

CHAPTER 16

TRIAL – TPR OR OTHER PERMANENT PLACEMENT PROCEEDING

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	PROCEDURE	AUTHORITY
16.01	<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	
16.02	<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
16.03	<p>TIMING OF TRIAL</p> <p>A. TERMINATION OF PARENTAL RIGHTS MATTERS. Except as provided below in (C), a TPR trial shall commence within ninety (90) days from the date of the filing of the petition.</p> <p>B. OTHER PERMANENT PLACEMENT MATTERS – GENERALLY. A trial regarding a non-TPR permanent placement matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier.</p> <p>C. OTHER PERMANENT PLACEMENT MATTERS – CHILD UNDER AGE 8. In the case of a child under age eight (8) at the time the child in need of protection or services petition is filed, if the responsible social services agency demonstrates at the permanency progress review hearing that the parent is not complying with the case plan or out-of-home placement plan or is not maintaining regular contact with the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the permanency plan shall be filed in juvenile court within thirty (30) days of the permanency progress review hearing. A trial on the petition shall be held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days in the case of a petition for termination of parental rights.</p> <p>D. SIMULTANEOUS CRIMINAL PROCEEDINGS. If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm (see definition below), 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>RJPP 39.02, subd. 1(c)</p> <p>RJPP 39.02, subd. 1(b)</p> <p>RJPP 39.02, subd. 1(b)</p> <p>RJPP 39.02, subd. 1(d)</p>

	PROCEDURE	AUTHORITY
	<p>16.03 Timing of Trial (continued)</p> <p><i>Comment: "Egregious harm" means the infliction of bodily harm to 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> 5. <i>Conduct towards a child that constitutes felony neglect or endangerment of a child under Minn. Stat. § 609.378;</i> 6. <i>Conduct towards a child that constitutes assault under Minn. Stat. § 609.221, 609.222, or 609.223;</i> 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> 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> 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> 10. <i>Conduct toward a child that constitutes criminal sexual conduct under Minn. Stat. § 609.342 or Minn. Stat. § 609.345.</i> 	<p>Minn. Stat. § 260C.007, subd. 6(14)</p>
16-04	<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. 	<ul style="list-style-type: none"> • RJPP 39.02, subd. 2(a) • RJPP 5.01, subd. 1 • Minn. Stat. § 260C.163, subd. 1(b)

	PROCEDURE	AUTHORITY
	<p>16.04 Continuance or adjournment of trial (continued)</p> <p>B. TERMINATION OF PARENTAL RIGHTS (TPR) AND OTHER PERMANENT PLACEMENT DETERMINATION MATTERS. In a TPR or other permanent placement determination matter, a 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(b) • RJPP 5.01, subd. 2 • Minn. Stat. § 260C.163, subd. 1(b)
16.05	<p>EFFECT OF MISTRIAL; NEW TRIAL 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>	RJPP 39.02, subd. 3
	NOTICE OF HEARING/TRIAL	
16.06	<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
16.07	<p>PERSONS TO BE SERVED AND METHOD OF SERVICE FOR NOTICE OF HEARING/TRIAL The court administrator shall serve a written notice of the date, time, and location of the next hearing, including any trial, upon all attorneys and the parties and participants to the CHIPS proceeding, including:</p> <p>A. PARTIES WHO MUST RECEIVE NOTICE OF TPR OR OTHER PERMANENT PLACEMENT TRIAL. Parties to a TPR or Other Permanent Placement proceeding who must receive notice of trial 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; 3. The child's guardian ad litem; 4. The child's legal custodian; 5. The child's Indian custodian, if the child is an Indian child; 6. The child's Indian tribe, if the child is an Indian child; 7. The petitioner; 8. Any person who intervenes as a party pursuant to RJPP 23; 9. Any person who is joined as a party pursuant to Rule 24; 	<p>RJPP 32.03, subd. 2(b) (timing and manner of service)</p> <ul style="list-style-type: none"> • RJPP 21.02(a) (parties entitled to notice of hearings) • RJPP 21.01 (list of parties)

	PROCEDURE	AUTHORITY
	<p>16.07 Persons Entitled to Notice of Trial (continued)</p> <ol style="list-style-type: none"> 10. 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; 11. The child's school district may be joined in any matter alleging a child to be a habitual <u>truant</u>; and 12. 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 TRP OR OTHER PERMANENT PLACEMENT TRIAL. Participants to a TPR or Other Permanent Placement matter who must receive notice of any trial include:</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 when it is not the petitioner; 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; 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 21.02(a) (parties entitled to notice of hearings) • RJPP 21.01, subd. 3 (list of parties) • RJPP 22.02, subd. 1(b) (participants entitled to notice of hearings) • RJPP 22.01 (list of participants)
16.08	<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 child in need of protection or services petition; 	RJPP 32.03, subd. 3

	PROCEDURE	AUTHORITY
	<p>16.08 Content of Notice of Hearing/Trial (continued)</p> <p>(2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;</p> <p>(3) permanent transfer of the child's legal and physical custody to a relative;</p> <p>(4) a finding that the statutory grounds set forth in the petition have been proved; and</p> <p>(5) an order granting the relief requested; and</p> <p>g. a statement that it is the responsibility of the individual to notify the court administrator of any change of address.</p> <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
16.09	<p>DEFAULT</p> <p>A. FAILURE TO APPEAR. If a parent, legal custodian, or Indian custodian fails to personally appear for a trial after being properly and timely served with a notice of hearing/trial that complies with RJPP 32.03, subd. 3 (see section 16.08 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 court receives evidence such that the petition is proved by the applicable standard of proof (see section 16.14 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 Children of Deloris Coats</i>, 633 N.W.2d 505 (Minn. 2001) (default in TPR appropriate where parent fails to present a reasonable excuse for failure to personally appear at pretrial hearing) <p>RJPP 18.02</p>
	TRIAL – PROCEDURES	
16.10	<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. 	

	PROCEDURE	AUTHORITY
	<p>16.10 Identification of file name and number and persons present (continued)</p> <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> <p>4. State that this is a Trial on a Child in Need of Protection or 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.</p>	<p>Minn. Stat. § 260C.163, subd. 7 (presence of child may be waived)</p>
16.11	<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 CHIPS matter, unless stating the address would endanger the child or seriously risk disruption of the current placement; 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, and whether the return receipt is in the court file; 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>
16.12	<p>ORDER OF EVIDENCE</p> <p>The trial shall proceed as follows:</p> <ol style="list-style-type: none"> 1. The petitioner may make an opening statement confining the statement to the facts expected to be proved; 	<p>RJPP 39.03, subd. 2(b)</p>

	PROCEDURE	AUTHORITY
	<p>16.12 Order of evidence (continued)</p> <ol style="list-style-type: none"> 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 shall be confined to the facts expected to be proved; 3. The petitioner shall offer evidence in support of the petition; 4. The other parties, in order determined by the court, may offer evidence; 5. The petitioner may offer evidence in rebuttal; 6. The other parties, in order determined by the court, may offer evidence in rebuttal; 7. When evidence is presented, other parties may, in order determined by the court, cross-examine witnesses; 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 9. The petitioner may make a closing statement. 	
16.13	<p>POST-TRIAL BRIEFS 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)
16.14	<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 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 Rule 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.</p>	<ul style="list-style-type: none"> • RJPP 39.04, subd. 1 • Minn. Stat. § 260C.163, subd. 1(a) • RJPP 39.04, subd. 2(b) • 25 USC § 1912(f) • <i>In Re the Matter of M.S.S.</i>, 465 N.W.2d 412 (Minn. Ct. App. 1991), (beyond a reasonable doubt in ICWA matters)

	PROCEDURE	AUTHORITY
16.15	<p>DECISION – TIMING</p> <p>A. GENERALLY. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved and shall file the findings and order with the court administrator.</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. 3(a)</p> <ul style="list-style-type: none"> • RJPP 39.05, subd. 1 • RJPP 39.03, subd. 2(b)(10)
16.16	<p>DECISION – CONTENT</p> <p>A. TPR MATTERS</p> <p>1. Particularized Findings Regarding Reasonable or Active Efforts. The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof (see section 16.15) and one of the following:</p> <p>a. Reasonable Efforts and Remedial Services. In any TPR the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minn. Stat. § 260.012(a).</p> <p>b. Active Efforts – Indian Child. In any TPR involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt 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>2. Statutory Grounds Not Proved. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to RJPP 40 (adjudication) (see Chapter 12).</p>	<p>RJPP 39.05, subd. 3(b)</p> <p>RJPP 39.05, subd. 3(b)(1)</p> <p>RJPP 39.05, subd. 3(b)(2)</p> <p>RJPP 39.05, subd. 3(a)</p>

	PROCEDURE	AUTHORITY
	<p>16.16 Decision – Content (continued)</p> <p>3. Statutory Grounds Proved. If the court finds that the statutory grounds set forth in the petition are proved, the court may terminate parental rights. Upon entry of an order terminating parental rights, the court shall order the guardianship and legal and physical custody of the minor child transferred to:</p> <ol style="list-style-type: none"> a. the Commissioner of Human Services; b. a licensed child placing agency; or c. an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child. <p>B. OTHER PERMANENT PLACEMENT MATTERS. The court shall issue its decision regarding permanency consistent with RJPP 42 (see Chapter 15).</p>	<ul style="list-style-type: none"> • RJPP 39.05, subd. 3(a) • RJPP 43.02, subd. 1 <p>RJPP 39.05, subd. 4</p>
16.17	<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>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>Comment: 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>

	PROCEDURE	AUTHORITY
16.18	<p>NEXT HEARING</p> <p>A. TPR MATTERS – POST-TPR REVIEW HEARINGS. If the Court terminates parental rights, it shall schedule a review hearing at least every ninety (90) days for the purpose of reviewing progress toward adoption (see Chapter 17).</p> <p>B. LONG TERM FOSTER CARE MATTERS. If the Court orders the child placed in long term foster care, then at least every twelve (12) months the court shall conduct a permanency review hearing to determine the future status of the child using the review requirements of Minn. Stat. § 260C.201, subd. 11(g) (see Chapter 17). Such annual reviews shall continue for as long as the child remains in long term foster care. The Court shall retain jurisdiction through the child’s minority, unless the court extends jurisdiction to age nineteen (19) as permitted under Minn. Stat. § 260C.193, subd. 6, which provides that jurisdiction of the court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so. Court jurisdiction under Minn. Stat. § 260C.007, subd. 6(14) (<u>Truancy</u>) may not continue past the child's 18th birthday.</p> <p>C. TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY. If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The court may order further hearings at such intervals as it determines to be in the best interests of the child.* The court may maintain jurisdiction over the responsible social services agency, the parents or legal custodian of the child, the child, and the permanent legal and physical custodian to ensure that appropriate services are delivered to the child and permanent legal custodian or to ensure that conditions ordered by the court related to the care and custody of the child are met. When juvenile court jurisdiction is terminated, the court shall order the juvenile court administrator to file the order with the family court. Any further proceedings shall be brought in the family court pursuant to Minn. Stat. § 518.18.</p> <p><i>*Best Practice: The transfer of permanent legal and physical custody of the child to a relative may involve a period of transition – especially in cases where the child does not know the relative well or has not previously lived with the relative or the child has special needs. Under such circumstances, it is best practice to maintain jurisdiction and order review hearings for a period of up to ninety (90) days to ensure that the transition is going as planned and the needs of the child are being met.</i></p>	<p>RJPP 43.03, subd. 1</p> <p>RJPP 43.03, subd. 2(b)</p> <p>RJPP 43.03, subd. 2(c) (jurisdiction though minority)</p> <p>Minn. Stat. § 260C.193, subd. 6 (jurisdiction may be extended to age 19)</p> <p>RJPP 42.05, subd. 2(b)</p>

	PROCEDURE	AUTHORITY
16.19	<p>NOTICE OF SUBSEQUENT HEARINGS 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 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#category7</p>	RJPP 32.04