

## CHAPTER 260

### JUVENILES

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#### **260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS.**

(a) If a child in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts including culturally appropriate services by the social service agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time, consistent with the best interests, safety, and protection of the child. The court may, upon motion and hearing, order the cessation of reasonable efforts if the court finds that provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances. In the case of an Indian child, in proceedings under sections 260.172, 260.191, and 260.221 the juvenile court must make findings and conclusions consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901 et seq., as to the provision of active efforts. If a child is under the court's delinquency jurisdiction, it shall be the duty of the court to ensure that reasonable efforts are made to reunite the child with the child's family at the earliest possible time, consistent with the best interests of the child and the safety of the public.

(b) "Reasonable efforts" means the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family; or upon removal, services to eliminate the need for removal and reunite the family. Services may include those listed under section 256F.07, subdivision 3, and other appropriate services available in the community. The social service agency has the burden of demonstrating that it has made reasonable efforts or that provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances. Reunification of a surviving child with a parent is not required if the parent has been convicted of:

(1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

(2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the surviving child; or

(3) a violation of, or an attempt or conspiracy to commit a violation of, United States Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent.

(c) The juvenile court, in proceedings under sections 260.172, 260.191, and 260.221 shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

(1) relevant to the safety and protection of the child;

(2) adequate to meet the needs of the child and family;

(3) culturally appropriate;

- (4) available and accessible;
- (5) consistent and timely; and
- (6) realistic under the circumstances.

In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances.

(d) This section does not prevent out-of-home placement for treatment of a child with a mental disability when the child's diagnostic assessment or individual treatment plan indicates that appropriate and necessary treatment cannot be effectively provided outside of a residential or inpatient treatment program.

**History:** 1997 c 239 art 6 s 13

## 260.015 DEFINITIONS.

*[For text of subs 1 to 2, see M.S.1996]*

**Subd. 2a. Child in need of protection or services.** "Child in need of protection or services" means a child who is in need of protection or services because the child:

- (1) is abandoned or without parent, guardian, or custodian;
- (2)(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 24, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 28, or (iv) is a victim of emotional maltreatment as defined in subdivision 5a;
- (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
  - (i) the infant is chronically and irreversibly comatose;
  - (ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
  - (iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;
- (6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody;
- (7) has been placed for adoption or care in violation of law;
- (8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;
- (9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;
- (10) has committed a delinquent act before becoming ten years old;
- (11) is a runaway;
- (12) is an habitual truant;

(13) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense;

(14) is one whose custodial parent's parental rights to another child have been involuntarily terminated within the past five years; or

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

*[For text of subds 3 to 28, see M.S.1996]*

**Subd. 29. Egregious harm.** "Egregious harm" means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. The egregious harm need not have occurred in the state or in the county where a termination of parental rights action is otherwise properly venued. Egregious harm includes, but is not limited to:

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

(2) the infliction of "substantial bodily harm" to a child, as defined in section 609.02, subdivision 8;

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

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

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

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

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

(8) conduct towards a child that constitutes receiving profit derived from prostitution under section 609.323; or

(9) conduct toward a child that constitutes a violation of United States Code, title 18, section 1111(a) or 1112(a).

**History:** 1997 c 239 art 6 s 14,15; art 11 s 1

**NOTE:** The amendment to subdivision 2a by Laws 1997, chapter 239, article 11, section 1, is effective June 1, 1998. Laws 1997, chapter 239, article 11, section 6.

## **260.131 PETITION.**

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

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

An individual may file a petition under this subdivision without seeking internal review of the local social service agency's decision. The court shall determine whether there is prob-

able cause to believe that a need for protection or services exists before the matter is set for hearing. If the matter is set for hearing, the court administrator shall notify the local social service agency by sending notice to the county attorney.

The petition must contain:

- (1) a statement of facts that would establish, if proven, that there is a need for protection or services for the child named in the petition;
- (2) a statement that petitioner has reported the circumstances underlying the petition to the local social service agency, and protection or services were not provided to the child;
- (3) a statement whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court concerning the child; and
- (4) a statement of the relationship of the petitioner to the child and any other parties.

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

*[For text of subs 1a and 1b, see M.S.1996]*

Subd. 2. The petition shall be verified by the person having knowledge of the facts and may be on information and belief. Unless otherwise provided by this section or by rule or order of the court, the county attorney shall draft the petition upon the showing of reasonable grounds to support the petition.

*[For text of subs 3 and 4, see M.S.1996]*

**History:** 1997 c 239 art 6 s 16,17

## 260.152 MENTAL HEALTH SCREENING OF CHILDREN.

*[For text of subd 1, see M.S.1996]*

Subd. 2. **Program components.** (a) The commissioner of human services shall, in consultation with the Indian affairs council, the council on affairs of Chicano/Latino people, the council on Black Minnesotans, and the council on Asian-Pacific Minnesotans, provide grants to the counties for the pilot projects. The projects shall build upon the existing service capabilities in the community and must include availability of screening for mental health problems of children who are alleged or found to be delinquent and children who are reported as being or found to be in need of protection or services.

(b) The projects must include referral for mental health assessment of all children for whom the screening indicates a need. This assessment is to be provided by the appropriate mental health professional. If the child is of a minority race or minority ethnic heritage, the mental health professional must be skilled in and knowledgeable about the child's racial and ethnic heritage, or must consult with a special mental health consultant who has such knowledge so that the assessment is relevant, culturally specific, and sensitive to the child's cultural needs.

(c) Upon completion of the assessment, the project must provide or ensure access to nonresidential mental health services identified as needed in the assessment.

Subd. 3. **Screening tool.** The commissioner of human services and the commissioner of corrections, in consultation with the Indian affairs council, the council on affairs of Chicano/Latino people, the council on Black Minnesotans, and the council on Asian-Pacific Minnesotans, shall jointly develop a model screening tool to screen children to determine if a mental health assessment is needed. This tool must contain specific questions to identify potential mental health problems. In implementing a pilot project, a county must either use this model tool or another screening tool approved by the commissioner of human services which meets the requirements of this section.

*[For text of subs 4 and 5, see M.S.1996]*

Subd. 6. **Evaluation.** The commissioner of human services and the commissioner of corrections shall, in consultation with the Indian affairs council, the council on affairs of Chi-

cano/Latino people, the council on Black Minnesotans, and the council on Asian-Pacific Minnesotans, develop systems and procedures for evaluating the pilot projects. The departments must develop an interagency management information system to track children who receive mental health services. The system must be designed to meet the information needs of the agencies involved and to provide a basis for evaluating outcome data. The system must be designed to track the mental health treatment of children released from custody and to improve the planning, delivery, and evaluation of services and increase interagency collaboration. The evaluation protocol must be designed to measure the impact of the program on juvenile recidivism, school performance, and state and county budgets.

Subd. 7. [Repealed, 1997 c 7 art 2 s 67]

**History:** 1997 c 7 art 3 s 10-12

## 260.155 HEARING.

*[For text of subd 1, see M.S.1996]*

Subd. 1a. **Right to participate in proceedings.** A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. At the first hearing following the filing of a petition, the court shall ask whether the child has lived with a grandparent within the last two years, except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

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

*[For text of subd 1b, see M.S.1996]*

Subd. 2. **Appointment of counsel.** (a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court. This right does not apply to a child who is charged with a juvenile petty offense as defined in section 260.015, subdivision 21, unless the child is charged with a third or subsequent juvenile alcohol or controlled substance offense and may be subject to the alternative disposition described in section 260.195, subdivision 4.

(b) The court shall appoint counsel, or stand-by counsel if the child waives the right to counsel, for a child who is:

(1) charged by delinquency petition with a gross misdemeanor or felony offense; or

(2) the subject of a delinquency proceeding in which out-of-home placement has been proposed.

(c) If they desire counsel but are unable to employ it, the court shall appoint counsel to represent the child or the parents or guardian in any case in which it feels that such an appointment is appropriate, except a juvenile petty offender who does not have the right to counsel under paragraph (a).

(d) Counsel for the child shall not also act as the child's guardian ad litem.

(e) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Subd. 3. **County attorney.** Except in adoption proceedings, the county attorney shall present the evidence upon request of the court. In representing the agency, the county attorney shall also have the responsibility for advancing the public interest in the welfare of the child.

**Subd. 4. 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 260.015, subdivision 2a. 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) 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 260.131.

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

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

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

*[For text of subs 4a to 7, see M.S.1996]*

**Subd. 8. Waiver.** (a) Waiver of any right which a child has under this chapter must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived. If a child is not represented by counsel, any waiver must be given or any objection must be offered by the child's guardian ad litem.

(b) Waiver of a child's right to be represented by counsel provided under the juvenile court rules must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived. In determining whether a child has voluntarily and intelligently waived the right to counsel, the court shall look to the totality of the circumstances which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend, and the presence and competence of the child's parents, guardian, or guardian ad litem. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision to accept the waiver.

*[For text of subd 9, see M.S.1996]*

**History:** 1997 c 239 art 6 s 18-22

**260.161 RECORDS.**

**Subdivision 1. Records required to be kept.** (a) The juvenile court judge shall keep such minutes and in such manner as the court deems necessary and proper. Except as provided in paragraph (b), the court shall keep and maintain records pertaining to delinquent adjudications until the person reaches the age of 28 years and shall release the records on an individual to another juvenile court that has jurisdiction of the juvenile, to a requesting adult court for purposes of sentencing, or to an adult court or juvenile court as required by the right of confrontation of either the United States Constitution or the Minnesota Constitution. The juvenile court shall provide, upon the request of any other juvenile court, copies of the records concerning adjudications involving the particular child. The court also may provide copies of records concerning delinquency adjudications, on request, to law enforcement agencies, probation officers, and corrections agents if the court finds that providing these records serves public safety or is in the best interests of the child. Until July 1, 1999, juvenile court delinquency proceeding records of adjudications, court transcripts, and delinquency petitions, including any probable cause attachments that have been filed or police officer reports relating to a petition, must be released to requesting law enforcement agencies and prosecuting authorities for purposes of investigating and prosecuting violations of section 609.229, provided that psychological or mental health reports may not be included with those records. The records have the same data classification in the hands of the agency receiving them as they had in the hands of the court.

The court shall also keep an index in which files pertaining to juvenile matters shall be indexed under the name of the child. After the name of each file shall be shown the file number and, if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed. The court shall also keep a register properly indexed in which shall be listed under the name of the child all documents filed pertaining to the child and in the order filed. The list shall show the name of the document and the date of filing thereof. The juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, findings, orders, decrees, judgments, and motions and such other matters as the court deems necessary and proper. Unless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child's parent and guardian.

(b) The court shall retain records of the court finding that a juvenile committed an act that would be a felony or gross misdemeanor level offense until the offender reaches the age of 28. If the offender commits a felony as an adult, or the court convicts a child as an extended jurisdiction juvenile, the court shall retain the juvenile records for as long as the records would have been retained if the offender had been an adult at the time of the juvenile offense. This paragraph does not apply unless the juvenile was provided counsel as required by section 260.155, subdivision 2.

**Subd. 1a. Record of findings.** (a) The juvenile court shall forward to the bureau of criminal apprehension the following data in juvenile petitions involving felony- or gross misdemeanor-level offenses:

(1) the name and birthdate of the juvenile, including any of the juvenile's known aliases or street names;

(2) the act for which the juvenile was petitioned and date of the offense; and

(3) the date and county where the petition was filed.

(b) Upon completion of the court proceedings, the court shall forward the court's finding and case disposition to the bureau. The court shall specify whether:

(1) the juvenile was referred to a diversion program;

(2) the petition was dismissed, continued for dismissal, or continued without adjudication; or

(3) the juvenile was adjudicated delinquent.

(c) The juvenile court shall forward to the bureau, the sentencing guidelines commission, and the department of corrections the following data on individuals convicted as extended jurisdiction juveniles:

- (1) the name and birthdate of the offender, including any of the juvenile's known aliases or street names;
- (2) the crime committed by the offender and the date of the crime;
- (3) the date and county of the conviction; and
- (4) the case disposition.

The court shall notify the bureau, the sentencing guidelines commission, and the department of corrections whenever it executes an extended jurisdiction juvenile's adult sentence under section 260.126, subdivision 5.

(d) The bureau, sentencing guidelines commission, and the department of corrections shall retain the extended jurisdiction juvenile data for as long as the data would have been retained if the offender had been an adult at the time of the offense. Data retained on individuals under this subdivision are private data under section 13.02, except that extended jurisdiction juvenile data becomes public data under section 13.87, subdivision 2, when the juvenile court notifies the bureau that the individual's adult sentence has been executed under section 260.126, subdivision 5.

*[For text of subd 1b, see M.S.1996]*

**Subd. 2. Public inspection of records.** Except as otherwise provided in this section, and except for legal records arising from proceedings or portions of proceedings that are public under section 260.155, subdivision 1, none of the records of the juvenile court and none of the records relating to an appeal from a nonpublic juvenile court proceeding, except the written appellate opinion, shall be open to public inspection or their contents disclosed except (a) by order of a court, (b) as required by sections 245A.04, 611A.03, 611A.04, 611A.06, and 629.73, or (c) the name of a juvenile who is the subject of a delinquency petition shall be released to the victim of the alleged delinquent act upon the victim's request; unless it reasonably appears that the request is prompted by a desire on the part of the requester to engage in unlawful activities. The records of juvenile probation officers and county home schools are records of the court for the purposes of this subdivision. Court services data relating to delinquent acts that are contained in records of the juvenile court may be released as allowed under section 13.84, subdivision 5a. This subdivision applies to all proceedings under this chapter, including appeals from orders of the juvenile court, except that this subdivision does not apply to proceedings under section 260.255, 260.261, or 260.315 when the proceeding involves an adult defendant. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions. In juvenile court proceedings any report or social history furnished to the court shall be open to inspection by the attorneys of record and the guardian ad litem a reasonable time before it is used in connection with any proceeding before the court.

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

**Subd. 3. Peace officer records of children.** (a) Except for records relating to an offense where proceedings are public under section 260.155, subdivision 1, peace officers' records of children who are or may be delinquent or who may be engaged in criminal acts shall be kept separate from records of persons 18 years of age or older and are private data but shall be disseminated: (1) by order of the juvenile court, (2) as required by section 126.036, (3) as authorized under section 13.82, subdivision 2, (4) to the child or the child's parent or guardian unless disclosure of a record would interfere with an ongoing investigation, (5) to the Minnesota crime victims reparations board as required by section 611A.56, subdivision 2, clause (f), for the purpose of processing claims for crime victims reparations, or (6) as otherwise provided in this subdivision. Except as provided in paragraph (c), no photographs of a child taken into custody may be taken without the consent of the juvenile court unless the child is alleged to have violated section 169.121 or 169.129. Peace officers' records containing data about children who are victims of crimes or witnesses to crimes must be adminis-



tered consistent with section 13.82, subdivisions 2, 3, 4, and 10. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor.

In the case of computerized records maintained about juveniles by peace officers, the requirement of this subdivision that records about juveniles must be kept separate from adult records does not mean that a law enforcement agency must keep its records concerning juveniles on a separate computer system. Law enforcement agencies may keep juvenile records on the same computer as adult records and may use a common index to access both juvenile and adult records so long as the agency has in place procedures that keep juvenile records in a separate place in computer storage and that comply with the special data retention and other requirements associated with protecting data on juveniles.

(b) Nothing in this subdivision prohibits the exchange of information by law enforcement agencies if the exchanged information is pertinent and necessary for law enforcement purposes.

(c) A photograph may be taken of a child taken into custody pursuant to section 260.165, subdivision 1, clause (b), provided that the photograph must be destroyed when the child reaches the age of 19 years. The commissioner of corrections may photograph juveniles whose legal custody is transferred to the commissioner. Photographs of juveniles authorized by this paragraph may be used only for institution management purposes, case supervision by parole agents, and to assist law enforcement agencies to apprehend juvenile offenders. The commissioner shall maintain photographs of juveniles in the same manner as juvenile court records and names under this section.

(d) Traffic investigation reports are open to inspection by a person who has sustained physical harm or economic loss as a result of the traffic accident. Identifying information on juveniles who are parties to traffic accidents may be disclosed as authorized under section 13.82, subdivision 4, and accident reports required under section 169.09 may be released under section 169.09, subdivision 13, unless the information would identify a juvenile who was taken into custody or who is suspected of committing an offense that would be a crime if committed by an adult, or would associate a juvenile with the offense, and the offense is not an adult court traffic offense under section 260.193.

(e) A law enforcement agency shall notify the principal or chief administrative officer of a juvenile's school of an incident occurring within the agency's jurisdiction if:

(1) the agency has probable cause to believe that the juvenile has committed an offense that would be a crime if committed as an adult, that the victim of the offense is a student or staff member of the school, and that notice to the school is reasonably necessary for the protection of the victim; or

(2) the agency has probable cause to believe that the juvenile has committed an offense described in subdivision 1b, paragraph (a), clauses (1) to (3), that would be a crime if committed by an adult, regardless of whether the victim is a student or staff member of the school.

A law enforcement agency is not required to notify the school under this paragraph if the agency determines that notice would jeopardize an ongoing investigation. Notwithstanding section 138.17, data from a notice received from a law enforcement agency under this paragraph must be destroyed when the juvenile graduates from the school or at the end of the academic year when the juvenile reaches age 23, whichever date is earlier. For purposes of this paragraph, "school" means a public or private elementary, middle, or secondary school.

(f) In any county in which the county attorney operates or authorizes the operation of a juvenile prepetition or pretrial diversion program, a law enforcement agency or county attorney's office may provide the juvenile diversion program with data concerning a juvenile who is a participant in or is being considered for participation in the program.

(g) Upon request of a local social service agency, peace officer records of children who are or may be delinquent or who may be engaged in criminal acts may be disseminated to the agency to promote the best interests of the subject of the data.

(h) Upon written request, the prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative, except as otherwise provided by this paragraph. Data shall not be released if:

(1) the release to the individual subject of the data would be prohibited under section 13.391; or

(2) the prosecuting authority reasonably believes:

(i) that the release of that data will interfere with the investigation; or

(ii) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

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

**Subd. 3b. County attorney referral of child in need of protection or services.** In a county in which the county attorney refers children who are in need of protection or services to community programs, the county attorney may provide a community program with data on a child who is a participant or being considered for participation in the program.

*[For text of subs 4 and 5, see M.S.1996]*

**History:** 1997 c 7 art 1 s 103; 1997 c 239 art 6 s 23; art 7 s 4,5; art 8 s 3-5; 1Sp1997 c 3 s 26

## 260.165 TAKING CHILD INTO CUSTODY.

Subdivision 1. No child may be taken into immediate custody except:

(a) With an order issued by the court in accordance with the provisions of section 260.135, subdivision 5, or Laws 1997, chapter 239, article 10, section 10, paragraph (a), clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the provisions of section 260.145; or

(b) In accordance with the laws relating to arrests; or

(c) By a peace officer

(1) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian; or

(2) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1922;

(d) By a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or

(e) By a peace officer or probation officer under section 260.132, subdivision 4.

*[For text of subd 2, see M.S.1996]*

**Subd. 3. Notice to parent or custodian.** Whenever a peace officer takes a child into custody for shelter care or relative placement pursuant to subdivision 1; section 260.135, subdivision 5; or section 260.145, the officer shall notify the parent or custodian that under section 260.173, subdivision 2, the parent or custodian may request that the child be placed with a relative or a designated caregiver under chapter 257A instead of in a shelter care facility. The officer also shall give the parent or custodian of the child a list of names, addresses, and telephone numbers of social service agencies that offer child welfare services. If the parent or custodian was not present when the child was removed from the residence, the list shall be left with an adult on the premises or left in a conspicuous place on the premises if no adult is present. If the officer has reason to believe the parent or custodian is not able to read and understand English, the officer must provide a list that is written in the language of the parent

or custodian. The list shall be prepared by the commissioner of human services. The commissioner shall prepare lists for each county and provide each county with copies of the list without charge. The list shall be reviewed annually by the commissioner and updated if it is no longer accurate. Neither the commissioner nor any peace officer or the officer's employer shall be liable to any person for mistakes or omissions in the list. The list does not constitute a promise that any agency listed will in fact assist the parent or custodian.

**History:** 1997 c 239 art 6 s 24; art 11 s 2

**NOTE:** The amendment to subdivision 1 by Laws 1997, chapter 239, article 11, section 2, is effective June 1, 1998. Laws 1997, chapter 239, article 11, section 6.

## 260.171 RELEASE OR DETENTION.

*[For text of subd 1, see M.S.1996]*

Subd. 2. (a) If the child is not released as provided in subdivision 1, the person taking the child into custody shall notify the court as soon as possible of the detention of the child and the reasons for detention.

(b) No child may be detained in a juvenile secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays, and holidays, after being taken into custody for a delinquent act as defined in section 260.015, subdivision 5, unless a petition has been filed and the judge or referee determines pursuant to section 260.172 that the child shall remain in detention.

(c) No child may be detained in an adult jail or municipal lockup longer than 24 hours, excluding Saturdays, Sundays, and holidays, or longer than six hours in an adult jail or municipal lockup in a standard metropolitan statistical area, after being taken into custody for a delinquent act as defined in section 260.015, subdivision 5, unless:

(1) a petition has been filed under section 260.131; and

(2) a judge or referee has determined under section 260.172 that the child shall remain in detention.

After August 1, 1991, no child described in this paragraph may be detained in an adult jail or municipal lockup longer than 24 hours, excluding Saturdays, Sundays, and holidays, or longer than six hours in an adult jail or municipal lockup in a standard metropolitan statistical area, unless the requirements of this paragraph have been met and, in addition, a motion to refer the child for adult prosecution has been made under section 260.125. Notwithstanding this paragraph, continued detention of a child in an adult detention facility outside of a standard metropolitan statistical area county is permissible if:

(i) the facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours. A delay not to exceed 48 hours may be made under this clause; or

(ii) the facility is located where conditions of safety exist. Time for an appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. "Conditions of safety" include adverse life-threatening weather conditions that do not allow for reasonably safe travel.

The continued detention of a child under clause (i) or (ii) must be reported to the commissioner of corrections.

(d) No child taken into custody and placed in a shelter care facility or relative's home by a peace officer pursuant to section 260.165, subdivision 1, clause (a) or (c)(2) may be held in custody longer than 72 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed and the judge or referee determines pursuant to section 260.172 that the child shall remain in custody or unless the court has made a finding of domestic abuse perpetrated by a minor after a hearing under Laws 1997, chapter 239, article 10, sections 2 to 26, in which case the court may extend the period of detention for an additional seven days, within which time the social service agency shall conduct an assessment and shall provide recommendations to the court regarding voluntary services or file a child in need of protection or services petition.

(e) If a child described in paragraph (c) is to be detained in a jail beyond 24 hours, excluding Saturdays, Sundays, and holidays, the judge or referee, in accordance with rules and

procedures established by the commissioner of corrections, shall notify the commissioner of the place of the detention and the reasons therefor. The commissioner shall thereupon assist the court in the relocation of the child in an appropriate juvenile secure detention facility or approved jail within the county or elsewhere in the state, or in determining suitable alternatives. The commissioner shall direct that a child detained in a jail be detained after eight days from and including the date of the original detention order in an approved juvenile secure detention facility with the approval of the administrative authority of the facility. If the court refers the matter to the prosecuting authority pursuant to section 260.125, notice to the commissioner shall not be required.

*[For text of subs 4 to 6, see M.S.1996]*

**History:** 1997 c 239 art 11 s 3

**NOTE:** The amendment to subdivision 2 by Laws 1997, chapter 239, article 11, section 3, is effective June 1, 1998. Laws 1997, chapter 239, article 11, section 6.

### **260.173 PLACE OF TEMPORARY CUSTODY; SHELTER CARE FACILITY.**

*[For text of subd 1, see M.S.1996]*

Subd. 2. Notwithstanding the provisions of subdivision 1, if the child had been taken into custody pursuant to section 260.165, subdivision 1, clause (a) or clause (c)(2), and is not alleged to be delinquent, the child shall be detained in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible. Placement may be with a child's relative, a designated caregiver under chapter 257A, or in a shelter care facility. The placing officer shall comply with this section and shall document why a less restrictive setting will or will not be in the best interests of the child for placement purposes.

*[For text of subs 3 to 5, see M.S.1996]*

**History:** 1997 c 65 s 5

### **260.1735 EXTENSION OF DETENTION PERIOD.**

Subdivision 1. **Detention.** Before July 1, 1999, and pursuant to a request from an eight-day temporary holdover facility, as defined in section 241.0221, the commissioner of corrections, or the commissioner's designee, may grant a one-time extension per child to the eight-day limit on detention under this chapter. This extension may allow such a facility to detain a child for up to 30 days including weekends and holidays. Upon the expiration of the extension, the child may not be transferred to another eight-day temporary holdover facility. The commissioner shall develop criteria for granting extensions under this section. These criteria must ensure that the child be transferred to a long-term juvenile detention facility as soon as such a transfer is possible. Nothing in this section changes the requirements in section 260.172 regarding the necessity of detention hearings to determine whether continued detention of the child is proper.

Subd. 2. **Continued detention.** (a) A delay not to exceed 48 hours may be made if the facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours.

(b) A delay may be made if the facility is located where conditions of safety exist. Time for an appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. "Conditions of safety" include adverse life-threatening weather conditions that do not allow for reasonably safe travel.

The continued detention of a child under paragraph (a) or (b) must be reported to the commissioner of corrections.

**History:** 1997 c 239 art 9 s 31

### **260.181 DISPOSITIONS; GENERAL PROVISIONS.**

*[For text of subs 1 and 2, see M.S.1996]*

**Subd. 3. Protection of the child's best interests.** (a) The policy of the state is to ensure that the best interests of children are met by requiring individualized determinations of the needs of the child and of how the selected placement will serve the needs of the child in foster care placements.

(b) Among the factors to be considered in determining the needs of the child are:

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

(c) The court, in transferring legal custody of any child or appointing a guardian for the child under the laws relating to juvenile courts, shall consider placement, consistent with the child's best interests and in the following order, in the legal custody or guardianship of an individual who (1) is related to the child by blood, marriage, or adoption, or (2) is an important friend with whom the child has resided or had significant contact. Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child. Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a sibling.

(d) If the child's birth parent or parents explicitly request that a relative or important friend not be considered, the court shall honor that request if it is consistent with the best interests of the child.

If the child's birth parent or parents express a preference for placing the child in a foster or adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

(e) This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 257.35 to 257.3579.

**Subd. 3a. Reports; juveniles placed out of state.** Whenever a child is placed in a residential program located outside of this state pursuant to a disposition order issued under section 260.185 or 260.191, the juvenile court administrator shall report the following information to the state court administrator:

- (1) the fact that the placement is out of state;
- (2) the type of placement; and
- (3) the reason for the placement.

*[For text of subd 4, see M.S.1996]*

**History:** 1997 c 7 art 2 s 48; 1997 c 86 s 12

## 260.185 DISPOSITIONS; DELINQUENT CHILD.

**Subdivision 1. Court order, findings, remedies, treatment.** If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:

- (a) Counsel the child or the parents, guardian, or custodian;
- (b) 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 child's 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, in a group foster care facility which is under the management and supervision of said commissioner;

(c) Subject to the supervision of the court, transfer legal custody of the child to one of the following:

(1) a child-placing agency; or

(2) the local social services agency; or

(3) a reputable individual of good moral character. No person may receive custody of two or more unrelated children unless licensed as a residential facility pursuant to sections 245A.01 to 245A.16; or

(4) a county home school, if the county maintains a home school or enters into an agreement with a county home school; or

(5) 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;

(d) Transfer legal custody by commitment to the commissioner of corrections;

(e) If the child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage;

(f) Require the child to pay a fine of up to \$700; the court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child;

(g) If the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided;

(h) If the court believes that it is in the best interests of the child and of public safety that the driver's license of the child be canceled until the child's 18th birthday, the court may recommend to the commissioner of public safety the cancellation of the child's license for any period up to the child's 18th birthday, and the commissioner is hereby authorized to cancel such license without a hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety that the child be authorized to apply for a new license, and the commissioner may so authorize.

(i) If the court believes that it is in the best interest of the child and of public safety that the child is enrolled in school, the court may require the child to remain enrolled in a public school until the child reaches the age of 18 or completes all requirements needed to graduate from high school. Any child enrolled in a public school under this paragraph is subject to the provisions of the Pupil Fair Dismissal Act in chapter 127.

If the child is petitioned and found by the court to have committed a controlled substance offense under sections 152.021 to 152.027, the court shall determine whether the child unlawfully possessed or sold the controlled substance while driving a motor vehicle. If so, the court shall notify the commissioner of public safety of its determination and order the commissioner to revoke the child's driver's license for the applicable time period specified in section 152.0271. If the child does not have a driver's license or if the child's driver's license is suspended or revoked at the time of the delinquency finding, the commissioner shall, upon the child's application for driver's license issuance or reinstatement, delay the issuance or reinstatement of the child's driver's license for the applicable time period specified in section 152.0271. Upon receipt of the court's order, the commissioner is authorized to take the licensing action without a hearing.

If the child is petitioned and found by the court to have committed or attempted to commit an act in violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23, or another offense arising out of a delinquency petition based on one or more of those sections, the court shall order an independent professional assessment of the child's need for sex offender treatment. An assessor providing an assessment for the court must be experienced in the evaluation and treatment of juvenile sex offenders. If the assessment indicates that the child is in need of and amenable to sex offender treatment, the court shall include in its disposition order a requirement that the child undergo treatment. Notwithstanding section 13.42, 13.85, 144.335, 260.161, or 626.556, the assessor has access

to the following private or confidential data on the child if access is relevant and necessary for the assessment:

- (1) medical data under section 13.42;
- (2) corrections and detention data under section 13.85;
- (3) health records under section 144.335;
- (4) juvenile court records under section 260.161; and
- (5) local welfare agency records under section 626.556.

Data disclosed under this paragraph may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

If the child is found delinquent due to the commission of an offense that would be a felony if committed by an adult, the court shall make a specific finding on the record regarding the juvenile's mental health and chemical dependency treatment needs.

Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition ordered, and shall also set forth in writing the following information:

- (a) why the best interests of the child are served by the disposition ordered; and
- (b) what alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case.

*[For text of subs 1a to 7, see M.S.1996]*

**History:** *1Sp1997 c 4 art 6 s 17*

## **260.191 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 local social services agency or child-placing agency in the child's own home under conditions prescribed by the court directed to the correction of the child's need for protection or services;
- (2) transfer legal custody to one of the following:
  - (i) a child-placing agency; or
  - (ii) the local social services agency.

In placing a child whose custody has been transferred under this paragraph, the agencies shall follow the order of preference stated in section 260.181, subdivision 3;

(3) if the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails or is unable to provide this treatment or care, the court may order it provided. The court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

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

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

- (1) counsel the child or the child's parents, guardian, or custodian;
- (2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules

for the child's conduct and the conduct of the parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child; or with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

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

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

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

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

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

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

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

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

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

(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.

**Subd. 1a. Written findings.** Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition ordered, and shall also set forth in writing the following information:

(a) Why the best interests of the child are served by the disposition ordered;

(b) What alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case;

(c) How the court's disposition complies with the requirements of section 260.181, subdivision 3; and

(d) 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.



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.

*[For text of subs 1b to 3, see M.S.1996]*

**Subd. 3a. Court review of out-of-home placements.** (a) If the court places a child in a residential facility, as defined in section 257.071, subdivision 1, the court shall review the out-of-home placement at least every six months to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. The court shall review agency efforts pursuant to section 257.072, subdivision 1, and order that the efforts continue if the agency has failed to perform the duties under that section. The court shall review the case plan and may modify the case plan as provided under subdivisions 1e and 2. If the court orders continued out-of-home placement, the court shall notify the parents of the provisions of subdivision 3b.

(b) When the court determines that a permanent placement hearing is necessary because there is a likelihood that the child will not return to a parent's care, the court may authorize the agency with custody of the child to send the notice provided in this paragraph to any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, any adult who has maintained a relationship or exercised visitation with the child as identified in the agency case plan for the child or demonstrated an interest in the child, and any relative who has provided a current address to the local social service agency. This notice must not be provided to a parent whose parental rights to the child have been terminated under section 260.221, subdivision 1. The notice must state that a permanent home is sought for the child and that individuals receiving the notice may indicate to the agency within 30 days their interest in providing a permanent home.

**Subd. 3b. Review of court ordered placements; permanent placement determination.** (a) The court shall conduct a hearing to determine the permanent status of a child not later than 12 months after the child is placed out of the home of the parent.

For purposes of this subdivision, the date of the child's placement out of the home of the parent is the earlier of the first court-ordered placement or the first court-approved placement under section 257.071, subdivision 3, of a child who had been in voluntary placement.

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

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

(2) if a child has been placed out of the home of the parent within the previous five years in connection with one or more prior petitions for a child in need of protection or services, the lengths of all prior time periods when the child was placed out of the home within the previous five years and under the current petition, are cumulated. If a child under this clause has been out of the home for 12 months or more, the court, if it is in the best interests of the child, 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) Not later than ten days prior to this hearing, the responsible social service agency shall file pleadings to establish the basis for the permanent placement determination. Notice of the hearing and copies of the pleadings must be provided pursuant to section 260.141. If a termination of parental rights petition is filed before the date required for the permanency planning determination, no hearing need be conducted under this subdivision. The court shall determine whether the child is to be returned home or, if not, what permanent placement is consistent with the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated.

(c) If the child is not returned to the home, the dispositions available for permanent placement determination are:

(1) permanent legal and physical custody to a relative in the best interests of the child. In transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards and procedures applicable under chapter 257 or 518. An order establishing

permanent legal or physical custody under this subdivision must be filed with the family court. The social service agency may petition on behalf of the proposed custodian;

(2) termination of parental rights and adoption; the social service agency shall file a petition for termination of parental rights under section 260.231 and all the requirements of sections 260.221 to 260.245 remain applicable. An adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58; or

(3) long-term foster care; transfer of legal custody and adoption are preferred permanency options for a child who cannot return home. The court may order a child into long-term foster care only if it finds that neither an award of legal and physical custody to a relative, nor termination of parental rights nor adoption is in the child's best interests. Further, the court may only order long-term foster care for the child under this section if it finds the following:

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

(ii) the child is a sibling of a child described in clause (i) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home; or

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

(i) the sole basis for an adjudication that a child is in need of protection or services is that the child is a runaway, is an habitual truant, or committed a delinquent act before age ten; and

(ii) the court finds that foster care for a specified period of time is in the best interests of the child.

(d) 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.

(e) Once a permanent placement determination has been made and permanent placement has been established, further court reviews and dispositional hearings are only necessary if the placement is made under paragraph (c), clause (4), review is otherwise required by federal law, an adoption has not yet been finalized, or there is a disruption of the permanent or long-term placement.

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

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

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

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

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

(5) if the child cannot be returned home, whether there is a substantial probability of the child being able to return home in the next six months.

(g) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social service agency is a party to the proceeding and must receive notice. An order for long-term foster care is reviewable 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.

**Subd. 4. Continuance of case.** If it is in the best interests of the child to do so and if the allegations contained in the petition have been admitted, or when a hearing has been held as provided in section 260.155 and the allegations contained in the petition have been duly proven, before the entry of a finding of need for protection or services or a finding that a child is neglected and in foster care, the court may continue the case for a period not to exceed 90 days on any one order. Following the 90-day continuance:

(1) if both the parent and child have complied with the terms of the continuance, the case must be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care; or

(2) if either the parent or child has not complied with the terms of the continuance, the court shall adjudicate the child in need of protection or services or neglected and in foster care.

**History:** 1997 c 86 s 13; 1997 c 107 s 15; 1997 c 112 s 5; 1997 c 239 art 6 s 25-27; art 11 s 4

**NOTE:** The amendment to subdivision 1 by Laws 1997, chapter 239, article 11, section 4, is effective June 1, 1998. Laws 1997, chapter 239, article 11, section 6.

## 260.192 DISPOSITIONS; VOLUNTARY FOSTER CARE PLACEMENTS.

Upon a petition for review of the foster care status of a child, the court may:

(a) In the case of a petition required to be filed under section 257.071, subdivision 3, find that the child's needs are being met, that the child's placement in foster care is in the best interests of the child, and that the child will be returned home in the next six months, in which case the court shall approve the voluntary arrangement and continue the matter for six months to assure the child returns to the parent's home.

(b) In the case of a petition required to be filed under section 257.071, subdivision 4, find that the child's needs are being met and that the child's placement in foster care is in the best interests of the child, in which case the court shall approve the voluntary arrangement. The court shall order the social service agency responsible for the placement to bring a petition under section 260.131, subdivision 1 or 1a, as appropriate, within 12 months.

(c) Find that the child's needs are not being met, in which case the court shall order the social service agency or the parents to take whatever action is necessary and feasible to meet the child's needs, including, when appropriate, the provision by the social service agency of services to the parents which would enable the child to live at home, and order a disposition under section 260.191.

(d) Find that the child has been abandoned by parents financially or emotionally, or that the developmentally disabled child does not require out-of-home care because of the handicapping condition, in which case the court shall order the social service agency to file an appropriate petition pursuant to sections 260.131, subdivision 1, or 260.231.

Nothing in this section shall be construed to prohibit bringing a petition pursuant to section 260.131, subdivision 1 or 2, sooner than required by court order pursuant to this section.

**History:** 1997 c 107 s 16; 1997 c 239 art 6 s 28

## 260.195 PETTY OFFENDERS; PROCEDURES; DISPOSITIONS.

*[For text of subs 1 to 2a, see M.S.1996]*

Subd. 3. **Dispositions.** If the juvenile court finds that a child is a petty offender, the court may:

(a) require the child to pay a fine of up to \$100;

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

(c) require the child to participate in a drug awareness program;

(d) place the child on probation for up to six months;

(e) order the child to undergo a chemical dependency evaluation and if warranted by this evaluation, order participation by the child in an outpatient chemical dependency treatment program;

(f) order the child to make restitution to the victim; or

(g) perform any other activities or participate in any other outpatient treatment programs deemed appropriate by the court.

In all cases where the juvenile court finds that a child has purchased or attempted to purchase an alcoholic beverage in violation of section 340A.503, if the child has a driver's license or permit to drive, and if the child used a driver's license, permit or Minnesota identifi-

cation card to purchase or attempt to purchase the alcoholic beverage, the court shall forward its finding in the case and the child's driver's license or permit to the commissioner of public safety. Upon receipt, the commissioner shall suspend the child's license or permit for a period of 90 days.

In all cases where the juvenile court finds that a child has purchased or attempted to purchase tobacco in violation of section 609.685, subdivision 3, if the child has a driver's license or permit to drive, and if the child used a driver's license, permit, or Minnesota identification card to purchase or attempt to purchase tobacco, the court shall forward its finding in the case and the child's driver's license or permit to the commissioner of public safety. Upon receipt, the commissioner shall suspend the child's license or permit for a period of 90 days.

None of the dispositional alternatives described in clauses (a) to (f) shall be imposed by the court in a manner which would cause an undue hardship upon the child.

**Subd. 3a. Enhanced dispositions.** If the juvenile court finds that a child has committed a second or subsequent juvenile alcohol or controlled substance offense, the court may impose any of the dispositional alternatives described in paragraphs (a) to (c). If the juvenile court finds that a child has committed a second or subsequent juvenile tobacco offense, the court may impose any of the dispositional alternatives described in paragraphs (a) to (c).

(a) The court may impose any of the dispositional alternatives described in subdivision 3, clauses (a) to (f).

(b) If the adjudicated petty offender has a driver's license or permit, the court may forward the license or permit to the commissioner of public safety. The commissioner shall revoke the petty offender's driver's license or permit until the offender reaches the age of 18 years or for a period of one year, whichever is longer.

(c) If the adjudicated petty offender has a driver's license or permit, the court may suspend the driver's license or permit for a period of up to 90 days, but may allow the offender driving privileges as necessary to travel to and from work.

(d) If the adjudicated petty offender does not have a driver's license or permit, the court may prepare an order of denial of driving privileges. The order must provide that the petty offender will not be granted driving privileges until the offender reaches the age of 18 years or for a period of one year, whichever is longer. The court shall forward the order to the commissioner of public safety. The commissioner shall deny the offender's eligibility for a driver's license under section 171.04, for the period stated in the court order.

*[For text of subs 4 to 7, see M.S.1996]*

**History:** 1997 c 227 s 2,3

## **260.221 GROUNDS FOR TERMINATION OF PARENTAL RIGHTS.**

Subdivision 1. **Voluntary and involuntary.** The juvenile court may upon petition, terminate all rights of a parent to a child with the written consent of a parent who for good cause desires to terminate parental rights; or if it finds that one or more of the following conditions exist:

(1) that the parent has abandoned the child; or

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

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

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions

directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that:

(i) the child was adjudicated in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); and

(ii) the parent's parental rights to one or more other children were involuntarily terminated under clause (1), (2), (4), or (7), or under clause (5) if the child was initially determined to be in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); or

(5) that following upon a determination of neglect or dependency, or of a child's need for protection or services, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of more than one year within a five-year period following an adjudication of dependency, neglect, need for protection or services under section 260.015, subdivision 2a, clause (1), (2), (3), (6), (8), or (9), or neglected and in foster care, and an order for disposition under section 260.191, including adoption of the case plan required by section 257.071;

(ii) conditions leading to the determination will not be corrected within the reasonably foreseeable future. It is presumed that conditions leading to a child's out-of-home placement will not be corrected in the reasonably foreseeable future upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan, and the conditions which led to the out-of-home placement have not been corrected; and

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

This clause does not prohibit the termination of parental rights prior to one year after a child has been placed out of the home.

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

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

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

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

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

(v) the parent continues to abuse chemicals.

Provided, that this presumption applies only to parents required by a case plan to participate in a chemical dependency treatment program on or after July 1, 1990; or

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care; or

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

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

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

In an action involving an American Indian child, sections 257.35 to 257.3579 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

**Subd. 1a. Evidence of abandonment.** For purposes of subdivision 1, clause (1):

(a) Abandonment is presumed when:

(1) the parent has had no contact with the child on a regular basis and not demonstrated consistent interest in the child's well-being for six months; and

(2) the social service agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from making contact with the child. This presumption does not apply to children whose custody has been determined under chapter 257 or 518. The court is not prohibited from finding abandonment in the absence of this presumption.

(b) The following are prima facie evidence of abandonment where adoption proceedings are pending and there has been a showing that the person was not entitled to notice of an adoption proceeding under section 259.49:

(1) failure to register with the putative fathers' adoption registry under section 259.52; or

(2) if the person registered with the putative fathers' adoption registry under section 259.52:

(i) filing a denial of paternity within 30 days of receipt of notice under section 259.52, subdivision 8;

(ii) failing to timely file an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10; or

(iii) timely filing an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10, but failing to initiate a paternity action within 30 days of receiving the putative fathers' adoption registry notice where there has been no showing of good cause for the delay.

*[For text of subs 2 to 4, see M.S.1996]*

**Subd. 5. Findings regarding reasonable efforts.** In any proceeding under this section, the court shall make specific findings:

(1) regarding the nature and extent of efforts made by the social service agency to rehabilitate the parent and reunite the family;

(2) that provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances; or

(3) that reunification is not required because the parent has been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3).

**History:** 1997 c 218 s 10,11; 1997 c 239 art 6 s 29,30

## **260.241 TERMINATION OF PARENTAL RIGHTS; EFFECT.**

Subdivision 1. If, after a hearing, the court finds by clear and convincing evidence that one or more of the conditions set out in section 260.221 exist, it may terminate parental rights. Upon the termination of parental rights all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceeding concerning the child. Provided, however, that a parent whose parental rights are terminated:

(1) shall remain liable for the unpaid balance of any support obligation owed under a court order upon the effective date of the order terminating parental rights; and

(2) may be a party to a communication or contact agreement under section 259.58.

*[For text of subd 2, see M.S.1996]*

Subd. 3. (a) A certified copy of the findings and the order terminating parental rights, and a summary of the court's information concerning the child shall be furnished by the court

to the commissioner or the agency to which guardianship is transferred. The orders shall be on a document separate from the findings. The court shall furnish the individual to whom guardianship is transferred a copy of the order terminating parental rights.

(b) The court shall retain jurisdiction in a case where adoption is the intended permanent placement disposition. The guardian ad litem and counsel for the child shall continue on the case until an adoption decree is entered. A hearing must be held every 90 days following termination of parental rights for the court to review progress toward an adoptive placement.

(c) The court shall retain jurisdiction in a case where long-term foster care is the permanent disposition. The guardian ad litem and counsel for the child must be dismissed from the case on the effective date of the permanent placement order. However, the foster parent and the child, if of sufficient age, must be informed how they may contact a guardian ad litem if the matter is subsequently returned to court.

*[For text of subd 4, see M.S.1996]*

**History:** 1997 c 112 s 6; 1997 c 239 art 6 s 31,32

## 260.242 GUARDIAN.

*[For text of subs 1 to 1b, see M.S.1996]*

**Subd. 2. Guardian's responsibilities.** (a) A guardian appointed under the provisions of this section has legal custody of a ward unless the court which appoints the guardian gives legal custody to some other person. If the court awards custody to a person other than the guardian, the guardian nonetheless has the right and responsibility of reasonable visitation, except as limited by court order.

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

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

(d) If the ward is in foster care, the court shall, upon its own motion or that of the guardian, conduct a dispositional hearing within 18 months of the child's initial foster care placement and once every 12 months thereafter to determine the future status of the ward including, but not limited to, whether the child should be continued in foster care for a specified period, should be placed for adoption, or should, because of the child's special needs or circumstances, be continued in foster care on a long-term basis.

**History:** 1997 c 107 s 17

**260.311 Subdivision 1.** MS 1996 [Renumbered 244.19, subd 1]

Subd. 2. MS 1996 [Renumbered 244.19, subd 2]

Subd. 3. MS 1996 [Renumbered 244.19, subd 3]

Subd. 3a. MS 1996 [Renumbered 244.19, subd 4]

Subd. 4. MS 1996 [Renumbered 244.19, subd 5]

Subd. 5. MS 1996 [Renumbered 244.19, subd 6]

Subd. 6. MS 1996 [Renumbered 244.19, subd 7]

Subd. 7. MS 1996 [Renumbered 244.19, subd 8]

## 260.38 COST, PAYMENT.

In addition to the usual care and services given by public and private agencies, the necessary cost incurred by the commissioner of human services in providing care for such child

shall be paid by the county committing such child which, subject to uniform rules established by the commissioner of human services, may receive a reimbursement not exceeding one-half of such costs from funds made available for this purpose by the legislature during the period beginning July 1, 1985, and ending December 31, 1985. Beginning January 1, 1986, the necessary cost incurred by the commissioner of human services in providing care for the child must be paid by the county committing the child. Where such child is eligible to receive a grant of aid to families with dependent children, Minnesota family investment program—statewide or supplemental security income for the aged, blind, and disabled, or a foster care maintenance payment under title IV–E of the Social Security Act, United States Code, title 42, sections 670 to 676, the child's needs shall be met through these programs.

**History:** 1997 c 85 art 4 s 23