

CHAPTER 28
BYPASSING CHIPS AND REUNIFICATION EFFORTS

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	GENERAL PROCEDURE	AUTHORITY
28.01	<p>CASES WHERE REUNIFICATION EFFORTS ARE NOT REQUIRED</p> <p>Reunification efforts are not required in juvenile protection cases where:</p> <ol style="list-style-type: none"> 1. The parent has subjected a child to egregious harm as defined in Minn. Stat. § 260C.007, subd. 14; 2. The parental rights of the parent to another child have been terminated involuntarily; 3. The child is an abandoned infant as defined in Minn. Stat. § 260C.301, subd. 2(a)(2); 4. The parent's custodial rights to another child have been involuntarily transferred to a relative under Minn. Stat. § 260C.201, subd. 11(d)(1), or a similar law of another jurisdiction; or 5. A termination of parental rights petition or other petition according to Minn. Stat. § 260C.201, subd. 11(d)(2), has been filed alleging a prima facie case that the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances. <p><i>Comment: In 1996, the Minnesota Supreme Court recognized that there are some cases where reasonable efforts or further reasonable efforts to reunify the child with the parent are futile and, therefore, unreasonable.</i></p> <p><i>In 1997, when it passed the Adoption and Safe Families Act (ASFA), Congress incorporated into national child welfare policy the concept that there are some circumstances of abuse and neglect of children that are so serious that the child's safety cannot be adequately addressed through reunification efforts. Congress required states to define these circumstances and to include cases where:</i></p> <ol style="list-style-type: none"> 1. <i>The parental rights of the parent to a sibling of the child have been terminated involuntarily, and</i> 2. <i>The parent:</i> <ol style="list-style-type: none"> (a) <i>Committed murder of another child of the parent;</i> (b) <i>Committed voluntary manslaughter of another child of the parent;</i> (c) <i>Aided, abetted, attempted, conspired, or solicited such a murder or manslaughter; or</i> (d) <i>Committed felony assault resulting in serious bodily injury to the child or another child of the parent.</i> <p><i>Congress authorized states to add additional case types involving situations where the parent has subjected the child to</i></p>	<ul style="list-style-type: none"> • Minn. Stat. § 260.012 • RJPP 30.09, subd. 3 <p><i>In the Matter of the Welfare of S.Z., 547 N.W.2d 866 (Minn. 1996)</i></p>

	GENERAL PROCEDURE	AUTHORITY
	<p>28.01 Cases Where Reunification Efforts Are Not Required (continued)</p> <p><i>“aggravated circumstances,” leaving it to each state to define what “aggravated circumstances” means. See 42 U.S.C. § 671(a)(15)(D). Minnesota has implemented these federal requirements for the case categories above and through the list of crimes appearing in Minn. Stat. § 260.012(b)(3).</i></p>	
28.02	<p>MANDATORY TERMINATION OF PARENTAL RIGHTS</p> <p>A. TERMINATION OF PARENTAL RIGHTS REQUIRED. The county attorney is required to file a termination of parental rights petition when:</p> <ol style="list-style-type: none"> 1. A parent has subjected a child (either the child who is subject of the petition or a sibling) to egregious harm (see definitions in Chapter 3.20); 2. The parent has lost parental rights to another child through an order involuntarily terminating parental rights or an order involuntarily transferring permanent legal and physical custody; or 3. The child is an abandoned infant (see definition in Chapter 3.01). <p>B. TERMINATION OF PARENTAL RIGHTS NOT REQUIRED. The county attorney is not required to file a petition to terminate parental rights if the county attorney:</p> <ol style="list-style-type: none"> 1. Determines that transfer of permanent legal and physical custody of the child to a relative is in the child’s best interests and files such a petition to transfer custody; or 2. Files a petition alleging the child to be in need of protection or services accompanied by a case plan documenting the responsible social services agency’s determination of a compelling reason¹ why termination is not in the child’s best interests. 	<ul style="list-style-type: none"> • Minn. Stat. § 260C.301, subd. 3 • RJPP 33.01, subd. 3(c) <p>RJPP 33.01, subd. 3(c)</p>
28.03	<p>PROCEDURES IN BYPASSING REASONABLE EFFORTS</p> <p>The county attorney may address case circumstances in which reunification efforts may be bypassed or a termination of parental rights petition is mandated in one of several ways:</p> <ol style="list-style-type: none"> 1. By filing a termination of parental rights petition alleging one of the following: 	<ul style="list-style-type: none"> • Minn. Stat. § 260.012 • Minn. Stat. § 260C.301, subd. 3 • RJPP 33.01, subd. 3

¹ “Compelling reasons” means an individualized determinations 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. Minn. Stat. § 260C.007, subd. 8.

	GENERAL PROCEDURE	AUTHORITY
	<p>28.03 Procedures in Bypassing Reasonable Efforts (continued)</p> <ul style="list-style-type: none"> (a) Egregious harm under Minn. Stat. § 260C.301, subd. 1 (b)(6) (see definition in Chapter 3.20); (b) Palpable unfitness due to an involuntary termination of parental rights or involuntary transfer of legal custody order under Minn. Stat. § 260C.201, subd. 11, for another child of the parent – either of these events creates a presumption of palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4); (c) That the child is an abandoned infant (defined in Chapter 3.01); (d) That the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties of the parent-child relationship and reasonable efforts would be futile and therefore unreasonable under Minn. Stat. § 260C.301, subd. 1(b)(2); or (e) That the parent has been convicted of one of the crimes listed in Minn. Stat. § 260.012(b)(3); <p>(2) By filing a petition to transfer permanent legal and physical custody of the child to a relative based upon one of the circumstances listed above in paragraph 1; or</p> <p>(3) By filing a petition alleging the child to be in need of protection or services, but which alleges that there is a compelling reason, documented in an accompanying case plan, not to proceed to termination of parental rights.</p>	
28.04	<p>REQUIRED COURT ACTION</p> <p>A. PRIMA FACIE DETERMINATION. Upon notice and request of the county attorney, the court is required to determine whether the petition filed states a prima facie case that one of the circumstances enumerated in section 28.03 exists.</p> <p>B. PRIMA FACIE CASE FOUND. If the court determines that the petition states a prima facie case, the court shall:</p> <ul style="list-style-type: none"> 1. Enter a finding that reasonable efforts to prevent placement were not required; 2. Enter a finding that reasonable efforts for reunification are not required unless, after trial, the courts finds that the facts upon which it based its prima facie determination were not proven by clear and convincing evidence; 3. Sets the matter for trial within thirty (30) days if a petition to transfer permanent legal and physical custody to a relative has been filed; or 	<ul style="list-style-type: none"> • Minn. Stat. § 260.012 • Minn. Stat. § 260C.178, subd. 1(e) <p>RJPP 30.09, subd. 2</p> <p>Minn. Stat. § 260C.012(b)(3)</p>

GENERAL PROCEDURE	AUTHORITY
<p>28.04 Required Court Action (continued)</p> <p>4. Sets the matter for pre-trial and trial within ninety (90) days of the filing of the petition if a termination of parental rights petition has been filed.</p> <p><i>Comment: Minn. Stat. § 260.012(b)(3) provides that no reasonable efforts for reunification are required when the court makes the prima facie determination required under RJPP 28.04. RJPP 38.09 provides that the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under RJPP 30.09, subd. 3, exists. The “reasonable efforts” findings are a quid pro quo resulting from the prima facie determination. It is not necessary for the responsible social services agency to take any further action to secure judicial approval regarding not providing reunification efforts unless the petition is not proven after trial. If the petition is not admitted or proven, the agency must plan and deliver services for reunification.</i></p> <p>C. PRIMA FACIA CASE NOT FOUND. If the court determines that the petition does not state a prima facie case, the court:</p> <ol style="list-style-type: none"> 1. Determines whether reasonable efforts to prevent the placement were made, including that there are no services that could be provided to the child and family <i>at this time</i> that would safely permit the child to remain in the care of the parent; and 2. Sets the matter for the next scheduled hearing. <p><i>Comment: If the agency is not required to make reunification efforts pending the outcome of a trial, best practice dictates that the court strictly adhere to the timelines for trial set out in the RJPP. Specifically, RJPP 39.02, subd. 1(c), requires trial within ninety (90) days of the filing of a petition to terminate parental rights and RJPP 30.09, subd. 3, requires trial within thirty (30) days of the Emergency Protective Care (EPC) Hearing or other hearing at which the court made a prima facie determination regarding a transfer of permanent legal and physical custody petition. Implementation of this imperative permits an early decision on the substance of the petition, which either permits the child to be placed permanently away from the parent and avoids the pitfalls for the child that come with lingering in foster care or redirects the agency's efforts to reunification and maintaining and building the parent-child relationship.</i></p>	<p>RJPP 30.09, subds. 2, 3</p>

	GENERAL PROCEDURE	AUTHORITY
	<p>28.04 Required Court Action (continued)</p> <p><i>Comment: Minn. Stat. § 260.012 and § 260C.178 do not address the “active efforts” requirements of the Indian Child Welfare Act (ICWA) in the context of bypass cases. There is no Minnesota appellate law that resolves the intersection between the active efforts to prevent the breakup of the Indian family requirement of ICWA and the authorization by 42 U.S.C. § 671 to forego reunification efforts.</i></p>	
28.05	<p>PLANNING FOR THE PERMANENT PLACEMENT OF THE CHILD AWAY FROM THE PARENT</p> <p>Due to the serious nature of the allegations regarding the child’s circumstances, the agency’s obligation is to immediately identify, recruit, and place the child in a home that will commit to being the permanent family for the child in the event the petition is proven. The agency has several, sometimes competing, interests to balance in making the best placement for the child. These interests include:</p> <ol style="list-style-type: none"> 1. Keeping the number of moves a child experiences in foster care to a minimum; 2. Keeping siblings together; 3. Placing the child with relatives; 4. Ensuring that the placement meets the child’s individual needs and best interests; 5. Making a placement that will facilitate visitation with siblings who cannot be placed together; and 6. Making a placement that will facilitate visitation with parents, in the event it is safe for the parent to visit the child. <p><i>Comment: Planning for the permanent placement of the child away from the parent in cases mandating the filing of a petition to terminate parental rights or where reunification efforts are not required does not mean permanent placement away from the parent is a foregone conclusion. It is still the prerogative of the court to determine the adequacy of the evidence supporting the petition and to determine what is in the child’s best interests.</i></p>	<ul style="list-style-type: none"> • Minn. Stat. § 260.012(e) • Minn. Stat. § 260C.178 • Minn. Stat. § 260C.193, subd. 3 • Minn. Stat. § 260C.212, subds. 3 and 5