

CHAPTER 12

ADJUDICATION

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12.01	<p>HEARING LENGTH TO BE ANTICIPATED FOR SCHEDULING PURPOSES</p> <p>The act of adjudicating a child as in need of protection or services usually is not a separate hearing but, instead, is generally combined with another hearing, such as the Admit/Deny Hearing if an admission is entered at that hearing or the Disposition Hearing following a trial. If disposition is ordered contemporaneously, allow thirty (30) minutes for the hearing.</p>	<ul style="list-style-type: none"> • Resource Guidelines, p. 62 • RJPP 35.03, subd. 7 • RJPP 41.01
12.02	<p>TIMING OF ADJUDICATION DECISION</p> <p>A. GENERALLY. The court may adjudicate the child as in need of protection or services following an admission by the appropriate parties under RJPP 35 or upon the conclusion of a trial where the court finds that the petitioner has met the burden of proof and the statutory grounds are proved by the applicable standard of proof.</p> <p>B. TIMING FOLLOWING TRIAL. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether the statutory grounds set forth in the petition have been proved by the applicable standard of proof and whether the child is or is not adjudicated as in need of protection or services. For good cause, this period may be extended for an additional fifteen (15) days. The trial is not to be considered completed until written arguments, if any, are submitted or the time for their submission has expired.</p>	<ul style="list-style-type: none"> • RJPP 40.01 • RJPP 35 (specifies who must enter an admission or denial) <p>RJPP 39.05</p>
12.03	<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.</p> <ol style="list-style-type: none"> 1. Foster Care Placement. 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, 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. 2. Termination of Parental Rights. In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 	<p>RJPP 39.04, subd. 1</p> <ul style="list-style-type: none"> • RJPP 39.04, subd. 2(a) • 25 U.S.C. § 1912(e) <ul style="list-style-type: none"> • RJPP 39.04, subd. 2(b) • 25 U.S.C. § 1912(e)

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	<p>12.03 Standard of Proof – Indian Child (TPR) (continued)</p> <p>9560.0670, 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. The standard of proof is based upon the child's ICWA status, so the standard of proof is beyond a reasonable doubt if one parent is not Native American. The focus is on the Indian child, not the parent(s).</p> <p><i>Comment: In In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. App. 1991), the court held that parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et. seq., requiring the county to make active efforts to prevent or avoid placement.</i></p>	<ul style="list-style-type: none"> • RJPP 39.04, subd. 2(b) • 25 U.S.C. § 1912(e) <p><i>In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. App. 1991) (beyond a reasonable doubt)</i></p>
12.04	<p>ADJUDICATION OR WITHHOLDING OF ADJUDICATION</p> <p>A. ADJUDICATION. If the court makes a finding that the statutory grounds as set forth in a petition alleging a child to be in need of protection or services are proved by the applicable standard of proof, the court shall make particularized findings and shall either:</p> <ol style="list-style-type: none"> 1. adjudicate the child as in need of protection or services and proceed to disposition (see Benchbook Chapter 13); or 2. withhold adjudication of the child. <p><i>Comment: Findings shall be particularized evidentiary facts that support the grounds proven by the applicable standard of proof. Pursuant to RJPP 3.02, subd. 3 the court may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.</i></p> <p>B. WITHHOLDING ADJUDICATION</p> <ol style="list-style-type: none"> 1. Generally. If the court finds that it is in the best interests of the child, the court may withhold adjudicating the child as in need of protection or services for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the period that adjudication is withheld, the court may enter a dispositional order setting conditions under which adjudication is withheld (see Benchbook Chapter 12). The child may be ordered into out-of-home placement despite a withholding of adjudication. 	<p>RJPP 40.01</p> <ul style="list-style-type: none"> • RJPP 40.02, subd. 1 • Minn. Stat. § 260C.201, subd. 12

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	<p>12.04 Adjudication or Withholding Adjudication (continued)</p> <p><i>Comment: Unlike delinquency matters, in CHIPS matters the court may only withhold adjudication for one 90-day period.</i></p> <p>2. Further Proceedings. At a hearing, which shall be held within ninety (90) days of the court's withholding of adjudication, the court shall either:</p> <p>(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or</p> <p>(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition (see Chapter 13).</p>	RJPP 40.02, subd. 2
12.05	<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, 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> <p>1. An investigation of the personal and family history and the environment of the child;</p> <p>2. Medical, psychological, psychiatric, or chemical dependency evaluations of the child and any parent who is a party; and</p> <p>3. Information regarding the best interest factors set forth in RJPP 41.05.</p> <p>B. ADVISORY. The court shall advise the persons present in court that:</p> <p>(a) a pre-disposition investigation is being ordered,</p> <p>(b) the nature of the evaluations to be included,</p> <p>(c) the date when the reports resulting from the investigation are to be filed with the court, and</p> <p>(d) the right of each party to present opposing evidence and reports.</p>	<p>RJPP 41.03, subd. 1</p> <p>RJPP 41.03, subd. 2</p>

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	<p>12.05 Predisposition Reports (continued)</p> <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. 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>E. DISCUSSION OF CONTENT OF REPORT - LIMITATION BY COURT. All records in the court file are presumed to be accessible to any party for inspection and copying, except for:</p> <ol style="list-style-type: none"> 1. Audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. 2. Portions of juvenile protection case records that identify reporters of abuse or neglect. 3. HIV test results, including any written motion and supporting data seeking HIV testing <p>F. LIMITATION ON DISCUSSION OF REPORTS. Despite the presumption of party access, upon a showing of good cause the court may limit the extent of the discussion about 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> <ol style="list-style-type: none"> 1. On the court's own motion; or 2. 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. 3(a)</p> <p>RJPP 41.03, subd. 4</p> <ul style="list-style-type: none"> • RJPP 41.03, subd. 5 • RJPP 8.04 (prohibits access by parties to certain records in court file) <p>Minn. Stat. § 611A.19, subd. 2 (data regarding results of HIV test shall not be maintained in any record of the court)</p> <ul style="list-style-type: none"> • RJPP 41.03, subd. 5 • RJPP 17.06 (regulates discovery)

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12.06	<p>NEXT STEPS: DISPOSITION</p> <p>A. GENERALLY. After an adjudication that a child is in need of protection or services, the court shall conduct a hearing to determine disposition (see Chapter 13).</p> <p>B. TIMING. To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order on the same day it makes a finding that the statutory grounds set forth in the petition have been proved. The disposition order must be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.</p> <p><i>Comment: Although the date by which the disposition will take place can not necessarily be predicted, there is a short time frame for submission of disposition reports under RJPP 41.03, and the disposition should be anticipated and a case plan developed. Thus, a pre-dispositional report and recommendation (presumably consistent with testimony) should be filed prior to, during, or immediately after the trial so as to allow for disposition within ten (10) days. While both of these events may be included in the Scheduling Order, it is difficult to anticipate the precise date that they will be accomplished.</i></p>	<p>RJPP 41.01</p> <p>RJPP 41.02</p> <p>RJPP 41.03</p>
12.07	<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