the out-of-home placement plan is designed to achieve a safe placement for the child in the least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification, and how the placement is consistent with the best interests and special needs of the child according to the factors under subdivision 2, paragraph (b);

(2) the specific reasons for the placement of the child in a residential facility, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make in order for the child to safely return home;

(3) a description of the services offered and provided to prevent removal of the child from the home and to reunify the family including:

(i) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (2), and the time period during which the actions are to be taken; and

(ii) the reasonable efforts, or in the case of an Indian child, active efforts to be made to achieve a safe and stable home for the child including social and other supportive services to be provided or offered to the parent or parents or guardian of the child, the child, and the residential facility during the period the child is in the residential facility;

(4) a description of any services or resources that were requested by the child or the child's parent, guardian, foster parent, or custodian since the date of the child's placement in the residential facility, and whether those services or resources were provided and if not, the basis for the denial of the services or resources;

(5) the visitation plan for the parent or parents or guardian, other relatives as defined in section 260C.007, subdivision 27, and siblings of the child if the siblings are not placed together in the residential facility, and whether visitation is consistent with the best interest of the child, during the period the child is in the residential facility;

(6) documentation of steps to finalize the adoption or legal guardianship of the child if the court has issued an order terminating the rights of both parents of the child or of the only known, living parent of the child, and a copy of this documentation shall be provided to the court in the review required under section 260C.317, subdivision 3, paragraph (b);

(7) to the extent available and accessible, the health and educational records of the child including:

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information; and

(8) an independent living plan for a child age 16 or older who is in placement as a result of a permanency disposition. The plan should include, but not be limited to, the following objectives:

(i) educational, vocational, or employment planning;

(ii) health care planning and medical coverage;

(iii) transportation including, where appropriate, assisting the child in obtaining a driver's license;

(iv) money management;

(v) planning for housing;

(vi) social and recreational skills; and

(vii) establishing and maintaining connections with the child's family and community.

(d) The parent or parents or guardian 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. The child shall also have the right to a guardian ad

litem. 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. The parent or parents may also receive assistance from any person or social services agency in preparation of the case plan.

After the plan has been agreed upon by the parties involved or approved or ordered by the court, the foster parents shall be fully informed of the provisions of the case plan and shall be provided a copy of the plan.

Subd. 2. Placement decisions based on best interest of the child. (a) The policy of the state of Minnesota is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed. The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order:

(1) with an individual who is related to the child by blood, marriage, or adoption; or

(2) with an individual who is an important friend with whom the child has resided or had significant contact.

(b) Among the factors the agency shall consider in determining the needs of the child are the following:

(1) the child's current functioning and behaviors;

(2) the medical, educational, 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 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, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

(c) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(d) Siblings should be placed together for foster care and adoption at the earliest possible time unless it is determined not to be in the best interests of a sibling or unless it is not possible after appropriate efforts by the responsible social services agency.

[For text of subd 3, see M.S.2000]

Subd. 4. Responsible social service agency's duties for children in placement. (a) When a child is in placement, the responsible social services agency shall make diligent efforts to identify, locate, and, where appropriate, offer services to both parents of the child.

(1) If a noncustodial or nonadjudicated parent is willing and capable of providing for the day-to-day care of the child, the responsible social services agency may seek authority from the custodial parent or the court to have that parent assume day-to-day care of the child. If a parent is not an adjudicated parent, the responsible social services agency shall require the nonadjudicated parent to cooperate with paternity establishment procedures as part of the case plan.

(2) If, after assessment, the responsible social services agency determines that the child cannot be in the day-to-day care of either parent, the agency shall prepare an out-of-home placement plan addressing the conditions that each parent must meet before the child can be in that parent's day-to-day care.

(3) If, after the provision of services following an out-of-home placement plan under this section, the child cannot return to the care of the parent from whom the

child was removed or who had legal custody at the time the child was placed in foster care, the agency may petition on behalf of a noncustodial parent to establish legal custody with that parent under section 260C.201, subdivision 11. If paternity has not already been established, it may be established in the same proceeding in the manner provided for under chapter 257.

(4) The responsible social services agency may be relieved of the requirement to locate and offer services to both parents by the juvenile court upon a finding of good cause after the filing of a petition under section 260C.141.

(b) The responsible social services agency shall give notice to the parent or parents or guardian of each child in a residential facility, other than a child in placement due solely to that child's developmental disability or emotional disturbance, of the following information:

(1) that residential care of the child may result in termination of parental rights or an order permanently placing the child out of the custody of the parent, but only after notice and a hearing as required under chapter 260C and the juvenile court rules;

(2) time limits on the length of placement and of reunification services, including the date on which the child is expected to be returned to and safely maintained in the home of the parent or parents or placed for adoption or otherwise permanently removed from the care of the parent by court order;

(3) the nature of the services available to the parent;

(4) the consequences to the parent and the child if the parent fails or is unable to use services to correct the circumstances that led to the child's placement;

(5) the first consideration for placement with relatives;

(6) the benefit to the child in getting the child out of residential care as soon as possible, preferably by returning the child home, but if that is not possible, through a permanent legal placement of the child away from the parent;

(7) when safe for the child, the benefits to the child and the parent of maintaining visitation with the child as soon as possible in the course of the case and, in any event, according to the visitation plan under this section; and

(8) the financial responsibilities and obligations, if any, of the parent or parents for the support of the child during the period the child is in the residential facility.

(c) The responsible social services agency shall inform a parent considering voluntary placement of a child who is not developmentally disabled or emotionally disturbed of the following information:

(1) the parent and the child each has a right to separate legal counsel before signing a voluntary placement agreement, but not to counsel appointed at public expense;

(2) the parent is not required to agree to the voluntary placement, and a parent who enters a voluntary placement agreement may at any time request that the agency return the child. If the parent so requests, the child must be returned within 24 hours of the receipt of the request;

(3) 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 or other permanent placement of the child away from the parent;

(4) if the responsible social services agency files a petition alleging that the child is in need of protection or services or a petition seeking the termination of parental rights or other permanent placement of the child away from the parent, the parent would have the right to appointment of separate legal counsel and the child would have a right to the appointment of counsel and a guardian ad litem as provided by law, and that counsel will be appointed at public expense if they are unable to afford counsel; and

(5) the timelines and procedures for review of voluntary placements under subdivision 3, and the effect the time spent in voluntary placement on the scheduling of a permanent placement determination hearing under section 260C.201, subdivision 11.

(d) When an agency accepts a child for placement, the agency shall determine whether the child has had a physical examination by or under the direction of a licensed physician within the 12 months immediately preceding the date when the child came into the agency's care. If there is documentation that the child has had an examination within the last 12 months, the agency is responsible for seeing that the child has another physical examination within one year of the documented examination and annually in subsequent years. If the agency determines that the child has not had a physical examination within the 12 months immediately preceding placement, the agency shall ensure that the child has an examination within 30 days of coming into the agency's care and once a year in subsequent years.

Subd. 5. **Relative search; nature.** (a) In implementing the requirement that the responsible social services agency must consider placement with a relative under subdivision 2 as soon as possible after identifying the need for placement of the child in foster care, the responsible social services agency shall identify relatives of the child and notify them of the need for a foster care home for the child and of the possibility of the need for a permanent out-of-home placement of the child. The relative search required by this section shall be reasonable in scope and may last up to six months or until a fit and willing relative is identified. Relatives should be notified that a decision not to be a placement resource at the beginning of the case may affect the relative being considered for placement of the child with that relative later. The relatives must be notified that they must keep the responsible social services agency informed of their current address in order to receive notice that a permanent placement is being sought for the child. A relative who fails to provide a current address to the responsible social services agency forfeits the right to notice of the possibility of permanent placement.

(b) A responsible social services agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable placement. The agency shall disclose only data that is necessary to facilitate possible placement with relatives. If the child's parent refuses to give the responsible social services agency information sufficient to identify relatives of the child, the agency shall determine whether the parent's refusal is in the child's best interests. If the agency determines the parent's refusal is not in the child's best interests, the agency shall file a petition under section 260C.141, and shall ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that relatives or a specific relative not be contacted or considered for placement, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives or a specific relative unless authorized to do so by the juvenile court.

(c) When the placing agency determines that a permanent placement hearing is necessary because there is a likelihood that the child will not return to a parent's care, the agency may send the notice provided in paragraph (d), may ask the court to modify the requirements of the agency under this paragraph, or may ask the court to completely relieve the agency of the requirements of this paragraph. The relative notification requirements of this paragraph do not apply when the child is placed with an appropriate relative or a foster home that has committed to being the permanent legal placement for the child and the agency approves of that foster home for permanent placement of the child. The actions ordered by the court under this section must be consistent with the best interests, safety, and welfare of the child.

(d) Unless required under the Indian Child Welfare Act or relieved of this duty by the court under paragraph (c), when the agency 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 agency shall 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. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a

permanent home. The notice must state that within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

[For text of subd 6, see M.S.2000]

Subd. 7. Administrative or court review of placements. (a) There shall be an administrative review of the out-of-home placement plan of each child placed in a residential facility no later than 180 days after the initial placement of the child in a residential facility and at least every six months thereafter if the child is not returned to the home of the parent or parents within that time. The out-of-home placement plan must be monitored and updated at each administrative review. As an alternative to the administrative review, the social services agency responsible for the placement may bring a petition as provided in section 260C.141, subdivision 2, to the court for review of the foster care to determine if placement is in the best interests of the child. This petition must be brought to the court in order for a court determination to be made regarding the best interests of the child within the applicable six months and is not in lieu of the requirements contained in subdivision 3 or 4. A court review conducted pursuant to section 260C.201, subdivision 11, or section 260C.141, subdivision 2, shall satisfy the requirement for an administrative review so long as the other requirements of this section are met.

(b) At the review required under paragraph (a), the reviewing administrative body or the court shall review:

- (1) the safety of the child;
- (2) the continuing necessity for and appropriateness of the placement;
- (3) the extent of compliance with the out-of-home placement plan;
- (4) where appropriate, the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in a residential facility;
- (5) where appropriate, the projected date by which the child may be returned to and safely maintained in the home or placed permanently away from the care of the parent or parents or guardian; and
- (6) the appropriateness of the services provided to the child.

Subd. 8. Review of voluntary placements. Except for a child in placement due solely to the child's developmental disability or emotional disturbance, if the child has been placed in a residential facility pursuant to a voluntary release by the parent or parents, and is not returned home within 90 days after initial placement in the residential facility, the social services agency responsible for the placement shall:

- (1) return the child to the home of the parent or parents; or
- (2) file a petition according to section 260C.141, subdivision 1 or 2, which may:
 - (i) ask the court to review the placement and approve it for up to an additional 90 days;
 - (ii) ask the court to order continued out-of-home placement according to sections 260C.178 and 260C.201; or
 - (iii) ask the court to terminate parental rights under section 260C.301.

The out-of-home placement plan must be updated and filed along with the petition.

If the court approves continued out-of-home placement for up to 90 more days, at the end of the court-approved 90-day period, the child must be returned to the parent's home. If the child is not returned home, the responsible social services agency must proceed on the petition filed alleging the child in need of protection or services or the petition for termination of parental rights or other permanent placement of the child away from the parent. The court must find a statutory basis to order the placement of the child under section 260C.178; 260C.201; or 260C.317.

Subd. 9. **Review of certain child placements.** (a) If a developmentally disabled child or a child diagnosed as emotionally disturbed has been placed in a residential facility pursuant to a voluntary release by the child's parent or parents because of the child's handicapping conditions or need for long-term residential treatment or supervision, the social services agency responsible for the placement shall report to the court and bring a petition for review of the child's foster care status as required in section 260C.141, subdivision 2, paragraph (b).

(b) If a child is in placement due solely to the child's developmental disability or emotional disturbance, and the court finds compelling reasons not to proceed under section 260C.201, subdivision 11, custody of the child is not transferred to the responsible social services agency under section 260C.201, subdivision 1, paragraph (a), clause (2), and no petition is required by section 260C.201, subdivision 11.

(c) Whenever a petition for review is brought pursuant to this subdivision, a guardian ad litem shall be appointed for the child.

[For text of subs 10 to 12, see M.S.2000]

History: 2001 c 178 art 1 s 25-31, 44

260C.213 CONCURRENT PERMANENCY PLANNING.

Subdivision 1. **Program; goals.** (a) The commissioner of human services shall establish a program for concurrent permanency planning for child protection services.

(b) Concurrent permanency planning involves a planning process for children who are placed out of the home of their parents pursuant to a court order, or who have been voluntarily placed out of the home by the parents for 60 days or more and who are not developmentally disabled or emotionally handicapped under section 260C.212, subdivision 9. The responsible social services agency shall develop an alternative permanency plan while making reasonable efforts for reunification of the child with the family, if required by section 260.012. The goals of concurrent permanency planning are to:

- (1) achieve early permanency for children;
- (2) decrease children's length of stay in foster care and reduce the number of moves children experience in foster care; and
- (3) develop a group of families who will work towards reunification and also serve as permanent families for children.

[For text of subs 2 and 3, see M.S.2000]

Subd. 4. **Technical assistance.** The commissioner of human services shall provide ongoing technical assistance, support, and training for responsible social services agencies and other individuals and agencies involved in concurrent permanency planning.

[For text of subd 5, see M.S.2000]

History: 2001 c 178 art 1 s 44

260C.215 WELFARE OF CHILDREN.

[For text of subs 1 to 5, see M.S.2000]

Subd. 6. **Duties of child-placing agencies.** (a) Each authorized child-placing agency must:

- (1) develop and follow procedures for implementing the requirements of section 260C.193, subdivision 3, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923;
- (2) have a written plan for recruiting adoptive and foster families that reflect the ethnic and racial diversity of children who are in need of foster and adoptive homes. The plan must include (i) strategies for using existing resources in diverse communities,

(ii) use of diverse outreach staff wherever possible, (iii) use of diverse foster homes for placements after birth and before adoption, and (iv) other techniques as appropriate;

(3) have a written plan for training adoptive and foster families;

(4) have a written plan for employing staff in adoption and foster care who have the capacity to assess the foster and adoptive parents' ability to understand and validate a child's cultural needs, and to advance the best interests of the child. The plan must include staffing goals and objectives;

(5) ensure that adoption and foster care workers attend training offered or approved by the department of human services regarding cultural diversity and the needs of special needs children; and

(6) develop and implement procedures for implementing the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

(b) In determining the suitability of a proposed placement of an Indian child, the standards to be applied must be the prevailing social and cultural standards of the Indian child's community, and the agency shall defer to tribal judgment as to suitability of a particular home when the tribe has intervened pursuant to the Indian Child Welfare Act.

[For text of subs 7 and 8, see M.S.2000]

History: 2001 c 178 art 1 s 32

260C.301 TERMINATION OF PARENTAL RIGHTS.

Subdivision 1. **Voluntary and involuntary.** The juvenile court may upon petition, terminate all rights of a parent to a child:

(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;

(2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable;

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth;

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated or that the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction;

(5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's

placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year, or in the case of a child under age eight, prior to six months after a child has been placed out of the home.

It is also presumed that reasonable efforts have failed under this clause upon a showing that:

(A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;

(B) the parent has been required by a case plan to participate in a chemical dependency treatment program;

(C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;

(D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and

(E) the parent continues to abuse chemicals.

(6) that 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;

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52;

(8) that the child is neglected and in foster care; or

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3).

In an action involving an American Indian child, sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

[For text of subd 2, see M.S.2000]

Subd. 3. Required termination of parental rights. (a) The county attorney shall file a termination of parental rights petition within 30 days of the responsible social services agency determining that a child has been subjected to egregious harm as defined in section 260C.007, subdivision 14, is determined to be the sibling of another child of the parent who was subjected to egregious harm, or is an abandoned infant as defined in subdivision 2, paragraph (a), clause (2), or the parent has lost parental rights to another child through an order involuntarily terminating the parent's rights, or another child of

the parent is the subject of an order involuntarily transferring permanent legal and physical custody of the child to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction. The responsible social services agency shall concurrently identify, recruit, process, and approve an adoptive family for the child. If a termination of parental rights petition has been filed by another party, the responsible social services agency shall be joined as a party to the petition. If criminal charges have been filed against a parent arising out of the conduct alleged to constitute egregious harm, the county attorney shall determine which matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(b) This requirement does not apply if the county attorney determines and files with the court:

(1) a petition for transfer of permanent legal and physical custody to a relative under section 260C.201, subdivision 11, including a determination that the transfer is in the best interests of the child; or

(2) a petition alleging the child, and where appropriate, the child's siblings, to be in need of protection or services accompanied by a case plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition would not be in the best interests of the child.

Subd. 4. Current foster care children. Except for cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, where custody has not been transferred to the responsible social services agency, and where the court finds compelling reasons to continue placement, the county attorney shall file a termination of parental rights petition or a petition to transfer permanent legal and physical custody to a relative under section 260C.201, subdivision 11, for all children who have been in out-of-home care for 15 of the most recent 22 months. This requirement does not apply if there is a compelling reason approved by the court for determining that filing a termination of parental rights petition or other permanency petition would not be in the best interests of the child or if the responsible social services agency has not provided reasonable efforts necessary for the safe return of the child, if reasonable efforts are required.

[For text of subs 5 to 7, see M.S.2000]

Subd. 8. Findings regarding reasonable efforts. In any proceeding under this section, the court shall make specific findings:

(1) that reasonable efforts to prevent the placement and to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or

(2) that reasonable efforts at reunification are not required as provided under section 260.012.

History: 2001 c 178 art 1 s 33-36,44; 1Sp2001 c 9 art 11 s 5

260C.312 DISPOSITION; PARENTAL RIGHTS NOT TERMINATED.

(a) If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section 260C.201.

(b) When a child has been in placement 15 of the last 22 months after a trial on a termination of parental rights petition, if the court finds that the petition is not proven or that termination of parental rights is not in the child's best interests, the court must order the child returned to the care of the parent unless the court finds compelling reasons why the child should remain out of the care of the parent. If the court orders

the child returned to the care of the parent, the court may order protective supervision or monitoring under section 260C.201.

History: 2001 c 178 art 1 s 37

260C.317 TERMINATION OF PARENTAL RIGHTS; EFFECT.

[For text of subds 1 and 2, see M.S.2000]

Subd. 3. **Order; retention of jurisdiction.** (a) A certified copy of the findings and the order terminating parental rights, and a summary of the court's information concerning the child shall be furnished by the court to the commissioner or the agency to which guardianship is transferred. The orders shall be on a document separate from the findings. The court shall furnish the individual to whom guardianship is transferred a copy of the order terminating parental rights.

(b) The court shall retain jurisdiction in a case where adoption is the intended permanent placement disposition. The guardian ad litem and counsel for the child shall continue on the case until an adoption decree is entered. A hearing must be held every 90 days following termination of parental rights for the court to review progress toward an adoptive placement and the specific recruitment efforts the agency has taken to find an adoptive family or other placement living arrangement for the child and to finalize the adoption or other permanency plan.

(c) When adoption is not the intended disposition, and if the child continues in out-of-home placement for 12 months after the court has issued the order terminating parental rights and at least every 12 months thereafter as long as the child continues in out-of-home placement, the court shall conduct a permanency review hearing to determine the future status of the child including, but not limited to, whether the child should be continued in out-of-home placement, should be placed for adoption, or should, because of the child's special needs and for compelling reasons, be ordered into long-term out-of-home placement.

(d) The court shall retain jurisdiction in a case where long-term foster care is the permanent disposition whether under paragraph (c) or section 260C.201, subdivision 11. All of the review requirements under section 260C.201, subdivision 11, paragraph (g), apply.

Subd. 4. **Rights of terminated parent.** Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child as to whom the parental rights are terminated, the court shall cause written notice to be made to that person setting forth:

(1) the right of the person to file at any time with the state registrar of vital statistics a consent to disclosure, as defined in section 144.212, subdivision 11;

(2) the right of the person to file at any time with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in section 144.2252; and

(3) the effect of a failure to file either a consent to disclosure, as defined in section 144.212, subdivision 11, or an affidavit stating that the information on the original birth record shall not be disclosed.

History: 2001 c 178 art 1 s 38; 1Sp2001 c 9 art 15 s 31,32

260C.325 GUARDIAN.

[For text of subd 1, see M.S.2000]

Subd. 2. [Repealed, 2001 c 178 art 1 s 43]

[For text of subd 3, see M.S.2000]

Subd. 4. **Guardian's responsibilities.** (a) A guardian appointed under the provisions of this section has legal custody of a ward unless the court which appoints the guardian gives legal custody to some other person. If the court awards custody to a

person other than the guardian, the guardian nonetheless has the right and responsibility of reasonable visitation, except as limited by court order.

(b) The guardian may make major decisions affecting the person of the ward, including but not limited to giving consent (when consent is legally required) to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment, or adoption of the ward. When, pursuant to this section, the commissioner of human services is appointed guardian, the commissioner may delegate to the responsible social services agency of the county in which, after the appointment, the ward resides, the authority to act for the commissioner in decisions affecting the person of the ward, including but not limited to giving consent to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment of the ward.

(c) A guardianship created under the provisions of this section shall not of itself include the guardianship of the estate of the ward.

History: 2001 c 178 art 1 s 39

260C.331 COSTS OF CARE.

Subdivision 1. **Care, examination, or treatment.** (a) Except where parental rights are terminated,

(1) whenever legal custody of a child is transferred by the court to a responsible social services agency,

(2) whenever legal custody is transferred to a person other than the responsible social services agency, but under the supervision of the responsible social services agency, or

(3) whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, these costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.

(b) The court shall order, and the responsible social services agency shall require, the parents or custodian of a child, while the child is under the age of 18, to use the total income and resources attributable to the child for the period of care, examination, or treatment, except for clothing and personal needs allowance as provided in section 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income and resources attributable to the child include, but are not limited to, social security benefits, supplemental security income (SSI), veterans benefits, railroad retirement benefits and child support. When the child is over the age of 18, and continues to receive care, examination, or treatment, the court shall order, and the responsible social services agency shall require, reimbursement from the child for the cost of care, examination, or treatment from the income and resources attributable to the child less the clothing and personal needs allowance.

(c) If the income and resources attributable to the child are not enough to reimburse the county for the full cost of the care, examination, or treatment, the court shall inquire into the ability of the parents to support the child and, after giving the parents a reasonable opportunity to be heard, the court shall order, and the responsible social services agency shall require, the parents to contribute to the cost of care, examination, or treatment of the child. When determining the amount to be contributed by the parents, the court shall use a fee schedule based upon ability to pay that is established by the responsible social services agency and approved by the commissioner of human services. The income of a stepparent who has not adopted a child shall be excluded in calculating the parental contribution under this section.

(d) The court shall order the amount of reimbursement attributable to the parents or custodian, or attributable to the child, or attributable to both sources, withheld under chapter 518 from the income of the parents or the custodian of the child. A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used.

(e) If the court orders a physical or mental examination for a child, the examination is a medically necessary service for purposes of determining whether the service is covered by a health insurance policy, health maintenance contract, or other health coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan requirements for medical necessity. Nothing in this paragraph changes or eliminates benefit limits, conditions of coverage, copayments or deductibles, provider restrictions, or other requirements in the policy, contract, or plan that relate to coverage of other medically necessary services.

[For text of subs 2 and 3, see M.S.2000]

Subd. 4. **Legal settlement.** The county charged with the costs and expenses under subdivisions 1 and 3 may recover these costs and expenses from the county where the minor has legal settlement for general assistance purposes by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. If a dispute relating to general assistance settlement arises, the responsible social services agency of the county denying legal settlement shall send a detailed statement of the facts upon which the claim is denied together with a copy of the detailed statement of the facts upon which the claim is based to the commissioner of human services. The commissioner shall immediately investigate and determine the question of general assistance settlement and shall certify findings to the responsible social services agency of each county. The decision of the commissioner is final and shall be complied with unless, within 30 days thereafter, action is taken in district court as provided in section 256.045.

[For text of subs 5 and 6, see M.S.2000]

History: 2001 c 178 art 1 s 44

260C.431 TESTS, EXAMINATIONS.

Thereafter it shall be the duty of the commissioner of human services through the bureau of child welfare and responsible social services agencies to arrange for such tests, examinations, and investigations as are necessary for the proper diagnosis, classification, treatment, care, and disposition of the child as necessity and the best interests of the child shall from time to time require. When it appears that a child found to be in need of protection or services is sound of mind, free from disease, and suitable for placement in a foster home for care or adoption, the commissioner may so place the child or delegate such duties to a child-placing agency accredited as provided by law, or authorize the child's care in the county by and under the supervision of the responsible social services agency.

History: 2001 c 178 art 1 s 44