

CHAPTER 260C

CHILD PROTECTION

260C.001	Title, intent, and construction.	260C.201	Dispositions; children who are in need of protection or services or neglected and in foster care.
260C.007	Definitions.	260C.205	Dispositions; voluntary foster care placements.
260C.101	Jurisdiction.	260C.209	Background checks.
260C.141	Petition.	260C.212	Children in placement.
260C.151	Summons; notice.	260C.312	Disposition; parental rights not terminated.
260C.163	Hearing.	260C.317	Termination of parental rights; effect.
260C.171	Records.		
260C.178	Emergency removal hearing.		
260C.193	Dispositions; general provisions.		

260C.001 TITLE, INTENT, AND CONSTRUCTION.

[For text of subs 1 and 2, see M.S.2004]

Subd. 3. **Permanency and termination of parental rights.** The purpose of the laws relating to permanency and termination of parental rights is to ensure that:

(1) when required and appropriate, reasonable efforts have been made by the social services agency to reunite the child with the child's parents in a home that is safe and permanent; and

(2) if placement with the parents is not reasonably foreseeable, to secure for the child a safe and permanent placement, preferably with adoptive parents or a fit and willing relative through transfer of permanent legal and physical custody to that relative.

Nothing in this section requires reasonable efforts to prevent placement or to reunify the child with the parent or guardian to be made in circumstances where the court has determined that the child has been subjected to egregious harm, when the child is an abandoned infant, the parent has involuntarily lost custody of another child through a proceeding under section 260C.201, subdivision 11, or similar law of another state, the parental rights of the parent to a sibling have been involuntarily terminated, or the court has determined that reasonable efforts or further reasonable efforts to reunify the child with the parent or guardian would be futile.

The paramount consideration in all proceedings for permanent placement of the child under section 260C.201, subdivision 11, or the termination of parental rights is the best interests of the child. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq.

[For text of subd 4, see M.S.2004]

History: 2005 c 159 art 2 s 12

260C.007 DEFINITIONS.

[For text of subs 1 to 7, see M.S.2004]

Subd. 8. **Compelling reasons.** "Compelling reasons" means an individualized determination by the responsible social services agency, which is approved by the court, related to a request by the agency 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 under section 260C.301, subdivision 3.

[For text of subs 9 to 30, see M.S.2004]

History: 2005 c 159 art 2 s 13

260C.101 JURISDICTION.

[For text of subd 1, see M.S.2004]

Subd. 2. **Jurisdiction over other matters relating to children.** Except as provided in clause (d), the juvenile court has original and exclusive jurisdiction in proceedings concerning:

(a) The termination of parental rights to a child in accordance with the provisions of sections 260C.301 to 260C.328.

(b) The appointment and removal of a juvenile court guardian for a child, where parental rights have been terminated under the provisions of sections 260C.301 to 260C.328.

(c) Judicial consent to the marriage of a child when required by law.

(d) The juvenile court in those counties in which the judge of the probate-juvenile court has been admitted to the practice of law in this state shall proceed under the laws relating to adoptions in all adoption matters. In those counties in which the judge of the probate-juvenile court has not been admitted to the practice of law in this state the district court shall proceed under the laws relating to adoptions in all adoption matters.

(e) The review of the foster care status of a child who has been placed in a residential facility, as defined in section 260C.212, subdivision 1, pursuant to a voluntary release by the child's parent or parents.

[For text of subds 3 to 5, see M.S.2004]

History: 2005 c 10 art 4 s 16

260C.141 PETITION.

[For text of subd 1, see M.S.2004]

Subd. 2. **Review of foster care status.** Except for a child in foster care 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 this paragraph and paragraph (1), the matter shall proceed under section 260C.163.

Subd. 2a. **Voluntary foster care placement.** 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, a petition under subdivision 1 shall not be filed unless a child continues in foster care for 13 consecutive months from the date of the voluntary placement, in which case, the responsible social services agency shall proceed under clause (2). In lieu of filing a petition to obtain judicial review of a child's voluntary placement due solely to disability and within 165 days of the placement, the responsible social services agency must report to the court as follows:

(1) **Report to court.** (i) 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. In the case of a child in placement due solely to an emotional disturbance, the written report shall include as an attachment the child's individual treatment plan developed by the child's treatment professional, as provided in section 245.4871, subdivision 21, or the child's individual interagency intervention plan, as provided in section 125A.023, subdivision 3, paragraph (c). In the case of a child in placement due solely to a developmental disability, the written report shall include as an attachment the child's individual service plan, as provided in section 256B.092, subdivision 1b; the child's individual program plan, as provided in Minnesota Rules, part 9525.0004, subpart 11; the child's waiver care plan; or the child's individual interagency intervention plan, as provided in section 125A.023, subdivision 3, paragraph (c).

(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 shall 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, the responsible social services agency's efforts to finalize a plan for the permanent placement of the child, 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 and that the responsible social services agency has made reasonable efforts to finalize a plan for the permanent placement 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.

(ii) When the court finds compelling reasons and approves the continued voluntary placement under this subdivision, the court shall not adjudicate the child in need of protection or services and shall not order the child placed in foster care or transfer legal custody of the child to the responsible social services agency. A finding that the court approves the continued voluntary placement means the responsible social services agency has continued legal responsibility for the child's placement due to the voluntary placement agreement and that the parent may terminate the voluntary agreement as provided in section 260C.212, subdivision 4, paragraph (c), clause (2), or, in the case of an Indian child, as provided in section 260.765, subdivision 4.

(iii) 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.

(iv) If a child diagnosed with developmental disability or emotional disturbance has been ordered into foster care under section 260C.178 or 260C.201 and the conditions which led to the court's order have been corrected so that the child could safely return to the care of the parent or guardian except for the child's need for continued placement to access necessary treatment or services, the responsible social services agency may file a motion with the court in the child in need of protection or services matter to vacate the finding that the child is in need of protection or services and to vacate the award of custody to the responsible agency. The motion shall be supported by affidavit setting forth: (A) the agency's reasonable efforts to finalize a permanent plan for the child including returning the child home; (B) the agency's compelling reasons why a permanent placement need not be ordered under section 260C.201, subdivision 11; and (C) why the voluntary placement is in the child's best interests. This motion must be filed no later than the time a permanency placement determination hearing is required under section 260C.201, subdivision 11. At the time scheduled for the court to hear the agency's motion, the parent or guardian and agency may execute a voluntary placement agreement when the court approves the child's continued foster care placement as a voluntary arrangement. The court may approve the continued foster care placement as a voluntary arrangement if it finds there are

compelling reasons why continued placement on a voluntary basis is in the child's best interests and that the responsible social services agency has made reasonable efforts to finalize a plan for the permanent placement of the child. The matter shall continue 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 due solely to the child's disability. A finding that the court approves the continued voluntary placement means the responsible social services agency has continued legal responsibility for the child's placement due to the voluntary placement agreement and that the parent may terminate the voluntary agreement as provided in section 260C.212, subdivision 4, paragraph (c), clause (2), or, in the case of an Indian child, as provided in section 260.765, subdivision 4.

(v) 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.

[For text of subds 3 to 6, see M.S.2004]

History: 2005 c 165 art 2 s 1

260C.151 SUMMONS; NOTICE.

[For text of subds 1 to 5, see M.S.2004]

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 responsibility for the child's care and custody be immediately assumed by the responsible social services agency 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 for placement of the child in foster care. In ordering that responsibility for the care, custody, and control of the child be assumed by the responsible social services agency, the court is ordering emergency protective care as that term is defined in the juvenile court rules.

History: 2005 c 159 art 2 s 14

260C.163 HEARING.

[For text of subds 1 to 4, see M.S.2004]

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, except proceedings where the sole allegation is that the child is a runaway or habitual truant. 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.

(f) The court shall require a background study for each guardian ad litem as provided under section 518.165. The court shall have access to data collected pursuant to section 245C.32 for purposes of the background study.

[For text of subds 6 to 11, see M.S.2004]

History: *1Sp2005 c 4 art 1 s 48*

260C.171 RECORDS.

[For text of subds 1 to 5, see M.S.2004]

Subd. 6. **Notice to school.** (a) As used in this subdivision, the following terms have the meanings given. "Chemical substance," "methamphetamine paraphernalia," and "methamphetamine waste products" have the meanings given in section 152.137, subdivision 1. "School" means a charter school or a school as defined in section 120A.22, subdivision 4, except a home school.

(b) If a child has been taken into protective custody after being found in an area where methamphetamine was being manufactured or attempted to be manufactured or where any chemical substances, methamphetamine paraphernalia, or methamphetamine waste products were stored, and the child is enrolled in school, the officer who took the child into custody shall notify the chief administrative officer of the child's school of this fact.

History: *2005 c 136 art 7 s 14*

260C.178 EMERGENCY REMOVAL 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. If the court determines 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 court shall order the child into foster care under the responsibility of the responsible social services agency or responsible probation or corrections agency for the purposes of protective care as that term is used in the juvenile court rules. 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 be placed in or continue in foster care under the protective care of the responsible agency, shall also make a determination, consistent with section 260.012 as to whether reasonable efforts were made to prevent placement or whether reasonable efforts to prevent placement are not required. In the case of an Indian child, the court shall determine whether 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 enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:

(1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

(2) that there are no services or other efforts that could be made at the time of the hearing that could safely permit the child to remain home or to return home. When reasonable efforts to prevent placement are required and there are services or other efforts that could be ordered which would permit the child to safely return home, the court shall order the child returned to the care of the parent or guardian and the services or efforts put in place to ensure the child's safety. When the court makes a prima facie determination that one of the circumstances under paragraph (e) exists, the court shall determine that reasonable efforts to prevent placement and to return the child to the care of the parent or guardian are not required.

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 emergency removal hearing, or at any time during the course of the proceeding, and upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a prima facie case that:

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

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

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

(4) the parents' 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; or

(5) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable.

(f) When a petition to terminate parental rights is required under section 260C.301, subdivision 3 or 4, but the county attorney has determined not to proceed with a termination of parental rights petition, and has instead filed a petition to transfer permanent legal and physical custody to a relative under section 260C.201, subdivision 11, the court shall schedule a permanency hearing within 30 days of the filing of the petition.

(g) 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.

(h) If the court determines the child should be ordered into foster care 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.

(i) If a child ordered into foster care has siblings, whether full, half, or step, who are also ordered into foster care, 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.

Subd. 2. [Repealed by amendment, 2005 c 159 art 2 s 15]

Subd. 3. **Parental visitation.** If a child has been taken into custody under section 260C.151, subdivision 5, or 260C.175, subdivision 1, clause (b)(2), and the court determines that the child should continue in foster care, the court shall include in its order reasonable rules for supervised or unsupervised parental visitation of the child in the foster care facility unless it finds that visitation would endanger the child's physical or emotional well-being.

Subd. 4. **Mental health treatment.** (a) Except as provided in paragraph (b), a child who is ordered placed in foster care as an alleged victim of child abuse as defined in section 630.36, subdivision 2, may not be given mental health treatment specifically for the effects of the alleged abuse until the court finds that there is a prima facie basis to believe the abuse has occurred.

(b) A child described in paragraph (a) may be given mental health treatment prior to a prima facie finding of child abuse if the treatment is either agreed to by the child's parent or guardian in writing, or ordered by the court according to the standard contained in section 260C.201, subdivision 1.

Subd. 5. **Copies of order.** Copies of the court's order shall be served upon the parties, including the placement facility, which shall release the child or continue to hold the child as the court orders.

When the court's order is served upon these parties, notice shall also be given to the parties of the subsequent reviews provided by subdivision 6.

Subd. 6. **Review.** When a child is placed in foster care, the child's placement shall be periodically reviewed as required under the juvenile court rules including notice to the parties required to be served with a copy of the order under subdivision 4.

A hearing shall be held at the request of any one of the parties notified pursuant to subdivision 5, if that party notifies the court of a wish to present to the court new evidence concerning whether the child should be continued in detention or notifies the court of a wish to present an alternate placement arrangement to provide for the safety and protection of the child.

In addition, if a child was taken into custody under section 260C.151, subdivision 5, or 260C.175, subdivision 1, clause (c)(2), and is placed in foster care or placed in another facility under a court order issued under subdivision 2, the court shall schedule and hold an adjudicatory hearing on the petition within 60 days of the emergency removal hearing upon the request of any party to the proceeding. However, if good cause is shown by a party to the proceeding why the hearing should not be held within that time period, the hearing shall be held within 90 days, unless the parties agree otherwise and the court so orders.

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 which has been developed jointly with the parent and in consultation with others as required under section 260C.212, subdivision 1, the court may approve implementation of the plan by the responsible social services agency 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) The responsible social services agency shall make reasonable attempts to engage a parent in case planning. If the parent refuses to cooperate in the development of the out-of-home placement plan or disagrees with the services recommended by the responsible social service agency, the agency shall note such refusal or disagreement for the court in the out-of-home placement plan filed with the court. The agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. The parent may ask the court to modify the plan to require different or additional services requested by the parent, but which the agency refused to provide. The court may approve the plan as presented by the agency or may modify the plan to require services requested by the parent. The court's approval shall be based on the content of the petition.

(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 finds the child is in need of protection or services and orders disposition 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: 2005 c 159 art 2 s 15

260C.193 DISPOSITIONS; GENERAL PROVISIONS.

[For text of subd 1, see M.S.2004]

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, the child's health or mental health care provider, 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.

[For text of subds 3 to 6, see M.S.2004]

History: 2005 c 165 art 2 s 2

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; and

(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 making a foster care placement for a child whose custody has been transferred under this subdivision, the agency 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) order a trial home visit without modifying the transfer of legal custody to the responsible social services agency under clause (2). Trial home visit means the child is returned to the care of the parent or guardian from whom the child was removed for a period not to exceed six months. During the period of the trial home visit, the responsible social services agency:

(i) shall continue to have legal custody of the child, which means the agency may see the child in the parent's home, at school, in a child care facility, or other setting as the agency deems necessary and appropriate;

(ii) shall continue to have the ability to access information under section 260C.208;

(iii) shall continue to provide appropriate services to both the parent and the child during the period of the trial home visit;

(iv) without previous court order or authorization, may terminate the trial home visit in order to protect the child's health, safety, or welfare and may remove the child to foster care;

(v) shall advise the court and parties within three days of the termination of the trial home visit when a visit is terminated by the responsible social services agency without a court order; and

(vi) shall prepare a report for the court when the trial home visit is terminated whether by the agency or court order which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under subdivision 11 or 11a. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanency hearing does not exceed 12 months;

(4) 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 or emotional disturbance as defined in section 245.4871, subdivision 15, 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

(5) 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 or 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);

(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; and

(5) 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 mental disability or emotional disturbance as defined in section 245.4871, subdivision 15, the written findings shall also set forth:

(i) whether the child has mental health needs that must be addressed by the case plan;

(ii) what consideration was given to the diagnostic and functional assessments performed by the child's mental health professional and to health and mental health care professionals' treatment recommendations;

(iii) what consideration was given to the requests or preferences of the child's parent or guardian with regard to the child's interventions, services, or treatment; and

(iv) what consideration was given to the cultural appropriateness of the child's treatment or services.

(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.

[For text of subs 3 to 9, see M.S.2004]

Subd. 10. Court review of foster care. (a) If the court orders a child placed in foster care, the court shall review the out-of-home placement at least every 90 days 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. This review is not required if the court has returned the child home, ordered the child permanently placed away from the parent under subdivision 11, or terminated rights under section 260C.301. Court review for a child permanently placed away from a parent, including where the child is under guardianship and legal custody of the commissioner, shall be governed by subdivision 11 or section 260C.317, subdivision 3, whichever is applicable.

(b) No later than six months after the child's placement in foster care, 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 transfer of custody to a responsible social services agency resulting in foster care or protective supervision with a noncustodial parent under subdivision 1, 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) This subdivision and subdivision 11a do not apply in cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, where legal custody has not been transferred to the responsible social services agency, and where the court finds compelling reasons under section 260C.007, subdivision 8, to continue the child in foster care past the time periods specified in this subdivision. Foster care placements of children due solely to their disability are governed by section 260C.141, subdivision 2b. In all other cases where the child is in foster care or in the care of a noncustodial parent under subdivision 1, the court shall commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent. At the admit-deny hearing commencing such proceedings, the court shall determine whether there is a prima facie basis for finding that the agency made reasonable efforts, or in the case of an Indian child active efforts, required under section 260.012 and proceed according to the rules of juvenile court.

For purposes of this subdivision, the date of the child's placement in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed in foster care by the child's parent or guardian. For purposes of this subdivision, time spent by a child under the protective supervision of the responsible social services agency in the home of a noncustodial parent pursuant to an order under subdivision 1 counts towards the requirement of a permanency hearing under this subdivision or subdivision 11a. Time spent on a trial home visit does not

count towards the requirement of a permanency hearing under this subdivision or subdivision 11a.

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 in foster care or in the home of a noncustodial parent are cumulated;

(2) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed in foster care within the previous five years are cumulated. If a child under this clause has been in foster care 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 the admit-deny hearing required under paragraph (a) and the rules of juvenile court, 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, including a termination of parental rights petition, according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152.

(c) The permanency proceedings shall be conducted in a timely fashion including that any trial required under section 260C.163 shall be commenced within 60 days of the admit-deny hearing required under paragraph (a). At the conclusion of the permanency proceedings, the court shall:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) order a permanent placement or termination of parental rights if permanent placement or termination of parental rights is 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 applicable under this chapter and chapter 260, and the procedures set out in the 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 bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; 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 when the requirements of sections 260C.301 to 260C.328 are met or according to the following conditions:

(i) order the social services agency to file a petition for termination of parental rights in which case 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 approves the responsible social service agency's 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) 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 the responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or with a fit and willing relative who will agree to a transfer of permanent legal and physical custody of the child, but such efforts have not proven successful; 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; and

(iii) at least annually, the responsible social services agency reconsiders its provision of services to the child and the child's placement in long-term foster care to ensure that:

(A) long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability, including whether there is another permanent placement option under this chapter that would better serve the child's needs and best interests;

(B) whenever possible, there is an identified long-term foster care family that is committed to being the foster family for the child as long as the child is a minor or under the jurisdiction of the court;

(C) the child is receiving appropriate services or assistance to maintain or build connections with the child's family and community;

(D) the child's physical and mental health needs are being appropriately provided for; and

(E) the child's educational needs are being met;

(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 approves the responsible social services agency's 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 agreed to by the responsible social services agency having legal custody of the child pursuant to court order under

this section that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24, except that such consent executed by a parent under this item, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable unless fraud is established and an order issues permitting revocation as stated in item (vii);

(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;

(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;

(vi) notwithstanding item (v), the commissioner of human services or the commissioner's designee must pursue adoptive placement in another home as soon as the commissioner or commissioner's designee determines that finalization of the adoption with the identified prospective adoptive parent is not possible, that the identified prospective adoptive parent is not willing to adopt the child, that the identified prospective adoptive parent is not cooperative in completing the steps necessary to finalize the adoption, or upon the commissioner's determination to withhold consent to the adoption.

(vii) unless otherwise required by the Indian Child Welfare Act, United States Code, title 25, section 1913, a consent to adopt executed under this section, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable upon acceptance by the court except upon order permitting revocation issued by the same court after written findings that consent was obtained by fraud.

(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), 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 finalize the permanent plan for the child including the agency's efforts to:

(1) ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child's needs and best interests;

(2) identify a specific long-term foster home for the child, if one has not already been identified;

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

(4) ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and

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

(h) In the event it is necessary for a child that has been ordered into foster care for a specified period of time to be in foster care longer than one year after the permanency hearing held under this section, not later than 12 months after the time the child was ordered into foster care for a specified period of time, the matter must be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child; if it is in the child's best interests to continue the order for foster care for a specified period of time past a total of 12 months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(i) An order permanently placing a child out of the home of the parent or guardian 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 guardian where reasonable efforts are required;

(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) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

(j) 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. The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanency option under this chapter and that such an option is in the child's best interests. Upon a hearing where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child's best interests. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests. The county attorney must file pleadings and give notice as required under the rules of juvenile court in order to modify an order for long-term foster care under this paragraph.

(k) 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.

[For text of subs 11a and 12, see M.S.2004]

History: 2005 c 136 art 15 s 5; 2005 c 159 art 2 s 16-18; 2005 c 165 art 2 s 3,4; 1Sp2005 c 5 art 2 s 80

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 by registered United States mail 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: 2005 c 165 art 2 s 5

260C.209 BACKGROUND CHECKS.

Subdivision 1. **Subjects.** The responsible social services agency must conduct a background check under this section of the following:

(1) a noncustodial parent or nonadjudicated parent who is being assessed for purposes of providing day-to-day care of a child temporarily or permanently under section 260C.212, subdivision 4, and any member of the parent's household who is over the age of 13 when there is a reasonable cause to believe that the parent or household member over age 13 has a criminal history or a history of maltreatment of a child or vulnerable adult which would endanger the child's health, safety, or welfare;

(2) an individual whose suitability for relative placement under section 260C.212, subdivision 5, is being determined and any member of the relative's household who is over the age of 13 when:

(i) the relative must be licensed for foster care; or

(ii) the agency must conduct a background study under section 259.53, subdivision 2; or

(iii) the agency has reasonable cause to believe the relative or household member over the age of 13 has a criminal history which would not make transfer of permanent legal and physical custody to the relative under section 260C.201, subdivision 11, in the child's best interest; and

(3) a parent, following an out-of-home placement, when the responsible social services agency has reasonable cause to believe that the parent has been convicted of a crime directly related to the parent's capacity to maintain the child's health, safety, or welfare or the parent is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable-adult maltreatment within the past ten years.

“Reasonable cause” means that the agency has received information or a report from the subject or a third person that creates an articulable suspicion that the individual has a history that may pose a risk to the health, safety, or welfare of the child. The information or report must be specific to the potential subject of the background check and shall not be based on the race, religion, ethnic background, age, class, or lifestyle of the potential subject.

Subd. 2. **General procedures.** (a) When conducting a background check under subdivision 1, the agency may require the individual being assessed to provide sufficient information to ensure an accurate assessment under this section, including:

(1) the individual’s first, middle, and last name and all other names by which the individual has been known;

(2) home address, zip code, city, county, and state of residence for the past ten years;

(3) sex;

(4) date of birth; and

(5) driver’s license number or state identification number.

(b) When notified by the responsible social services agency that it is conducting an assessment under this section, the Bureau of Criminal Apprehension, commissioners of health and human services, law enforcement, and county agencies must provide the responsible social services agency or county attorney with the following information on the individual being assessed: criminal history data, reports about the maltreatment of adults substantiated under section 626.557, and reports of maltreatment of minors substantiated under section 626.556.

Subd. 3. **Multistate information.** (a) For any assessment completed under this section, if the responsible social services agency has reasonable cause to believe that the individual is a multistate offender, the individual must provide the responsible social services agency or the county attorney with a set of classifiable fingerprints obtained from an authorized law enforcement agency. The responsible social services agency or county attorney may obtain criminal history data from the National Criminal Records Repository by submitting the fingerprints to the Bureau of Criminal Apprehension.

(b) For purposes of this subdivision, the responsible social services agency has reasonable cause when, but not limited to:

(1) information from the Bureau of Criminal Apprehension indicates that the individual is a multistate offender;

(2) information from the Bureau of Criminal Apprehension indicates that multistate offender status is undetermined;

(3) the social services agency has received a report from the individual or a third party indicating that the individual has a criminal history in a jurisdiction other than Minnesota; or

(4) the individual is or has been a resident of a state other than Minnesota at any time during the prior ten years.

Subd. 4. **Notice upon receipt.** The responsible social services agency must provide the subject of the background study with the results of the study under this section within 15 business days of receipt or at least 15 days prior to the hearing at which the results will be presented, whichever comes first. The subject may provide written information to the agency that the results are incorrect and may provide additional or clarifying information to the agency and to the court through a party to the proceeding. This provision does not apply to any background study conducted under chapters 245A and 245C.

History: 2005 c 136 art 15 s 6

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. For a child in placement due solely or in part to the child's emotional disturbance, preparation of the out-of-home placement plan shall additionally include the child's mental health treatment provider. 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, including any known communicable diseases, as defined in section 144.4172, subdivision 2;
 - (vii) the child's medications; and
 - (viii) any other relevant health and education information;
- (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; and

(9) for a child in placement due solely or in part to the child's emotional disturbance, diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes.

(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.

[For text of subs 2 and 3, see M.S.2004]

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) The responsible social services agency shall assess whether a noncustodial or nonadjudicated parent is willing and capable of providing for the day-to-day care of the child temporarily or permanently. An assessment under this clause may include, but is not limited to, obtaining information under section 260C.209. If after assessment, the responsible social services agency determines that a noncustodial or nonadjudicated parent is willing and capable of providing 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:

(i) 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; and

(ii) provide a parent who is the subject of a background study under section 260C.209 15 days' notice that it intends to use the study to recommend against putting the child with that parent, as well as the notice provided in section 260C.209, subdivision 4, and the court shall afford the parent an opportunity to be heard concerning the study.

The results of a background study of a noncustodial parent shall not be used by the agency to determine that the parent is incapable of providing day-to-day care of the child unless the agency reasonably believes that placement of the child into the home of that parent would endanger the child's health, safety, or welfare.

(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.

[For text of subs 5 to 11, see M.S.2004]

Subd. 12. Fair hearing review. Any person whose claim for foster care payment pursuant to the placement of a child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness may appeal the decision under section 256.045, subdivision 3.

History: 2005 c 98 art 3 s 21; 2005 c 136 art 15 s 7; 2005 c 165 art 2 s 6

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 approves the responsible social services agency's determination of 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 a trial home visit, protective supervision, or monitoring under section 260C.201.

History: 2005 c 159 art 2 s 19

260C.317 TERMINATION OF PARENTAL RIGHTS; EFFECT.

[For text of subds 1 and 2, see M.S.2004]

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 until the child's adoption is finalized, the child is 18 years of age, or the child is otherwise ordered discharged from the jurisdiction of the court. 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) The responsible social services agency may make a determination of compelling reasons for a child to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least 24 months after the court has issued the order terminating parental rights. Upon approving the agency's determination of compelling reasons, the court may order the child placed in long-term foster care. 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 using the review requirements of section 260C.201, subdivision 11, paragraph (g).

(d) The court shall retain jurisdiction through the child's minority in a case where long-term foster care is the permanent disposition whether under paragraph (c) or section 260C.201, subdivision 11.

[For text of subd 4, see M.S.2004]

History: 2005 c 159 art 2 s 20