

**CHAPTER 3
DEFINITIONS**

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	PROCEDURE	AUTHORITY
3.02	<p>“ACTIVE EFFORTS” The Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 to § 1923, provides that “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”</p> <p>The ICWA does not define “active efforts.” However, under Minnesota laws and regulations it means the thorough, careful, and culturally appropriate efforts by the responsible social services agency to fulfill its obligations under the Indian Child Welfare Act (ICWA), Minnesota Indian Family Preservation Act (MIFPA), and Minnesota Dept. of Human Services (DHS) Social Services Regulations to prevent placement of an Indian child and at the earliest possible time to return the child to the child’s family once placement has occurred. See also “reasonable efforts” defined in section 3.47.</p> <p><i>Comment: The following are considered “active efforts”:</i></p> <ul style="list-style-type: none"> • <i>Invite the tribal representative to participate at the earliest possible point;</i> • <i>Actively solicit the tribal representative’s advice;</i> • <i>Involve an expert with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community that can evaluate the family circumstances and assist in developing a case plan that uses tribal and Indian community resources;</i> • <i>Provide concrete services such as financial assistance, food, housing, etc., if needed;</i> • <i>Facilitate visitation, including transportation assistance, to keep the child in close contact with parent(s), siblings, and other relatives;</i> • <i>Refer parent(s) and children to Indian agencies for services;</i> • <i>Contact extended family members as a resource for child; and</i> • <i>Make all case records and materials involving custody or potential custody available to the tribal social services agency or its designee.</i> 	<p>Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(d)</p> <p>Social Services Manual, Minn. Dept. of Human Services, XIII 3521 (6/18/99)</p> <p>Minnesota Indian Family Preservation Act “Social Worker Checklist,” Social Services Manual, Minn. Dept. of Human Services, XIII 3521, 3522, 3559 (5/99)</p>
3.03	<p>“ADJUDICATED FATHER” means an individual determined by a court, or pursuant to a Recognition of Parentage under Minn. Stat. § 257.75, subd. 3, to be the biological father of the child.</p>	RJPP 2.01(a)
3.04	<p>“AGENCY” means the responsible social services agency or a licensed child-placing agency.</p>	Minn. Stat. § 260C.007, subd. 2
3.05	<p>“ALLEGED FATHER” means an individual claimed by a party or participant to be the biological father of a child.</p>	RJPP 2.01(b)

	PROCEDURE	AUTHORITY
3.06	<p>“BEST INTERESTS OF THE CHILD”</p> <p>The Code of Federal Regulations uses the phrase “best interests of the child” and “contrary to the welfare of the child” interchangeably. Minnesota requires a “contrary to the welfare” determination at the Emergency Protective Care Hearing (see “Emergency Protective Care Hearing” Chapter 8.16). There is no requirement for a “best interest” finding in an ex parte order for emergency protective care, but RJPP 28.02, subd. 1(c); Minn. Stat. § 260C.175, subd. 1(a); and § 260C.151, subd. 6, require a “contrary to the welfare” determination to be included with the ex parte order.</p> <p>Child Protection Matters:</p> <p>The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child.</p> <p>In proceedings involving an Indian child, the best interests of the child must be determined consistent with Minn. Stat. § 260.751 to § 260.835 and the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1923.</p> <p>When considering the child’s placement, “best interests of the child” means “all relevant factors to be considered and evaluated” and includes 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.”</p>	<ul style="list-style-type: none"> • 45 C.F.R 1356.21(c) (best interest or contrary to welfare finding required) • Minn. Stat. § 260C.178, subd. 1(d) (contrary to welfare finding required) • Minn. Stat. § 260C.175, subd. 1(a) (court order for emergency protective care requires contrary to welfare finding) • Minn. Stat. § 260C.151, subd. 6 (court order for emergency protective care requires contrary to welfare finding) • RJPP 28.02, subd. 1(c) (court order for emergency protective care requires contrary to welfare finding) <p>Minn. Stat. § 260C.001, subd. 2</p> <p>Minn. Stat. § 260C.001, subd. 2</p> <p>Minn. Stat. § 260C.201, subd. 11(c) and § (e)</p>

	PROCEDURE	AUTHORITY
	<p>3.06 Best Interests of Child – Child Protection Matters (continued)</p> <p>Generally, consideration of the child's best interests is required for placement in foster care.</p> <p>When ordering the child into out-of-home placement, the court is required to make individualized determinations about the needs of the child and how the selected placement will serve those needs. The court shall review whether the agency has made reasonable efforts and individualized determination required under Minn. Stat. § 260C.212, subd. 2(b), as follows:</p> <ul style="list-style-type: none"> (a) the child's current functioning and behaviors; (b) the medical, educational, and developmental needs of the child; (c) the child's history and past experience; (d) the child's religious and cultural needs; (e) the child's connection with a community, school, and faith community; (f) the child's interests and talents; (g) the child's relationship to current caretakers, parents, siblings, and relatives; and (h) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference. <p>The best interest of the child is the paramount consideration in terminating parental rights; however, the best interests of the child may work either for or against termination. In determining the best interest of the child in cases where a child may not be adoptable, courts must weigh the benefits of non-termination, requiring foster care against termination, and requiring foster care for an unadoptable child. Non-termination preserves parent contact, but termination severs that relationship.</p> <p>Procedural or technical defects by the state which implicate due process concerns must be balanced against the child's substantive rights to be raised in a secure home, which is embodied in the best interest of the child.</p> <p>The parent's right to custody is always subordinate to the best interests of the child.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.193, subd. 3 • Minn. Stat. § 260C.212, subd. 2(b) • Minn. Stat. § 260C.193, subd. 3(a), § (b) • Minn. Stat. § 260C.212, subd. 2(b) • RJPP 41.05, subd. 1(c) • Minn. Stat. § 260C.301, subd. 7 • <i>In Re Welfare of A.J.C.</i>, 556 N.W.2d 161 (Minn. Ct. App. 1996) • <i>In Re Welfare of S.R.A.</i>, 527 N.W.2d 835 (Minn. Ct. App. 1995) • <i>In Re Welfare of Larson</i>, 312 Minn. 210, 251 N.W.2d 325 (Minn. 1977)

	PROCEDURE	AUTHORITY
	<p>3.06 Best Interests of Child – Child Protection Matters (continued)</p> <p>Public policy determines that the best interests of the child are usually served by parental custody. This policy establishes a presumption that natural parents should be entrusted with the care of their children and should not be deprived of custody except for grave and weighty reasons. The dependency and neglect statutes create a temporary solution with the ultimate purpose of returning the child to the natural parents.</p> <p>Termination of Parental Rights Matters</p> <p>With respect to termination of parental rights proceedings, “where the interests of parent and child conflict, the interests of the child are paramount.”</p> <p>The best interests of the child, standing alone, is an insufficient basis to support involuntary termination of parental rights. Parental rights cannot be terminated in the absence of at least one statutory ground for termination.</p> <p>In applying the best interests of the child in a termination of parental rights context, courts must look at the child’s interests prospectively as well as looking into the past, so as not to distort a fair understanding of the concept.</p> <p>Stability is a factor that must be given high priority when determining the best interests of the child in terminating parental rights.</p> <p>If a statutory ground for termination of parental rights is proven, the court must then determine whether termination is in the child’s best interests. In evaluating the child’s best interests, the Court must balance three factors:</p> <ol style="list-style-type: none"> (1) the child’s interest in maintaining the parent-child relationship; (2) the parent’s interest in maintaining the parent-child relationship; and (3) any competing interest of the child, such as the child’s stable environment, length of time in foster care, health considerations, and the preference regarding placement. 	<p><i>In Re Matter of Welfare of Solomon</i>, 291 N.W.2d 364 (Minn. 1980)</p> <p>Minn. Stat. § 260C.301, subd. 7</p> <p><i>In Re the Matter of the Welfare of the Children of R.W.</i>, 678 N.W.2d 49 (Minn. 2004)</p> <p><i>In Re Welfare of M.P.</i>, 542 N.W.2d 71 (Minn. Ct. App. 1996)</p> <p><i>In Re Welfare of K.T.</i>, 327 N.W.2d 13 (Minn. 1982)</p> <ul style="list-style-type: none"> • <i>In Re Welfare of J.M.</i>, 574 N.W.2d 717 (Minn. 1998) • <i>In Re Welfare of M.G.</i>, 407 N.W.2d 118 (Minn. Ct. App. 1987) • <i>In Re Welfare of R.T.B.</i>, 492 N.W.2d 1 (Minn. Ct. App. 1992)

	PROCEDURE	AUTHORITY
	<p>3.06 Best Interests of Child – Child Protection Matters (continued)</p> <p>When the futility of reunification efforts is irrefutable, such as when the father is incarcerated until the children's adulthood for murdering their mother, the county is not required to provide a case plan before an individual's parental rights can be terminated on statutory grounds. <i>In Re Matter of Welfare of Solomon</i>, 291 N.W.2d 364 (Minn. 1980)</p>	<p><i>In the Matter of the Children of A. V.</i>, 658 N.W.2d 249 (Minn. Ct. App. 2003)</p>
3.07	<p>"CASE PLAN" means any plan for the delivery of services to a child and parent or legal custodian, or, when reunification is not required, the child alone, that is developed according to the requirements of Minn. Stat. § 260C.212, subd. 1. An "out-of-home placement plan" is required for children ordered into placement by the Court. A "protective services case plan" is required for a child who remains at home under the protective supervision of the social services agency. RJPP 37 specifies the requirements for both types of case plans.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 3 • RJPP 37
3.08	<p>"CHILD" means an individual under 18 years of age.</p>	<p>Minn. Stat. § 260C.007, subd. 4</p>
3.09	<p>"CHILD ABUSE" means an act that involves a minor victim and that constitutes a violation of</p> <ul style="list-style-type: none"> • Minn. Stat. § 609.221 (assault in the first degree), • Minn. Stat. § 609.222 (assault in the second degree), • Minn. Stat. § 609.223 (assault in the third degree), • Minn. Stat. § 609.224 (assault in the fifth degree), • Minn. Stat. § 609.2242 (domestic assault), • Minn. Stat. § 609.322 (solicitation, inducement and promotion of prostitution), • Minn. Stat. § 609.324 (certain acts involving young children), • Minn. Stat. § 609.342 (criminal sexual conduct in the first degree), • Minn. Stat. § 609.343 (criminal sexual conduct in the second degree), • Minn. Stat. § 609.344 (criminal sexual conduct in the third degree), • Minn. Stat. § 609.345 (criminal sexual conduct in the fourth degree), • Minn. Stat. § 609.377 (malicious punishment of a child), • Minn. Stat. § 609.378 (neglect or endangerment of a child), • Minn. Stat. § 617.246 (use of minors in sexual performance), or • An act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state. 	<p>Minn. Stat. § 260C.007, subd. 5</p>

	PROCEDURE	AUTHORITY
3.10	<p>“CHILD IN NEED OF PROTECTION OR SERVICES” means a child who is in need of protection or services because the child:</p> <ul style="list-style-type: none"> (a) is abandoned or without parent, guardian, or custodian; (b) (1) has been a victim of physical or sexual abuse, (2) resides with or has resided with a victim of domestic child abuse (defined in section 3.19), (3) resides with or would reside with a perpetrator of domestic child abuse or child abuse, or (4) is a victim of emotional maltreatment (defined in section 3.22); (c) 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; (d) is without the special care made necessary by a physical, mental, or emotional condition because the child’s parent, guardian, or custodian is unable or unwilling to provide that care, including a child in voluntary placement due solely to the child’s developmental disability (defined in section 3.18) or emotional disturbance (defined in section 3.23); (e) 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: <ul style="list-style-type: none"> (1) the infant is chronically and irreversibly comatose; (2) 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 (3) 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; (f) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child’s care and custody, including a child in voluntary placement under Minn. Stat. § 260C.212, subd. 8; (g) has been placed for adoption or care in violation of law; 	Minn. Stat. § 260C.007, subd. 6

	PROCEDURE	AUTHORITY
	<p>3.10 Child in Need of Protection or Services (continued)</p> <p>(h) 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;</p> <p>(i) 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;</p> <p>(j) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;</p> <p>(k) has engaged in prostitution as defined in Minn. Stat. § 609.321, subd. 9 ("prostitution" means engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact);</p> <p>(l) has committed a delinquent act or a juvenile petty offense before becoming ten years old;</p> <p>(m) is a <u>runaway</u> (defined in section 3.51);</p> <p>(n) is a habitual <u>truant</u> (defined in section 3.26);</p> <p>(o) 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 Minn. Stat. § 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense; or</p> <p>(p) has been found by the court to have committed domestic abuse perpetrated by a minor, 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.</p>	
3.11	<p>"CHILD-PLACING AGENCY" means any agency licensed under Minn. Stat. § 245A.01 to § 245A.16 and § 252.28, subd. 2.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 7 • RJPP 2.01(c)
3.12	<p>"COMPELLING REASONS" means an individualized determination by the responsible social services agency, which is approved by the court, not to initiate proceedings to terminate parental rights or transfer permanent legal and physical custody of a child to the child's relative or former noncustodial parent.</p>	<p>Minn. Stat. § 260C.007, subd. 8</p>
3.13	<p>"CONCURRENT PERMANENCY PLANNING" means that reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts to reunify the child with the parent described in section 3.47.</p>	<p>Minn. Stat. § 260.012(f)</p>

	PROCEDURE	AUTHORITY
	<p>3.13 Concurrent Permanency Planning (continued)</p> <p>When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, the agency shall disclose its decision and both plans for concurrent reasonable efforts to all parties and the court.</p>	Minn. Stat. § 260.012(f)
3.14	<p>“COSTS OF CARE” means:</p> <p>(a) Except where parental rights are terminated,</p> <p>(1) whenever legal custody of a child is transferred by the court to a responsible social services agency,</p> <p>(2) whenever legal custody is transferred to a person other than the responsible social services agency, but under the supervision of the responsible social services agency, or</p> <p>(3) whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, these costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.</p> <p>(b) The court shall order, and the responsible social services agency shall require, the parents or custodian of a child, while the child is under the age of 18, to use the total income and resources attributable to the child for the period of care, examination, or treatment, except for clothing and personal needs allowance as provided in Minn. Stat. § 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income and resources attributable to the child include, but are not limited to, social security benefits, supplemental security income (SSI), veterans benefits, railroad retirement benefits and child support. When the child is over the age of 18, and continues to receive care, examination, or treatment, the court shall order, and the responsible social services agency shall require, reimbursement from the child for the cost of care, examination, or treatment from the income and resources attributable to the child less the clothing and personal needs allowance.</p> <p>(c) If the income and resources attributable to the child are not enough to reimburse the county for the full cost of the care, examination, or treatment, the court shall inquire into the ability</p>	<p>Minn. Stat. § 260C.331, subd. 1(a)</p> <ul style="list-style-type: none"> • Minn. Stat. § 260C.331, subd. 1(b) • <i>In Re Matter of Welfare of M.M.</i>, 561 N.W.2d 528 (Minn. Ct. App. 1997) (life insurance proceeds attributable to child) • <i>In Re County of Ramsey v. Wilson</i>, 526 N.W.2d 384 (Minn. Ct. App. 1995) (adoption subsidy attributable to child) • <i>Beltrami County v. Goodman</i>, 427 N.W.2d 662 (Minn. 1998) (wrongful death settlement available as income) <p>Minn. Stat. § 260C.331, subd. 1(c)</p>

	PROCEDURE	AUTHORITY
	<p>3.14 Costs of Care (continued)</p> <p>of the parents to support the child and, after giving the parents a reasonable opportunity to be heard, the court shall order, and the responsible social services agency shall require, the parents to contribute to the cost of care, examination, or treatment of the child. When determining the amount to be contributed by the parents, the court shall use a fee schedule based upon ability to pay that is established by the responsible social services agency and approved by the commissioner of human services. The income of a stepparent who has not adopted a child shall be excluded in calculating the parental contribution under this section.</p> <p>(d) The court shall order the amount of reimbursement attributable to the parents or custodian, or attributable to the child, or attributable to both sources, withheld under chapter 518 from the income of the parents or the custodian of the child. A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used.</p> <p>(e) If the court orders a physical or mental examination for a child, the examination is a medically necessary service for purposes of determining whether the service is covered by a health insurance policy, health maintenance contract, or other health coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan requirements for medical necessity. Nothing in this paragraph changes or eliminates benefit limits, conditions of coverage, co-payments or deductibles, provider restrictions, or other requirements in the policy, contract, or plan that relate to coverage of other medically necessary services.</p>	<p>Minn. Stat. § 260C.331, subd. 1(d)</p> <p>Minn. Stat. § 260C.331, subd. 1(e)</p>
3.15	<p>“COURT” means district court judge presiding in juvenile court, unless otherwise specified in this Benchbook.</p>	<p>Minn. Stat. § 260C.007, subd. 9</p>
3.16	<p>“CUSTODIAN” means any person who is under a legal obligation to provide care and support for a minor or who is in fact providing care and support for a minor. This definition does not impose upon persons, who are not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care. For an Indian child, custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child, as provided in Minn. Stat. § 260.755, subd. 10.</p>	<p>Minn. Stat. § 260C.007, subd. 10</p>

	PROCEDURE	AUTHORITY
	<p>3.16 Custodian (continued)</p> <p><i>Comment: Providing "care and support" for a child in a child protection matter is not the same as "custody" under Minn. Stat. § 518.003, subd. 3.</i></p>	
3.17	<p>"DELINQUENT CHILD" means a child:</p> <p>a. who has violated any state or local law, except as provided in Minn. Stat. § 260B.225, subd. 1, and except for <u>truants</u> (defined in section 3.26) and <u>runaways</u> (defined in section 3.51); or</p> <p>b. who has violated a federal law or a law of another state and whose case has been referred to the juvenile court if the violation would be an act of delinquency if committed in this state or a crime or offense if committed by an adult.</p>	Minn. Stat. § 260C.007, subd. 11
3.18	<p>"DEVELOPMENTAL DISABILITY" means developmental disability as defined in 42 U.S.C. § 6001(8) (sic - repealed).</p>	Minn. Stat. § 260C.007, subd. 12
3.19	<p>"DOMESTIC CHILD ABUSE" means:</p> <p>(a) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means; or</p> <p>(b) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of Minn. Stat. § 609.321 to § 609.324 (prostitution and solicitation offenses); § 609.342 to § 609.345 (criminal sexual conduct in first, second, third, or fourth degree); or § 617.246 (use of minor in sexual performance).</p>	Minn. Stat. § 260C.007, subd. 13
3.20	<p>"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:</p> <p>(a) conduct towards a child that constitutes a violation of Minn. Stat. § 609.185 to § 609.21 (murder in first, second and third degree; manslaughter in first and second degree; and criminal vehicular homicide and injury); § 609.222, subd. 2 (assault in second degree); § 609.223 (assault in third degree), or any other similar law of any other state;</p> <p>(b) the infliction of "substantial bodily harm" to a child, as defined in Minn. Stat. § 609.02, subd. 7a ("substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member);</p>	Minn. Stat. § 260C.007, subd. 14

	PROCEDURE	AUTHORITY
	<p>3.20 Egregious Harm (continued)</p> <p>(c) conduct towards a child that constitutes felony malicious punishment of a child under Minn. Stat. § 609.377 (“malicious punishment” – a parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child);</p> <p>(d) conduct towards a child that constitutes felony unreasonable restraint of a child under Minn. Stat. § 609.255, subd. 3 (“unreasonable restraint of children” – a parent, legal guardian, or caretaker who intentionally subjects a child under the age of 18 years to unreasonable physical confinement or restraint by means including but not limited to, tying, locking, caging, or chaining for a prolonged period of time and in a cruel manner which is excessive under the circumstances, is guilty of unreasonable restraint of a child).</p> <p>(e) conduct towards a child that constitutes felony neglect or endangerment of a child under Minn. Stat. § 609.378;</p> <p>(f) conduct towards a child that constitutes assault under Minn. Stat. § 609.221 to § 609.223 (assault in first, second and third degree);</p> <p>(g) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under Minn. Stat. § 609.322;</p> <p>(h) conduct towards a child that constitutes murder or voluntary manslaughter as defined by 18 U.S.C. § 1111(a) or § 1112(a);</p> <p>(i) conduct towards a child that constitutes aiding or abetting, attempting, conspiring, or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of 18 U.S.C. § 1111(a) or § 1112(a); or</p> <p>(j) conduct toward a child that constitutes criminal sexual conduct under Minn. Stat. § 609.342 to § 609.345.</p>	
3.21	<p>“EMERGENCY PROTECTIVE CARE” means the placement status of a child when:</p> <p>(a) taken into custody by a peace officer pursuant to Minn. Stat. § 260C.151, subd. 6; § 260C.154; or § 260C.175; or</p> <p>(b) returned home before a disposition with court ordered conditions of release.</p>	<ul style="list-style-type: none"> • RJPP 2.01(d) • RJPP 28.01

	PROCEDURE	AUTHORITY
3.22	<p>“EMOTIONAL MALTREATMENT” means the consistent, deliberate infliction of mental harm on a child by a person responsible for the child’s care, that has an observable, sustained, and adverse effect on the child’s physical, mental, or emotional development. “Emotional maltreatment” does not include reasonable training or discipline administered by the person responsible for the child’s care or the reasonable exercise of authority by that person.</p>	Minn. Stat. § 260C.007, subd. 15
3.23	<p>“EMOTIONALLY DISTURBED” means “emotional disturbance” as described in Minn. Stat. § 245.4871, subd. 15. “Emotional disturbance” is a generic term intended to reflect all categories of disorder described in DSM-MD, current edition as “usually first evident in childhood or adolescence.” It means an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that:</p> <p>(a) Is listed in the clinical manual of the International Classification of Diseases (ICD-9-CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0 or the corresponding code in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III; and</p> <p>(b) Seriously limits a child’s capacity to function in primary aspects of daily living such as personal relations, living arrangements, work, school, and recreation.</p>	Minn. Stat. § 260C.007, subd. 16
3.24	<p>“FAMILY OR HOUSEHOLD MEMBERS” means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.</p>	Minn. Stat. § 260C.007, subd. 17
3.25	<p>“FOSTER CARE” means “24-hour substitute care for children placed away from their parents or guardian and for whom a responsible social services agency has placement and care responsibility. ‘Foster care’ includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. ‘Foster care’ does not include placement in any of the following facilities: hospitals, in-patient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction’s</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 18 • RJPP 2.01(e)

	PROCEDURE	AUTHORITY
	<p>3.25 Foster Care Placement (continued)</p> <p>facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails.” See also “Shelter Care Facility” which provides that foster care means a “physically unrestricting facility.”</p>	
3.26	<p>“HABITUAL TRUANT” means a child under the age of 16 years who is absent from attendance at school without lawful excuse for seven (7) school days if the child is in elementary school or for one or more class periods on seven (7) school days if the child is in middle school, junior high school, or high school, or a child who is 16 or 17 years of age who is absent from attendance at school without lawful excuse for one or more class periods on seven (7) school days and who has not lawfully withdrawn from school under Minn. Stat. § 120A.22, subd. 8.</p> <p>Withdrawal from school. For any student between 16 and 18 years of age who seeks to withdraw from school, the student’s parent or guardian must:</p> <p>(a) attend a meeting with school personnel to discuss the educational opportunities available to the student, including alternative educational opportunities; and</p> <p>(b) sign a written election to withdraw from school.</p>	<p>Minn. Stat. § 260C.007, subd. 19</p> <p>Minn. Stat. § 120A.22, subd. 8</p>
3.27	<p>“INDEPENDENT LIVING PLAN” is a plan for a child age 16 or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minn. Stat. § 260C.212, subd. 1(c)(8). An independent living plan should include, but not be limited to, the following objectives:</p> <p>(a) educational, vocational, or employment planning;</p> <p>(b) health care planning and medical coverage;</p> <p>(c) transportation including, where appropriate, assisting the child in obtaining a driver’s license;</p> <p>(d) money management;</p> <p>(e) planning for housing;</p> <p>(f) social and recreational skills; and</p> <p>(g) establishing and maintaining connections with the child’s family and community.</p>	<ul style="list-style-type: none"> • RJPP 2.01(f) • Minn. Stat. § 260C.212, subd. 1(c)(8)
3.28	<p>“INDIAN” means a person who is a member of an Indian tribe or who is an Alaskan native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1606.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 20 • Minn. Stat. § 260.755, subd. 7

	PROCEDURE	AUTHORITY
3.29	<p>"INDIAN CHILD" means an unmarried person who is under age 18 and is:</p> <p>(a) a member of an Indian tribe; or</p> <p>(b) eligible for membership in an Indian tribe.</p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(4) • Minn. Stat. § 260C.007, subd. 21 • RJPP 2.01(g)
3.30	<p>"INDIAN CUSTODIAN" means any Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.</p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(6) • Minn. Stat. § 260.755, subd. 10 • RJPP 2.01(h)
3.31	<p>"INDIAN TRIBE" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.</p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(8) • Minn. Stat. § 260.755, subd. 12 • RJPP 2.01(i)
3.32	<p>"JUVENILE PROTECTION CASE RECORDS" means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials. See also "records."</p>	RJPP 2.01(j)
3.33	<p>"JUVENILE PROTECTION MATTER" means any of the following types of matters:</p> <p>(a) Child in need of protection or services matters (defined in section 3.10), including habitual <u>truant</u> and <u>runaway</u> matters;</p> <p>(b) Neglected and in foster care matters (defined in section 3.37);</p> <p>(c) Review of foster care matters and review of out-of-home placement matters as described in Minn. Stat. § 260C.141, subd. 2, and § 260C.212;</p> <p>(d) Termination of parental rights matters as described in Minn. Stat. § 260C.301 to § 260C.328; and</p> <p>(e) Permanent placement matters as described in Minn. Stat. § 260C.201, subd. 11, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.</p>	RJPP 2.01(k)
3.34	<p>"LEGAL CUSTODIAN" means a person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.</p>	RJPP 2.01(l)

	PROCEDURE	AUTHORITY
3.35	<p>“LEGAL CUSTODY” means the right to the care, custody, and control of a child who has been taken from a parent by the court in accordance with the provisions of Minn. Stat. § 260C.201 or § 260C.317. The costs of care (defined in section 3.14) associated with legal custody are paid pursuant to the provisions of Minn. Stat. § 260C.331.</p> <p><i>Comment: The “right to care, custody and control of a child” in a child protection matter is not the same as “custody” under Minn. Stat. § 518.003, subd. 3.</i></p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 22 • Minn. Stat. § 260C.331, subd. 1 (costs of care, examination, or treatment)
3.36	<p>“MINOR” means an individual under 18 years of age.</p>	<p>Minn. Stat. § 260C.007, subd. 23</p>
3.37	<p>“NEGLECTED AND IN FOSTER CARE” means a child</p> <ol style="list-style-type: none"> (a) Who has been placed in foster care by court order; and (b) Whose parents’ circumstances, condition, or conduct are such that the child cannot be returned to them; and (c) Whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, (d) or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child. 	<p>Minn. Stat. § 260C.007, subd. 24</p>
3.38	<p>“OUT-OF-HOME PLACEMENT PLAN” (see “case plan” defined in section 3.07).</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 3 • RJPP 37.02 • RJPP 37.03
3.39	<p>“PARTICIPANT” Unless already a party pursuant to RJPP 21, or unless otherwise specified, participants to a juvenile protection matter include:</p> <ol style="list-style-type: none"> (a) the child; (b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father; (c) the responsible social services agency, when the responsible social services agency is not the petitioner; (d) any guardian ad litem for the child’s legal custodian; (e) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition; (f) relatives or other persons providing care for the child and other relatives who request notice; (g) current foster parents and persons proposed as long-term foster care parents; (h) the spouse of the child, if any; and (i) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child. <p>Participants are entitled to the rights identified in RJPP 22.02.</p>	<ul style="list-style-type: none"> • RJPP 22.01 • Minn. Stat. § 260C.151, subd. 2 (list of individuals to whom notice of proceeding must be provided) • Minn. Stat. § 260C.152, subd. 5 (foster parents, preadoptive parents, and relatives providing care must be provided notice of and opportunity to be heard in any hearing) • RJPP 22.02 • Minn. Stat. § 260C.163, subd. 2

	PROCEDURE	AUTHORITY
3.40	<p>"PARTY" Parties to a juvenile protection matter include:</p> <p>A. PARTIES GENERALLY.</p> <ol style="list-style-type: none"> 1. the child's guardian ad litem; 2. the child's legal custodian; 3. in the case of an Indian child, the child's Indian custodian and Indian tribe through the tribal representative; 4. the petitioner; 5. any person who intervenes as a party pursuant to RJPP 23; 6. any person who is joined as a party pursuant to RJPP 24; and 7. any other person who is deemed by the court to be important to a resolution that is in the child's best interests. <p>B. HABITUAL TRUANT MATTERS. In addition to the parties identified above for juvenile protection matters, in any matter alleging a child to be a habitual <u>truant</u>, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual <u>truant</u>, the child's school district may be joined as a party.</p> <p>C. TERMINATION OF PARENTAL RIGHTS MATTERS AND PERMANENT PLACEMENT MATTERS. In addition to the parties identified above for juvenile protection matters, in any termination of parental rights matter or permanent placement matter the parties shall also include:</p> <ol style="list-style-type: none"> 1. the child's parents, including any noncustodial parent and any adjudicated or presumed father; 2. any person entitled to notice of any adoption proceeding involving the child; and 3. any other person who is deemed by the court to be important to a resolution that is in the best interests of the child. <p>Parties are entitled to the rights listed in RJPP 21.02.</p>	<ul style="list-style-type: none"> • RJPP 21.01, subd. 1 • Minn. Stat. § 260C.151, subs. 2, 3, 5 (list of individuals to whom notice of proceeding must be provided) • Minn. Stat. § 260C.152, subd. 3 (list of individuals to whom notice of proceeding must be provided) <p>RJPP 21.01, subd. 2</p> <p>RJPP 21.01, subd. 3</p> <ul style="list-style-type: none"> • RJPP 21.02 • Minn. Stat. § 260C.163, subs. 2
3.41	<p>"PARENT" means the birth, legally adjudicated (see definition of "adjudicated father," section 3.03), or adoptive parent of a minor child. For an Indian child, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minn. Stat. § 260.755, subd. 14, but it does not include an unmarried father whose paternity has not been acknowledged or established.</p>	<ul style="list-style-type: none"> • See Minn. Stat. § 260C.007, subd. 25 • Minn. Stat. § 260.755, subd. 14 • RJPP 2.01(m)

	PROCEDURE	AUTHORITY
3.42	"PERSON" means any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 26 • RJPP 2.01(n)
3.43	"PRESUMED FATHER" means an individual who is presumed to be the biological father of a child under Minn. Stat. § 257.55, subd. 1. ¹	<ul style="list-style-type: none"> • Minn. Stat. § 257.55 • RJPP 2.01(o)
3.44	"PROTECTIVE CARE" means the right of the responsible social services agency or child-placing agency to temporary physical custody and control of a child for purposed of foster care placement, and the right and duty of the agency to provide the care, food, lodging, education, supervision, and treatment the child needs.	RJPP 2.01(p)

¹ **Minn. Stat. § 257.55. Presumption of Paternity**

Subd. 1. Presumption. A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under Minn. Stat. § 257.75, subd. 1a;

(b) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth record; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child;

(e) He and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under Minn. Stat. § 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) Evidence of statistical probability of paternity based on blood or genetic testing establishes the likelihood that he is the father of the child, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater;

(g) He and the child's biological mother have executed a recognition of parentage in accordance with Minn. Stat. § 257.75 and another man is presumed to be the father under this subdivision;

(h) He and the child's biological mother have executed a recognition of parentage in accordance with Minn. Stat. § 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with Minn. Stat. § 257.75; or

(i) He and the child's biological mother executed a recognition of parentage in accordance with Minn. Stat. § 257.75 when either or both of the signatories were less than 18 years of age.

Subd. 2. Rebuttable Presumption. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

	PROCEDURE	AUTHORITY
3.45	“PROTECTIVE SERVICES CASE PLAN” (see “case plan” defined in section 3.07).	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 3 • RJPP 37.04
3.46	“PROTECTIVE SUPERVISION” means the right and duty of the responsible social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child’s need for protection or services while in the care of the child’s parent or legal custodian.	RJPP 2.01(q)
3.47	<p>“REASONABLE EFFORTS” means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child’s family to prevent removal of the child from the child’s parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. “Reasonable efforts” includes efforts by the responsible social services agency to secure for the child a legally permanent home in a timely fashion when reunification efforts are no longer applicable. See also “Active Efforts” defined in section 3.02.</p> <p>When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:</p> <ul style="list-style-type: none"> • relevant to the safety and protection of the child; • adequate to meet the needs of the child and family; • culturally appropriate; • available and accessible; • consistent and timely; and • realistic under the circumstances. <p>Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts described above. See “concurrent permanency planning” defined in section 3.13.</p> <p>In deciding whether county met its duty of reasonable efforts to reunify child with parents before permanent placement is granted, the court must consider the length of time county was involved and quality of efforts made by agency.</p> <p>A parent whose parental rights to a previous child have been involuntarily terminated is presumed to be palpably unfit to parent a subsequent child and has the burden of rebutting that presumption and the social services agency is not required to develop a case plan and make reasonable efforts to reunite the parent and child.</p>	<ul style="list-style-type: none"> • 42 U.S.C. § 671(a)(15) • 42 U.S.C. § 672(a)(a) • 45 C.F.R. § 1356.21(a)(1) • Minn. Stat. § 260.012(b) • RJPP 2.01(r) <p>Minn. Stat. § 260.012(c)</p> <p>Minn. Stat. § 260.012(f)</p> <p><i>In Re Welfare of A.R.G-B.</i>, 551 N.W.2d 256 (Minn. Ct. App. 1996)</p> <p><i>In Re the Matter of the Welfare of: D.L.R.D., a/k/a D.L.R.H., Child</i>, 656 N.W.2d 247 (Minn. Ct. App. 2003)</p>

	PROCEDURE	AUTHORITY
	<p>3.47 Reasonable Efforts (continued)</p> <p>When the futility of reunification efforts is irrefutable, such as when the father is incarcerated until the children's adulthood for murdering their mother, the county is not required to provide a case plan before an individual's parental rights can be terminated on statutory grounds.</p> <p>Judicial review of an agency's reasonable efforts at rehabilitation and reunification in a parental rights termination case is not a constitutionally guaranteed right. Therefore, the legislature's elimination of the requirement that agencies make reasonable efforts when there has been a prior involuntary termination of parental rights does not violate the Minnesota Constitution. The statutory presumption of palpable unfitness in Minn. Stat. § 260C.301, subd. 1(b)(4), does not violate due process and equal protection rights.</p>	<p><i>In the Matter of the Children of A.V.</i>, 658 N.W.2d 249 (Minn. Ct. App. 2003)</p> <p><i>In the Matter of the Child of P.T. and A.T., Parents</i>, 657 N.W.2d 577 (Minn. Ct. App. 2003)</p>
3.48	<p>"RECORDS" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to the Records of the Judicial Branch. See "juvenile protection case records" defined in section 3.32.</p>	RJPP 2.01(s)
3.49	<p>"RELATIVE" means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.007, subd. 27 • RJPP 2.01(t)
3.50	<p>"REMOVED FROM HOME" means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility. See also "shelter care facility" (defined in section 3.53) which provides that foster care means a "physically unrestricting facility."</p>	RJPP 2.01(u)
3.51	<p>"RUNAWAY" means an unmarried child under the age of 18 years who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian.</p>	Minn. Stat. § 260C.007, subd. 28
3.52	<p>"SECURE DETENTION FACILITY" means a physically restricting facility, including but not limited to a jail, a hospital, a state institution, a residential treatment center, or a detention home used for the temporary care of a child pending court action.</p>	Minn. Stat. § 260C.007, subd. 29

	PROCEDURE	AUTHORITY
3.53	“SHELTER CARE FACILITY” means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minn. Stat. Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.	<ul style="list-style-type: none">• Minn. Stat. § 260C.007, subd. 30• RJPP 2.01(v)