



2009 LEGISLATIVE and COURT RULES UPDATE

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Themes: Legislation & Court Rules

Legislation

- Both parents (who is a father?)
- *What about the Dads?*
- <http://aspe.hhs.gov/hsp/06/CW-involve-dads/>
 - Assessment
 - Services
 - Visits with child
- Relatives
- Siblings
- RE:
 - Prevent placement
 - To achieve permanency:
 - Both parents
 - Relatives
 - Siblings
 - Older youth
- Limits on use of foster care

Court Rules

- ICWA:
 - Transfer to tribal court
 - QEW
 - Petition to invalidate
 - Voluntary consent to TPR
- Permanency Rule
- Required findings – trial rule:
 - TPR
 - Best interests
- Shortening time of appeals process

Chapter 163 Overview

- Article 1: Not included -- all technical changes
- Fostering Connections: updates to meet federal requirements
 - Older youth in foster care
 - Keeping siblings together or visiting
 - Notice to relatives
 - Education and health care planning requirements
 - Adoption Assistance – not included
- Entire bill available at
<https://www.revisor.leg.state.mn.us/laws/?id=163&doctype=Chapter&year=2009&type=0>

Chapter 163 Overview

- Limits on use of foster care
- Parentage
 - Data: access to child support enforcement data
 - Definitions
 - Procedures
- Visitation
 - Standard
 - process
- Safe Place for Newborns
 - process

Chapter 163: Parentage: Data

- Sec 3. Page 4, lines 150-154
- Provides for disclosure of child support data to county social services agencies for determining who has or may have parental rights as provided by federal law
- Recommended practices:
 - Have county policy in place about sharing child support data with child welfare personnel
 - Ask the court to order child support enforcement to disclose data to child welfare

Chapter 163: Parentage: Definitions

- Sec 18, Page 20, lines 826-838
- Definition of parent references parent and child relationship as that term is used in 257.52
- *Minn. Stat. 257.52* says "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.
- Presumptions -- handout

Chapter 163: Parentage: Procedures

- Sec 19. Page 20, lines 842-844
- Parentage may be established in CHIPS, TPR, or permanency proceeding
- Court rules

Chapter 163: Parentage: Procedures

- Page 20, line 845 – page 21, line 857
- Genetic test indicating individual is father makes him a presumed father for CHIPS
 - Right to notice (summons)
 - Right to be assessed for day-to-day care
 - Obligation to cooperate with paternity establishment proceedings

Chapter 163: Parentage: Agency Duties

- Page 21, lines 854-874
- Diligent efforts to locate both parents
 - Ask custodial/known parent
 - Whereabouts of relatives (two birds, one stone)
 - Data from child support
 - Search FAR 30 days after child's birth
 - Any other reasonable means
- Agency may disclose private data when necessary to find nonresident parent

Chapter 163: Parentage: Court Inquiry

- Page 21, lines 875-881
- Court must inquire regarding correctness of identities and whereabouts of both parents of the child
- If identity or whereabouts of a parent is not known, court must inquire of parties and participants

Chapter 163: Parentage: County Attorney/Court

- Page 21, line 882 to p. 22, line 896
- County attorney may ask to have custodial or known parent placed under oath to inquire about identity and whereabouts of other parent
- When notice would cause endangerment:
 - Court may issue protective order; or
 - Court may waive requirement of notice to nonresident parent if child remains in care of custodial parent

Chapter 163: Parentage: Procedures

- Page 22, lines 897- 912
- If a parent remains unidentified and unlocated, agency must report (*timing*) regarding diligent efforts
- Court must find:
 - Whether diligent efforts were made
 - If not, order what further must be done
 - If summons has not been served, complete service on unknown parent

Chapter 163: Parentage: Reasonable Efforts for Locating BOTH Parents

- Page 22, lines 913-919
- Court may base RE findings on agency's diligent efforts:
 - RE to reunify
 - RE to finalize permanency
 - Further RE would be futile and therefore unreasonable

Implementing Chapter 163 Parentage: Recommended Practices

- Develop set of practices for locating or making efforts to locate nonresident parents with CJI team that meet “diligent efforts” requirement
- Request court findings about parents who have been identified and served, so record is clear

Chapter 163: Parentage: CHIPS Notice

- Sec 20, Page 22, line 927 to p. 23, line 949
- Child's parents and/or legal custodian must be summoned
- Sec 21, Page 23 lines 939-949
- Putative father receives notice of CHIPS proceeding
- Putative not defined in statute (alleged + fathers who register on the FAR (timely FAR registration alone enough for CHIPS phase)

Chapter 163: Parentage: TPR or Permanency Proceeding Notice

- Sec. 22, 23, lines 951-971
- Child's "parent" must be summoned
- Notice to putative father who has registered with FAR and who is entitled to notice of adoption proceeding FAR (timely registration alone not enough for notice requirement *for TPR*)
- HO -- "Persons entitled to notice of an adoption proceeding"
- No summons or notice need be given to putative fathers unless entitled to notice of adoption proceeding

Chapter 163: Parentage: TPR

- Sec. 4, Page 7, lines 268-274
- Limit of a father's right to assert an interest in the child when he fails to register with the FAR applies in TPR cases (formerly, applied only in adoption proceedings)

Chapter 163: Visitation

- Sec. 28, Page 27 line 1151 to page 28, line 1175
- Purpose of visitation plan is to promote parent and child relationship
 - *See too:* Court approves visitation plan that contributes to the objectives of the case plan, the maintenance of the familial relationship, and provides for visits with parents, siblings, relatives -
- page 45, Line 1892 to 1904

Visitation

- Visitation plan required ASAP unless:
 - visitation would endanger the child's physical or emotional well-being; or
 - there has been no or limited visitation or contact between parent and child; then development of the plan can be delayed until agency can conduct an assessment of the parent
 - court may defer visitation until results of genetic test showing individual is presumed father

Chapter 163: Safe Place for Newborns

- Sec. 19, Page 22, lines 920-925
- No duty to identify or locate either parent of child when agency is proceeding under Safe Place for Newborns provisions including no duty to search FAR (*see also*, p. 27, lines 265-266)
- No summons or notice required for Safe Place for Newborns cases

Chapter 163: Agency Duty: Older Youth in Care

- Sec 35, Page 39, lines 1647-1653
- Duty of agency to provide child a transition plan within 90 days of anticipated discharge including:
 - Housing
 - Health insurance
 - Education
 - Local opportunities for mentors
 - Continuing support services, work force supports, employments services

Chapter 163: Siblings

- Sec. 32, Page 35, lines 1477-1484
 - If siblings are not placed together, document why contrary to safety or well-being of any of the siblings or not possible after RE
 - Frequent visitation or other interaction required unless agency documents why it is contrary to safety or well-being of any of the siblings

Chapter 163: Notice to Relatives

- Sec. 35, Page 30, lines 1509-1538
 - Due diligence to identify and notify adult relatives prior to or within 30 days of child's placement
 - Agency notification to relative:
 - Need for foster home, option for permanent placement and the possibility of permanent placement
 - Keep agency apprised of current address
 - Relative may participate in care and planning for the child, but failure to respond may mean relative loses the opportunity to participate
 - Licensing requirements and supports available when child is in foster care
- <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4558A-ENG>

Chapter 163: Education

- Sec. 31, Page 33, lines 1378-1398
- Additional OHPP planning and documentation requirements for:
- Efforts to ensure educational stability:
 - Same school; or
 - Immediate and appropriate enrollment in new school
- Other relevant educational information

Chapter 163: Health

- Sec 31, Page 33 line 1399 to page 34, line 1422
- Additional OHPP document requirements for oversight and continuity of health care services including:
 - Initial health screens
 - Monitoring and treatment of known health issues
 - Plan for updating information

Agency Health Duties (cont.)

- Responsibility for coordinating/responding to health needs
- Responsibility for prescription medications
- How physicians/other medical professionals will be consulted/involved
- Responsibility for utilizing medical insurance or MA
- Health records:
 - Providers
 - Immunizations
 - Health problems
 - Medications
 - Eligibility for insurance or MA

Chapter 163: Reasonable Efforts

- Sec 13, Page 29, lines 564 - 581
- RE to prevent placement
 - includes working with a family to develop and implement a safety plan
- RE to finalize the permanent plan for the child includes:
 - conducting the relative search and providing notice to adult relatives
 - placing siblings together at all stages of the proceeding (or visitation)

Chapter 163: Limits on Use of Foster Care

- For treatment, “when medically necessary”
 - Sec. 13, p. 16 line 637, Sec. 36, p. 39, line 1660-1661, Sec. 37, p. 40 lines 1673-1674
- Cannot be used as punishment or consequence for child’s behavior
 - Sec 14, p. 16, lines 667 – p. 17 l. 679 (260B), Sec. 17, p. 20, line 822-824 (260C)

Limits on Use of Foster Care (cont.)

- Transfer of custody under 260B requires finding the child is a danger to self or others
 - Sec. 16. p. 18, line 733
- Child taken into custody as runaway may only be transported home, to a relative, or another safe place
 - Sec. 25. p. 24, lines 1004-1007
- Cannot keep child in foster care solely for reason that child would runaway
 - Sec. 26 p. 24, line 1022 – p. 25 line 1026 and Sec. 27 p. 25 deletions at 1052-1062

ADR Authorized in CHIPS, TPR, and Permanency Cases

- Sec. 24, Page 24, lines 982-994
- Any form of alternative dispute resolution may be authorized by the court when in the best interests of the child
 - Child may be ordered included
 - FGDM
 - PPP
 - Mediation

Court Rules

Court Rules: ICWA Concepts

- Comply with requirements of ICWA
- Solicit information from tribe upfront about whether child is an Indian child so court can determine whether ICWA applies
- Exclusive and concurrent jurisdiction
- Preference for tribal jurisdiction
 - Procedures for transfer including judge to judge contact
 - “good cause” exceptions

ICWA: Comply

- Best thing for Indian children
- Face petition to invalidate if there is failure to comply with:
 - Notice provisions
 - Violation of jurisdiction
 - Appointment of counsel
 - Examination of reports
 - Active efforts
 - QEW
 - Voluntary TPR consent (See requirements at R. 42.08, subd. 3 p. 70-71)

ICWA: Determining if Child is an Indian Child

- EPC – R. 30.08, subd. 2, p. 29-30:
- Review content of petition and other documents
- Inquire on-the-record
- Direct petitioner to make further inquiry if unable to determine

ICWA: EPC

- Importance of information about the Indian child – R. 30.08, subd. 3:
 - Tribal ward or not
 - Reservation domiciliary or not
- Court:
 - Require notice to be sent to child's parents or Indian custodian and tribe (file copy of notice together with return receipts or proof of service – R. 32.06, p. 37)
 - Testimony of QEW – per rule 49, 90 days

ICWA: Petition Content

- R. 33.02, p. 39-40
- "believed to be an Indian child"
- Name of child's tribe
- Name of Indian custodian's tribe
- Whether child's residence is believed to be on an Indian reservation, if so, and the name of the reservation
- Whether child is a ward of tribal court, and if so, name of the tribe;
- Whether the child's tribe has exclusive jurisdiction

ICWA: Procedures for Transfer to Child's Tribe – Rule 48

- Motion – written or on the record -- R. 48.01
- Notice – to parties and both parents (are parties, R. 21.01, subd. 1 (c)) and Indian child age 12 or older – R. 15.02 (b)
- Transfer required absent objection by parent (veto) or “good cause”

ICWA: Procedures for Transfer to Child's Tribe – Rule 48

- Opposing non-parent must establish “good cause”
 - Child files written request – BIA Guidelines for child age 12 or older
 - Other party files motion opposing transfer and stating good cause
 - Hearing is required w/i 15 days of motion opposing transfer

ICWA: Procedures for Transfer to Child's Tribe

- R. 48.02, p. 127- 130
- Judge to judge communication to facilitate timely transfer and prevent cases from falling between the cracks
- District court jurisdiction is maintained and hearings required at least every 90 days

ICWA: Procedures for Transfer to Child's Tribe

- R. 48.01, subd 1 (e), p. 125 When tribal court has exercised jurisdiction, district court terminates jurisdiction:
 - Factual basis for judge finding tribe has exercised jurisdiction;
 - Terminate jurisdiction over all parties;
 - Terminate county agency's responsibility for placement
 - Discharge DHS as guardian
 - Discharge attorneys and guardian ad litem
- R. 48. 03, p. 130 Court administrator makes certified copy of entire file and delivers to tribal court.

ICWA: QEW – R. 49

- R. 2.01 (21) definition – p. 6
- When required:
 - CHIPS, when court orders foster care
 - Timing – 90 days after emergency foster care – R. 49.01
 - TPR – when ordering TPR
- Required content:
 - R. 49.02 and.03 – “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child”

ICWA: Petition or Motion to Invalidate

- R. 46.03, p. 113 - 115
- Motion during proceeding
- Petition, if district court jurisdiction terminated
 - Both served according to R. 15
 - Hearing within 30 days of filing – but filing motion late shall not delay trial – decision about invalidation can be issued with trial decision
 - 15 days to issue decision – no provision for extension

Petition or Motion to Invalidate Response

- What's the issue?
- Can it be "cured?"
- Who is bringing the motion, and if not the tribe, what's the tribe's response?
- Is it more than 2 years since finalization of adoption? *See 25. U.S.C. 1913 (d)* – for consent obtained through fraud or duress
- *Laches* – equitable estoppel?
- Is there another remedy?

Court Rules: Trial – Permanency - Timing

- By-pass cases, R. 42.01, subd. 6., p. 60—
 - A/D w/i 30 days of filing TPR or permanency petition
 - Trial within 90 days of prima facie finding
- Final argument: can be simultaneous with case being "under advisement" and w/i 15 days after close of testimony --R. 39.05, p. 51
- Permanency:
 - Trial w/i 60 days of first scheduled A/D hearing, R. 39.02, subd. 1 (c), p. 49;
 - THV – hearing at time required for A/D hearing R. 42.13, p. 83 - 84

Trial: Findings:

- R. 39.05, subd. 3, p. 52-53
- Petition proved
- CHIPS (entered or withheld); dismissed if petition not proven;
- TPR or CHIPS (entered or withheld) or dismiss, if petition is not proven
- Other permanency orders

Trial: Findings:

- TPR, also:
 - RE either for reunification or not required; OR
 - Indian child:
 - Active efforts
 - Serious emotion or physical damage -- from QEW
 - Best interests consistent with ICWA
 - Best interests – 3 pronged test
 - Child's interest in preserving the parent-child relationship;
 - Parent's interests in preserving the parent-child relationship;
 - Any competing interests of the child

TPR Orders:

- R. 42.10, p. 74 – 75
- When both parents terminated or consent to adoption: G/LC
- If not both, continue LC with county agency
- If rights are terminated or consent occurs at different times, reference the first order and order G/LC
- G/LC:
 - Commissioner
 - Licensed child placing agency
 - Individual

Court Rules: Disposition and Reviews

- Disposition, adjudication – same day – R. 41.02, p. 54
 - Added requirement for QEW testimony before ordering foster care for an Indian child – R. 41.05, subd. 1 (e), p. 55
- Agency has legal custody – 90 days including THV – R. 41.06, subd. 2 (b) (3), p. 57
- Protective supervision – 6 months

Court Rules: Permanency Rule

- R. 42.01, subd. 4 (c), p. 59 THV counts
- R. 42.01 subd. 5 (a), p. 60 < 8 review can be for older siblings too
- R. 42.02, subd. 1, p. 61 orders must be consistent with child's BI and pleadings and proof presented to court
- R. 42.05, subd. 1, p. 65-66 statutory findings for TPLPC and LTFC
- Venue for addressing TPLPC – R. 42.06, subd 4

Court Rules: Voluntary Placements

- Voluntary foster care for treatment – R. 43
- Voluntary foster care – R. 44

Post-trial Motions & Appeals

- R. 45 Post-trial motions
 - Filed 10 days of service of notice filing of the order
 - Response due in 5 days
 - Hearing not required, but if any, must be within 10 days of filing of post-trial motion
- R. 47.02 Notice of filing of appeal
 - 20 days of the service of notice of filing of order and must be accompanied by request for transcript
 - Time for filing briefs shortened to 20 days