

CHAPTER 11
TRIAL – CHIPS PROCEEDING
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11.01	<p>RECOMMENDED HEARING LENGTH The court shall set aside sufficient time to avoid interruption of the trial.</p> <p><i>Best Practice: The intent of this rule is for the court to set aside enough time in consecutive days so as to avoid having to hear evidence over several weeks or months.</i></p>	RJPP 39.02, subd. 1(e)
	TRIALS GENERALLY	
11.02	<p>PURPOSE OF TRIAL A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.</p>	RJPP 39.01
11.03	<p>TIMING OF TRIAL</p> <p>A. TIMING. A trial regarding a CHIPS matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the date of the admit/deny hearing, whichever is earlier.</p> <p>B. SIMULTANEOUS CRIMINAL PROCEEDINGS. If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.</p> <p><i>Comment: "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:</i></p> <ol style="list-style-type: none"> 1. <i>Conduct towards a child that constitutes a violation of Minn. Stat. § 609.185 to 609.21; 609.222, subd. 2; 609.223; or any other similar law of any other state;</i> 2. <i>The infliction of "substantial bodily harm" to a child, as defined in Minn. Stat. § 609.02, subd. 7a;</i> 3. <i>Conduct towards a child that constitutes felony malicious punishment of a child under Minn. Stat. § 609.377;</i> 4. <i>Conduct towards a child that constitutes felony unreasonable restraint of a child under Minn. Stat. § 609.255, subd. 3;</i> 	<p>RJPP 39.02, subd. 1(a)</p> <p>RJPP 39.02, subd. 1(d)</p> <p>Minn. Stat. § 260C.007, subd. 14</p>

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	<p>5. <i>Conduct towards a child that constitutes felony neglect or endangerment of a child under Minn. Stat. § 609.378;</i></p> <p>11.03 Timing of Trial (continued)</p> <p>6. <i>Conduct towards a child that constitutes assault under Minn. Stat. § 609.221, 609.222, or 609.223;</i></p> <p>7. <i>Conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under Minn. Stat. § 609.322;</i></p> <p>8. <i>Conduct towards a child that constitutes murder or voluntary manslaughter as defined by 18 U.S.C. § 1111(a) or 1112(a);</i></p> <p>9. <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</i></p> <p>10. <i>Conduct toward a child that constitutes criminal sexual conduct under Minn. Stat. § 609.342 to Minn. Stat. § 609.345.</i></p>	<p>Minn. Stat. § 260C.007, subd. 14</p>
11.04	<p>CONTINUANCE OR ADJOURNMENT OF TRIAL</p> <p>A. GENERALLY. The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date, so long as the permanency time requirements set forth in these rules are not delayed, upon written findings or oral findings made on the record that a continuance is necessary:</p> <ul style="list-style-type: none"> • for the protection of the child, • for accumulation or presentation of evidence or witnesses, • to protect the rights of a party, or • for other good cause shown. <p>B. CHILD IN NEED OF PROTECTION OR SERVICES (CHIPS) MATTERS. In CHIPS trial may not be continued or adjourned for more than one (1) week unless the court makes a specific finding that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.</p>	<ul style="list-style-type: none"> • RJPP 39.02, subd. 2(a) • RJPP 5.01, subd. 1 • Minn. Stat. § 260C.163, subd. 1(b) • RJPP 39.02, subd. 2(b) • RJPP 5.01, subd. 2 • Minn. Stat. § 260C.163, subd. 1(b)
11.05	<p>EFFECT OF MISTRIAL; NEW TRIAL</p> <p>Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.</p>	<p>RJPP 39.02, subd. 3</p>

	PROCEDURE	AUTHORITY
	NOTICE OF HEARING/TRIAL	
11.06	<p>TIMING OF SERVICE OF NOTICE OF HEARING/TRIAL A written notice of the date, time, and location of the next hearing, including a trial, shall be delivered at the close of the current hearing or mailed at least 5 days before the date of the next hearing or 10 days before the date of the next hearing if mailed to an address outside the state.</p>	RJPP 32.04
11.07	<p>PERSONS TO BE SERVED AND METHOD OF SERVICE FOR NOTICE OF HEARING/TRIAL The Notice of Hearing shall be served by the court administrator upon all attorneys, parties, and participants to the CHIPS proceeding, including:</p> <p>A. PARTIES WHO MUST RECEIVE NOTICE OF CHIPS TRIAL.</p> <ol style="list-style-type: none"> 1. The child's guardian ad litem; 2. The child's legal custodian; 3. The child's Indian custodian, if the child is an Indian child; 4. The child's Indian tribe, if the child is an Indian child; 5. The petitioner; 6. Any person who intervenes as a party pursuant to RJPP 23; 7. Any person who is joined as a party pursuant to RJPP 24; 8. The child, regardless of age, in any matter alleging a child to be a habitual <u>truant</u>, a <u>runaway</u>, or engaged in prostitution; 9. The child's school may be joined as a party in any matter alleging a child to be a habitual <u>truant</u>; and 10. 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>B. PARTICIPANTS WHO MUST RECEIVE NOTICE OF CHIPS TRIAL.</p> <ol style="list-style-type: none"> 1. The child, regardless of age; 2. Any parent who is not a legal custodian and any alleged, adjudicated, or presumed father; 3. The responsible social services agency, if it is not the 	<ul style="list-style-type: none"> • RJPP 21.02(a) (parties entitled to notice of hearings) • RJPP 21.01 (list of parties) <p>RJPP 21.01, subd. 2</p> <p>RJPP 21.01, subd. 2</p> <ul style="list-style-type: none"> • RJPP 22.02, subd. 1(a) (participants entitled to notice of hearings)

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	PROCEDURE	AUTHORITY
	<p>petitioner;</p> <ol style="list-style-type: none"> 4. Any guardian ad litem for the child’s legal custodian; 5. Grandparents with whom the child has lived within the two (2) years preceding the filing of the petition; 6. Relatives or other persons providing care for the child and other relatives who request notice; <p>11.07 Persons to be served and method of service for notice of hearing/trial (continued)</p> <ol style="list-style-type: none"> 7. Current foster parents and persons proposed as long-term foster care parents; 8. The spouse of the child, if any; and 9. Any other person who is deemed by the court to be important to a resolution that is in the best interests of the child. 	<ul style="list-style-type: none"> • RJPP 22.01 (list of participants) • RJPP 22.02, subd. 1(b) (participants entitled to notice of hearings) • RJPP 22.01 (list of participants)
11.08	<p>CONTENT OF NOTICE OF HEARING/TRIAL</p> <p>A notice shall contain or have attached:</p> <ol style="list-style-type: none"> a. a copy of the petition, if this is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition; b. the time and place of the hearing; c. the purpose of the hearing; d. an explanation of the right to representation pursuant to RJPP 25; e. an explanation of intervention as of right and permissive intervention pursuant to RJPP 23; f. a statement pursuant to RJPP 18.01 that failure to appear may result in: <ol style="list-style-type: none"> (1) the child being removed from home pursuant to a CHIPS petition; (2) the parent’s parental rights being permanently severed pursuant to a TPR petition; (3) permanent transfer of the child’s legal and physical custody to a relative; (4) a finding that the statutory grounds set forth in the petition have been proved; and (5) an order granting the relief requested; and g. a statement that it is the responsibility of the individual to notify the court administrator of any change of address. <p><i>Comment:</i> <i>The Notice of Subsequent Hearing form located on CourtNet complies with the above content requirements:</i> http://courtnet.courts.state.mn.us/courtnetforms/Default.aspx?category=43#category7</p>	RJPP 32.03, subd. 3

	PROCEDURE	AUTHORITY
11.09	<p>FAILURE TO APPEAR – DEFAULT</p> <p>A. FAILURE TO APPEAR. If a parent, legal custodian, or Indian custodian fails to appear for a trial after being properly and timely served with a notice of hearing/trial that complies with Rule 32.03, subd. 3 (see section 11.08 above) that person may be considered in default and the court may:</p> <ol style="list-style-type: none"> 1. Receive evidence in support of the petition; or 2. Reschedule the hearing/trial. <p>B. DEFAULT ORDER. If a parent, legal custodian, or Indian custodian is in default, and the petition is proved by the applicable standard of proof (see section 11.14 below), the court may enter the relief requested in the petition as to that person.</p>	<ul style="list-style-type: none"> • RJPP 18.01 • <i>In Re the Children of Deloris Coats</i>, 633 N.W.2d 505 (Minn. 2001) (default in termination of parental rights appropriate where parent fails to present a reasonable excuse for failure to personally appear at pretrial hearing) <p>RJPP 18.02</p>
	TRIAL – PROCEDURES	
11.10	<p>IDENTIFICATION OF FILE NAME AND NUMBER AND PERSONS PRESENT</p> <p>At the commencement of the trial, 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. 3. Determine whether it is in the child’s best interests to be present or to be excluded from the hearing. <p><i>Best Practice:</i> <i>In cases where the child’s behavior is the underlying cause of the petition, the child is a party and should be present.</i></p> <ol style="list-style-type: none"> 4. State that this is a Trial on a Child in Need of Protection or 	<p>Minn. Stat. § 260C.163, subd. 7 (presence of child may be waived)</p>

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	Services Petition and that the purpose of the hearing is to determine whether the statutory grounds and factual allegations set forth in the petition are or are not proven.	
11.11	<p>INITIAL PROCEDURES</p> <p>At the beginning of the trial the court shall on the record:</p> <ol style="list-style-type: none"> 1. Verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement; <p>11.11 Initial Trial Procedures (continued)</p> <ol style="list-style-type: none"> 2. Inquire whether the child is an Indian child and, if so, determine whether the child's Indian tribe has been timely notified of the CHIPS proceeding by registered mail, return receipt requested; <i>Best Practice: It is best practice for the agency to file with the court the return receipt so that the Court may verify that appropriate service has been made in compliance with ICWA.</i> 3. Determine whether all parties are present and identify those present for the record; 4. Determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to RJPP 25 (see Chapter 23); 5. Determine whether notice requirements have been met and, if not, whether the affected person waives notice; 6. If the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights; 7. Determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and 8. Explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minn. Stat. § 260C.201, subd. 11. 	<p>RJPP 39.03, subd. 1</p> <p>25 U.S.C. § 1912(a)</p> <p>RJPP 39.03, subd. 1</p>
11.12	<p>ORDER OF EVIDENCE</p> <p>The trial shall proceed as follows:</p> <ol style="list-style-type: none"> 1. Petitioner may make an opening statement confined to the facts expected to be proved; 2. The other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement 	RJPP 39.03, subd. 2(b)

	PROCEDURE	AUTHORITY
	<p>shall be confined to the facts expected to be proved;</p> <p>3. The petitioner shall offer evidence in support of the petition;</p> <p>4. The other parties, in order determined by the court, may offer evidence;</p> <p>5. The petitioner may offer evidence in rebuttal;</p> <p>6. The other parties, in order determined by the court, may offer evidence in rebuttal;</p> <p>7. When evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;</p> <p>11.12 Order of Evidence (continued)</p> <p>8. At the conclusion of the evidence, the parties, other than the petitioner, in order determined by the court, may make a closing statement; and</p> <p>9. The petitioner may make a closing statement.</p>	
11.13	<p>POST-TRIAL BRIEFS</p> <p>If written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.</p>	RJPP 39.03, subd. 2(b)(10)
11.14	<p>STANDARD OF PROOF</p> <p>A. GENERALLY. The statutory grounds set forth in the petition must be proved by clear and convincing evidence.</p> <p>B. INDIAN CHILD. In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670 (see Chapter 34), 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 39.04, subd. 1 • Minn. Stat. § 260C.163, subd. 1(a) • RJPP 39.04, subd. 2 • 25 U.S.C. § 1912(e)

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11.15	<p>DECISION</p> <p>A. TIMING – GENERALLY. The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed.</p> <p>B. EXTENSION IF POST-TRIAL BRIEFS. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony and the Court’s findings and order must be filed within fifteen (15) days of submission of the briefs.</p>	<p>RJPP 39.05, subd. 2</p> <ul style="list-style-type: none"> • RJPP 39.05, subd. 2 • RJPP 39.03, subd. 2(b)(10)
11.16	<p>FILING AND SERVICE OF ORDER</p> <p>A. ORAL ORDER REDUCED TO WRITTEN ORDER. Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing.</p> <p>11.16 Filing and Service of Order (continued)</p> <p>B. IMMEDIATE EFFECT OF ORAL ORDER. Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.</p> <p>C. DELIVERY; MAILING. Service of court orders shall be made by the court administrator and may be:</p> <ol style="list-style-type: none"> 1. Delivered at the close of the hearing; or 2. Mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. <p>If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. Filing and mailing of the order by the court administrator must be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.</p> <p><i>Best Practice: While the Rule provides that service shall be upon counsel for a party, if represented, the best practice is to also provide a copy directly to the party to ensure it is timely received and to allow the parent to more quickly begin work on the case plan. The best practice is to distribute the order at the close of the hearing.</i></p>	<p>RJPP 10.01</p> <p>RJPP 10.02</p> <p>RJPP 10.03</p> <p>RJPP 10.03</p>

	PROCEDURE	AUTHORITY
11.17	<p>NEXT HEARING</p> <p>A. PETITION PROVED. If the Court finds that the statutory grounds set forth in the petition have been proved, the Court shall schedule the matter for a disposition hearing (see Chapter 13).</p> <p>B. PETITION NOT PROVED. If the Court finds that the statutory grounds set forth in the petition have not been proved, the petition shall be dismissed.</p>	<p>RJPP 39.05, subd. 2</p> <p>RJPP 39.05, subd. 1</p>
11.18	<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:</p> <ol style="list-style-type: none"> 1. Delivered at the close of the current hearing (if written notice is delivered at the end of the hearing, later written notice is not required), 2. Mailed at least five (5) days before the date of the next hearing, or <p>11.18 Notice of Subsequent Hearing (continued)</p> <ol style="list-style-type: none"> 3. Mailed ten (10) days before the date of the hearing if mailed to an address outside the state. <p><i>Comment: The Notice of Subsequent Hearing form located on CourtNet complies with the above content requirements:</i> http://courtnet.courts.state.mn.us/courtnetforms/Default.aspx?category=43#categoryZ</p>	<p>RJPP 32.04</p>

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