

CHAPTER 13**DISPOSITION HEARING****TABLE OF CONTENTS**

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| 13.06 | <p>PRE-DISPOSITION REPORTS</p> <p>A. INVESTIGATIONS AND EVALUATIONS. At any time after the court accepts or conditionally accepts an admission or finds that the statutory grounds set forth in the petition have been proved (see Benchbook chapter 12 regarding Adjudication), the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:</p> <ol style="list-style-type: none"> (1) An investigation of the personal and family history and environment of the child; (2) Medical, psychological, or chemical dependency evaluations of the child and any parent who is a party; and (3) Information regarding the factors set forth in RJPP 41.05 (see section 13.10 below). <p>B. ADVISORY. The court shall advise the persons present in court that:</p> <ol style="list-style-type: none"> (1) a pre-disposition investigation is being ordered, (2) the nature of the evaluations to be included, (3) the date when the reports resulting from the investigation are to be filed with the court, and (4) the right of each party to present opposing evidence and reports. <p>C. FILING AND INSPECTION OF PRE-DISPOSITION REPORTS. Any person who intends to offer a pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.</p> <p>D. CONSIDERATION OF REPORTS. Before making a disposition in a case, terminating parental rights, or appointing a legal guardian for a child, the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family, a school district concerning the effect on student transportation of placing a child in a school district in which the child is not a resident, or any other information deemed material by the court.</p> <p>E. DISCUSSION OF CONTENTS OF REPORTS. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.</p> | <p>RJPP 41.03, subd. 3</p> <p>RJPP 41.03, subd. 2</p> <p>RJPP 41.03, subd. 3</p> <p>RJPP 41.03, subd. 3(b)</p> <p>RJPP 41.03, subd. 4</p> |

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| | <p>13.06 Pre-Disposition Reports – filing and inspection (continued)</p> <p>F. DISCUSSION OF CONTENT OF REPORT - LIMITATION BY COURT. Pursuant to RJPP 8.04, all records in the court file are presumed to be accessible to any party for inspection and copying, except for:</p> <ul style="list-style-type: none"> (a) Audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. (b) Portions of juvenile protection case records that identify reporters of abuse or neglect. (c) HIV test results, including any written motion and supporting data seeking HIV testing <p>Despite the presumption of party access in RJPP 8.04, upon a showing of good cause the court may limit the extent of the discussion of the contents of any pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:</p> <ul style="list-style-type: none"> (a) On the court’s own motion; or (b) Upon the written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report. | <p>RJPP 41.03, subd. 5 RJPP 8.04</p> <p>RJPP 41.03, subd. 5</p> |
| 13.07 | <p>EVIDENCE The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minn. Stat. § 626.556, subd. 8.</p> <p><i>Comment: Minn. Stat. § 626.556, subd. 8, provides that "no evidence relating to the neglect or abuse of a child or to any prior incidents of abuse or neglect involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or abuse on the grounds of privilege set forth in Minn. Stat. § 595.02, subds. 1(a), (d) and (g)." Minn. Stat. § 595.02, subds. 1(a), (d), and (g), deal with communication between husband and wife, and between medical or therapeutic professional and patient. While such communications might otherwise be privileged, they shall not be excluded during child protection proceedings.</i></p> | <p>RJPP 41.04</p> <p>Minn. Stat. § 626.556, subd. 8</p> <p>Minn. Stat. § 626.556, subd. 8</p> |
| 13.08 | <p>INFORMAL HEARING Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.</p> | RJPP 41.04 |
| | HEARING PROCEDURE | |
| 13.09 | <p>INITIAL PROCEDURE At the commencement of the hearing, it is best practice for the court on the record to:</p> <ol style="list-style-type: none"> 1. State the case name and file number. 2. Ask all parties, participants, and attorneys present to identify themselves for the record. | |

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| | <p>13.09 Initial Procedure (continued)</p> <p>3. Determine whether all required persons have been informed of the time and place of the hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.</p> <p>4. Determine whether child is or should be present. If the child is present, determine whether it is in child's best interest to be present or excluded from hearing.</p> <p>5. <i>(Optional best practice)</i> Ask anyone else in the audience involved in the hearing to identify themselves and their relationship to the child and family.</p> | |
| 13.10 | <p>DETERMINATIONS</p> <p>During the disposition hearing, the court shall solicit information regarding the following issues, and shall include in the disposition order written findings of fact to support the disposition ordered, and the following information:</p> <p>(a) A statement explaining how the disposition serves the best interests and safety of the child.</p> <p>(b) A statement of all alternative dispositions or services under the case plan considered by the court and why such dispositions or services are not appropriate in the instant case.</p> <p>(c) If the disposition is out-of-home placement through legal custody to a responsible social services agency, a statement reviewing the agency's use of the factors set out below in making the child's placement. Among the factors to be considered in determining the needs of the child are:</p> <ol style="list-style-type: none"> (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 faith community; (6) the child's interests and talents; (7) the child's relationship to current caretakers, parents, siblings, and relatives; and (8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference. <p>(d) A brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minn. Stat. § 260.012 or § 260C.178, subd. 1.</p> <p>(e) In the case of an Indian child, the foster care placement of the child shall be ordered only upon the testimony, pursuant to Rule 49, of at least one qualified expert witness that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> | <ul style="list-style-type: none"> • RJPP 41.05, subd. 5 • Minn. Stat. § 260C.178, subd. 1 • Minn. Stat. 260.012 |

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| | <p>13.10 Determinations (continued)</p> <p>(f) If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review and make findings regarding the reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or relative who has committed to providing the legally permanent home for the child in the event reunification efforts are not successful.</p> <p><i>Comment: The information for determinations (a) – (f) above should be located in the out-of-home placement plan. The solicitation of these facts may be accomplished by review of that plan. Any required information not included in the plan should be solicited during the hearing. If the Court is continuing an existing plan, modifying it in specific ways, or adopting a new plan, that fact and the reasons for such should be stated on the record.</i></p> | <ul style="list-style-type: none"> • RJPP 41.05, subd. 5 • Minn. Stat. § 260C.178, subd. 1 • Minn. Stat. 260.012 |
| 13.11 | <p>DISPOSITION ORDER</p> <p>A. MANDATORY PLACEMENT PROVISIONS. The court shall enter an order making one or more of the following dispositions for the child:</p> <ol style="list-style-type: none"> 1. Place the child under the protective supervision of the responsible services agency or child-placing agency in the home of a parent or legal custodian under conditions directed to correction of the child’s need for protection or services. <ol style="list-style-type: none"> (a) The protective supervision may be in the home from where the child was removed. (b) The court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, such an order does not confer legal custody on that parent under Minn. Stat. § 257, 257C, or 518; (c) if the court orders the child into the home of a father who is not adjudicated, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and (d) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan. 2. Transfer legal custody to a child-placing agency or the responsible social services agency for placement in foster care. 3. Order a trial home visit without modifying the transfer of legal custody to the responsible social services agency. | <p>RJPP 41.05, subd. 2(a)</p> <p>Minn. Stat. § 260c.201, subd. 1(a)(1)</p> <p>Rule 41.05, subd. 2(b)</p> <p>Minn. Stat. § 260c.201, subd. 1(a)(2)</p> <p>Minn. Stat. § 260c.201, subd. 1(a)(3)</p> |

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| | <p>13.11 Disposition Order – Mandatory Provisions (continued)</p> <ol style="list-style-type: none"> 4. In the case of a child who needs special treatment and care for reasons of physical or mental health when the child’s parent or legal custodian is unable to provide the treatment or care, order that the treatment and care be provided. 5. Allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the responsible social services agency after consultation with the court has specifically authorized this alternative. 6. When a parent has complied with a case plan and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent’s continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances. <p>B. ADDITIONAL DISPOSITION PROVISIONS. As part of the disposition order the court shall also:</p> <ol style="list-style-type: none"> 1. Approve or modify the plan for supervised or unsupervised visitation for the child’s parent or legal custodian, relatives, and siblings if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan which must be filed within thirty (30) days of removal; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court’s disposition order or would endanger the child’s physical or emotional well-being. 2. If the case plan has already by filed, review the case plan, make modifications supported by the evidence, if appropriate, and approve the plan. 3. Order all parties to comply with the approved case plan. 4. Incorporate into the order by reference the approved case plan and any modified language. Attach a copy of the plan to the Order only if it has been modified. If the plan has been modified, order the responsible social services agency to modify the case plan to reflect the modification and to file and serve upon the parties the modified plan. 5. Give notice to the parent on the record and in writing of the requirements of Minn. Stat. § 260C.201, subds. 11 and 11a, regarding the permanency timelines and potential outcomes of the proceedings stating that the petition has been proven and the child has been adjudicated as in need of protection or services and: | |

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| <p>13.11 Disposition Order – Additional Provisions (continued)</p> <p>(a) If the child has not been returned home:</p> <ul style="list-style-type: none"> ○ if the child was under 8 years of age at the time the petition was filed, within six (6) months of the child’s court-ordered placement the court must conduct a Permanency Progress Review Hearing (see Chapter 15) ; or ○ if the child was age 8 or older at the time the petition was filed, within twelve (12) months of the court must conduct a Permanent Placement Determination Hearing (see Chapter 16). <p><i>Comment: For a child under age 8, the purpose of the Permanency Progress Review Hearing is to determine whether the child can be safely returned home or, if not, determine whether the parents or legal custodian have maintained contact with the child and are complying with the case plan and whether the child would benefit from continuing this relationship and, if not, whether grounds for termination of parental rights exist or whether transfer of permanent legal and physical custody is appropriate.</i></p> <p><i>For any child, regardless of age, who has not returned home by month 11, the purpose of the Permanent Placement Determination Hearing is to review the parent’s progress on the case plan and the services provided by the agency. The court shall determine whether the child can be safely returned home or, if not, order permanent placement consistent with the child’s best interests. The Permanent Placement Determination Hearing is the Admit/Deny Hearing on the permanency petition, which should have been filed by the county attorney by day 335 (30 days before the commencement of the permanency hearing).</i></p> <p>(b) Failure to comply with the court’s orders and to make progress on a case plan ordered or approved by the court may result in the permanent removal of the child from the parent’s care including an order terminating the parent’s rights or transferring permanent legal and physical custody of the child to another.</p> <p>(c) Set the date and time for the permanency placement determination hearing pursuant to RJPP 42.</p> <p>(d) Set the date for the next hearing (which will typically be a disposition review hearing – see section 13.13 below).</p> <p>C. Habitual Truant and Runaway Matters: If the child is adjudicated in need of protection or services because the child is a habitual <u>truant</u> or a <u>runaway</u>, the court may order any of the following dispositions in addition to or as alternatives to the mandatory and additional provisions above:</p> | <p>Rule 41.05, subd. 2(c)</p> |

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| | <p>13.11 Disposition Order – Additional Provisions (continued)</p> <ol style="list-style-type: none"> 1. Counseling for the child or the child’s parent or legal 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 parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child. 3. With the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner’s management and supervision. <i>Comment: Pursuant to Minn. Stat. § 260C.163, subd. 3(c), and RJPP 25.02, subd 1(b), the child is entitled to court appointed counsel if there is an allegation that the child is an habitual truant and out-of-home placement is being considered.</i> 4. Subject to the court’s supervision, transfer legal custody of the child to one of the following: <ol style="list-style-type: none"> (1) a reputable person of good moral character; or (2) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minn. Stat. § 241.021. 5. Require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child. 6. Require the child to participate in a community service project. 7. 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. 8. Order the commissioner of public safety to cancel the child’s driver’s license or permit or, for a child who does not have a driver’s license or permit, order a denial of driving privileges for any period up to the child’s 18th birthday. 9. Order the child’s parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court. | |
| 13.12 | <p>REASONABLE EFFORTS NOT FOUND</p> <p>The court may authorize or continue an award of legal custody to the responsible social services agency despite a finding that the agency’s preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.</p> <p><i>Comment: If reasonable efforts are not found, the court should direct the filing and service of a case plan that provides for reasonable efforts, or active efforts in the case of an Indian child, and consider scheduling an earlier review hearing to ensure that the plan has been developed and is appropriate.</i></p> | RJPP 41.05, subd. 1(d) |

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| 13.13 | <p>NEXT HEARING</p> <p>A. LEGAL CUSTODY TO AGENCY WITH FOSTER CARE. When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.</p> <p>B. LEGAL CUSTODY TO AGENCY WITH PROTECTIVE SUPERVISION. While the child is in trial home placement the matter shall be reviewed in court at least every ninety (90) days to determine whether the trial home visit continues to be necessary.</p> <p>C. PROTECTIVE SUPERVISION. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.</p> | <p>RJPP 41.06, subd. 2(a)</p> <p>RJPP 41.06, subd. 2(b)</p> <p>RJPP 41.05, subd. 2(c)</p> |
| 13.14 | <p>NOTICE OF SUBSEQUENT HEARINGS</p> <p>For each hearing following the Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a notice of the date, time, and location of the next hearing. The notice shall be delivered at the close of the hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.</p> | RJPP 32.04 |