8th District CHIPS Specialization Workshop:
CHIPS Permanency Timeline and Strategies for Achieving Timely Permanency

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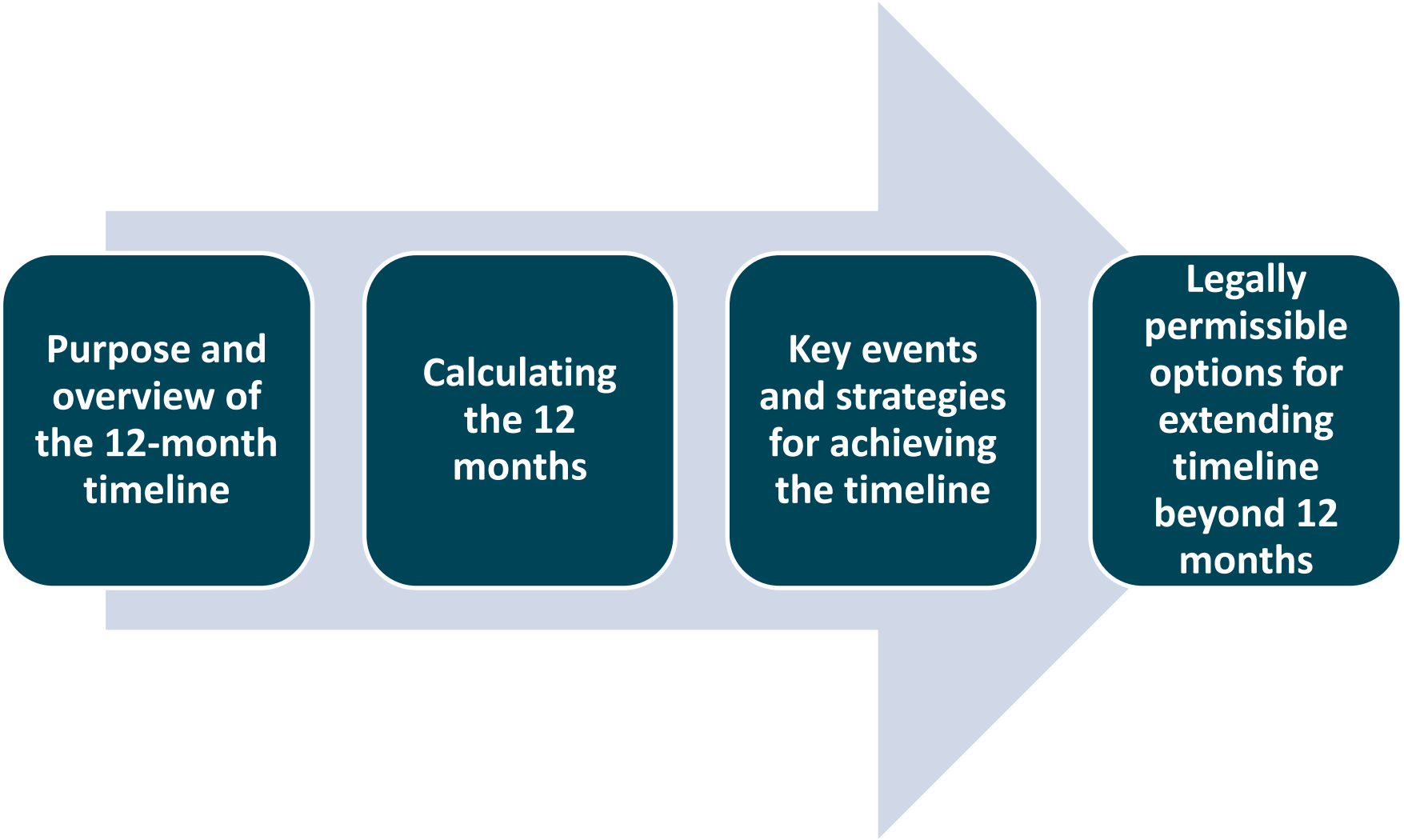
MINNESOTA
JUDICIAL BRANCH

To provide justice through a system that assures equal access for the fair and timely resolution of cases and controversies.

MJB Mission Statement

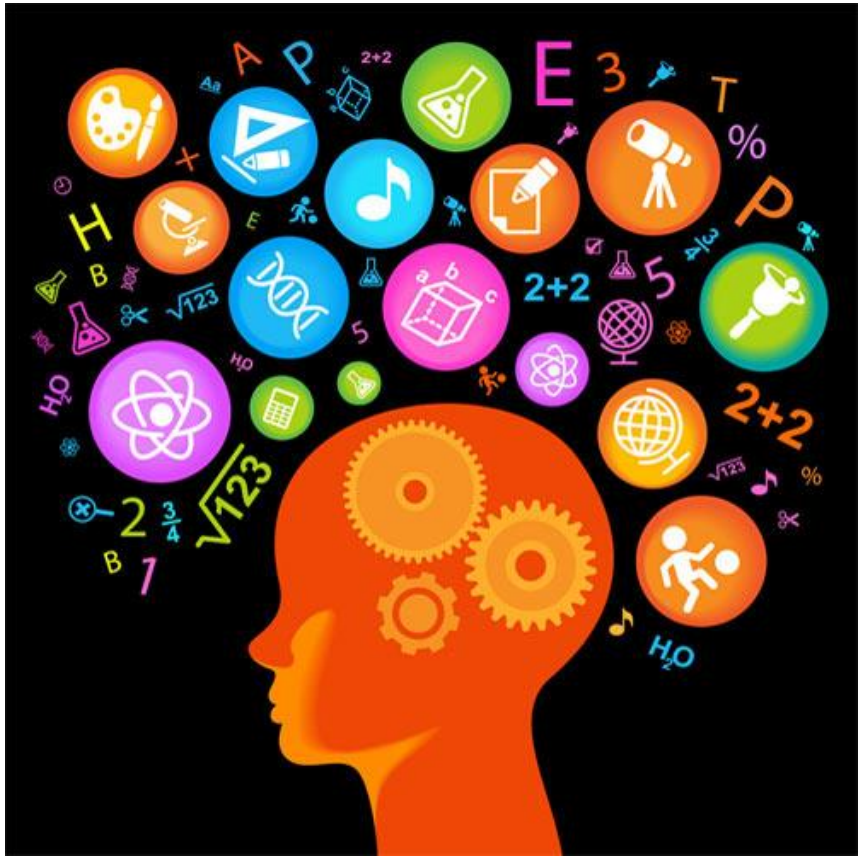
Overview


Purpose and overview of the 12-month timeline
Calculating the 12 months
Key events and strategies for achieving the timeline
Legally permissible options for extending timeline beyond 12 months

Section 1

Purpose of permanency timeline

It’s all about healthy child development

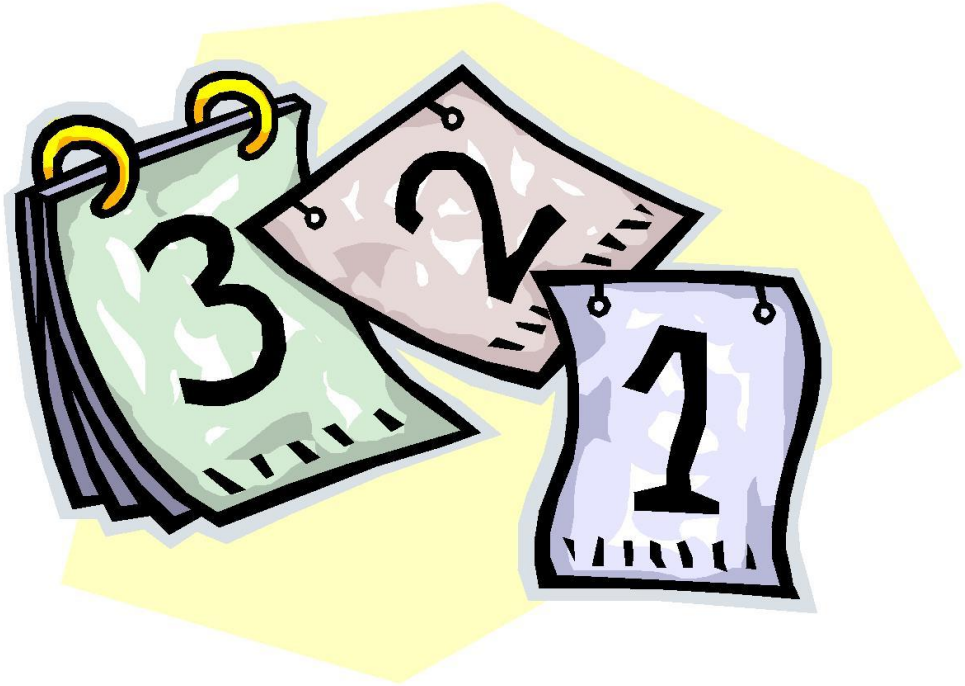


Healthy Child Development

- Healthy child development requires:
  - ✓ Safe, stable, permanent homes
- Lack of permanency increases the risk of trauma
- Trauma and ongoing instability can lead to:
  - ✓ Unhealthy development
  - ✓ Delinquent and criminal acts
- 1997 Adoption and Safe Families Act (ASFA)
  - ✓ Set 12-month permanency timeline to ensure courts did not allow children to linger in foster care one day more than necessary

Section 2

Calculating the 12-month timeline



Calculating the 12-Month Timeline

- 12-month timeline starts on date of child's placement, which is earlier of:
  - ✓ 60 days after date child placed in voluntary foster care
  - ✓ First court-ordered placement with non-resident parent or in foster care
    - Includes order for immediate custody (ex parte emergency protective care)

Calculating the 12-Month Timeline

- **What counts toward the 12 months:**
  - ✓ **Days in home of non-resident parent or foster care**
  - ✓ **Days in trial home visit**
  - ✓ **Days in protective supervision with non-resident parent**
  - ✓ **Days in court-ordered foster care or home of non-resident parent in last 5 years if prior petition(s)**
    - **Cumulative start counting where last day ended**

Section 3

Key Timeline Events and Strategies to Achieve Timely Permanency

PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT

(Timeline shows the latest date for each event)

CHIPS Proceeding

0	3	13	28	30	53	63	103	123	180	193	283	335*	365* (Permanency Proceeding Commenced)
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Child's Removal from Home

- Child can be removed by:
  - ✓ Law enforcement – 72 hour police hold
  - ✓ Court order based upon county's ex parte motion for immediate custody (emergency protective care)

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Scheduling Order

- Purpose: To ensure dates for key events along 12-month continuum are specified as a reminder to parent, judge, county attorney, and other stakeholders
- Timing:
  - ✓ Must be issued in every CHIPS case
  - ✓ Must be issued at or within 15 days of the admit/deny hearing on the CHIPS petition
  - ✓ Must be stated on record and put in writing
- Content: Must address dates or deadlines for pre-trial, trial, case plan, permanency progress review hearing, permanency petition, and admit/deny on perm petition

Scheduling Order

- **Format:**
  - ✓ **Maybe a stand-alone order or embedded in order from Admit/Deny Hearing** (see Scheduling Order template)

- **Best practice is to include the following dates in every order as a reminder to parents, county attorney, judge, and other stakeholders:**
  - ✓ **permanency progress review hearing,**
  - ✓ **permanency petition filing, and**
  - ✓ **permanency admit/deny hearing.**

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Out of Home Placement Plan

- Timing
  - ✓ Must be filed within 30 days of child's removal
  - ✓ If child not removed, protective services case plan must be filed along with petition

- Preparation
  - ✓ Prepared by the responsible social services agency:
    - Jointly with child's parents or legal guardian
    - In consultation with child's guardian ad litem, foster parent, and child's tribe if the child is an Indian child.
    - In consultation with child, where appropriate

Out of Home Placement Plan

Road map for the case

- Content "AND factor"
  - ✓ Description of problems or conditions in home of parent or parents necessitating removal of child
  - ✓ Services to be provided by agency to reunify family
  - ✓ Tasks parent must complete
    (AND)
  - ✓ Specific changes parent must make and sustain for specified timeframe for child to safely return home

Out of Home Placement Plan

Court Review

- Approve, modify, or reject OHPP
- Ask parent and attorney what additional services needed to be successful
- Court may order assessments without an adjudication
- Unless parent agrees to comply with terms of OHP plan, court may not order parent to comply with provisions of plan until court finds child is in need of protection or services and orders disposition

Reports to Court

- GAL and social worker reports must be filed and served at least 5 business days before hearing
- Discuss progress on case plan
- Discuss child's wellbeing
- Review status and needs at every hearing

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Permanency Progress Review Hearing

- No later than 6 months (180 days) after child's court ordered placement in foster care or home of nonresident parent

- Required for all children in foster care or home of nonresident parent, regardless of child's age
  - ✓ No longer just for children under age 8

Permanency Progress Review Hearing

- Court must review and make findings on whether:
  - ✓ Parent making adequate progress OHP
  - ✓ Parent maintaining regular contact
  - ✓ Child will benefit from ongoing relationship
  - ✓ Agency providing necessary services and reasonable or active efforts

- Determination
  - ✓ Proceed immediately to permanency
  - ✓ Continue for up to 6 additional months

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Permanency Petition Filed

Termination of Parental Rights Involuntary (TPR)

- Parent presumed to be palpably unfit to parent so new child will be immediately removed (Dept. of Health matching system)
- Called "CHIPS bypass" or "expedited permanency"
- Burden of proof switches and parent must rebut presumption of palpable unfitness and prove change of circumstances and capacity to parent

Termination of Parental Rights Voluntary (TPR)

- No expedited permanency for new born child – may proceed to CHIPS

Permanency Petition Filed

Transfer of permanent legal and physical custody to a relative (TPLPC)

- *Northstar – child eligible for financial benefits*
  - Relative must be licensed for 6 months
  - Child must live in home for 6 months
  - Order for TPLPC must be deferred pending finalization of Northstar eligibility requirements

Permanency custody to agency (PCA)

- Formerly long-term foster care
- Only for children age 16+ (and sibling groups)
- May be requested only by social worker

Temporary custody to agency for specified period of time (TCA)

- Based on child's behavior

PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT

(Timeline shows the latest date for each event)

CHIPS Proceeding

0	3	13	28	30	53	63	103	123	180	193	283	335*	365* (Permanency Proceeding Commenced)
Child Removed from home	Petition Served[1] & EPC Hearing[2] & attorneys appear	Admit Deny Hearing[4] (ADH)	Sched. Order Filed[5]	Out of Home Place. Plan Filed[6]	Pretrial Hearing[7]	Trial[8]	Disp. Rev. Hearing if Adj.& Disp.at ADH[9]	Adjud.[10] & Dispo.[11] Order	Perm. Progress Review Hearing[12]	Disp. Review Hearing[9]	Disp. Rev. Hearing[9]	Perm Petiti Filed	

GAL and SW reports must be filed and served at least 5 business days prior to each hearing[35]

➜If child not removed from home: Protective Services Case Plan must be filed with petition.[3]

***Out three exceptions**. The Admit/Deny Hearing (ADH) on the p manency petition may be continued beyond month 12 ONL if: (1) the child is on a trial home visit (THV) at the time e permanency petition is supposed to be filed, and then the A H may be continued for the remaining length of the THV THV may last no more than 6-months); or (2) the child is in otective supervision with the parent from whom the child as removed; or (3) at least one other CHIPS petition has been led within the last 5 years and the child has been in out-of-ho e placement for 365 days on those prior petition(s), then, the agency establishes a compelling reason, the court may ntinue the ADH on the permanency petition for up to 6 mont .[15]

Permanency Proceeding (in order of statutory preference[13])

Preferred permanency[13]: Adoption through either TPR or Consent to Adopt

	335	365	415	425	485	575
Termination of Parental Rights (TPR) (leading to adoption)	TPR Petitio Filed[14]	Admit/Deny Hearing[15]	Pretrial Hearing[16]	Trial Start[17]	Findings Decision Filed[18]	Post-TPR Review Hearing[19]
Guardianship to Commissioner of Human Services – Consent to Adopt (GLCHS)	Consen To adop Filed[20]				Findings Filed[21]	90-Day Review Hearing[22]
Transfer of Permanent Legal and Physical Custody to a Relative (TPLPC)	TLC Petitio Filed[23]	Admit/Deny Hearing[24]	Pretrial Hearing[25]	Trial Start[26]	Findings Decision Filed[27]	Post-TLC Review Hearing[28]
Permanent Custody to the Agency for Placement in Foster Care (PCA)	PCA Petitio Filed[29]	Admit/Deny Hearing[30]	Pretrial Hearing[31]	Trial Start[32]	Findings Decision Filed[33]	Annual Review Hearing[34]
Temporary Legal Custody to the Agency for Specified Period of Time (TLCSPT)	TLCSP Petition Filed[29]	Admit/Deny Hearing[30]	Pretrial Hearing[31]	Trial Start[32]	Findings Decision Filed[33]	Annual Review Hearing[34]

Judith Nord, Staff Attorney, State Court Administrator's Office, 651-282-3972

Children's Justice Initiative

Admit/Deny Hearing on Permanency Petition

- If not safe for child to return home, court must commence admit/deny hearing on permanency petition no later than 12 months after child is ordered into foster care or in the care of a nonresident parent
- If denial, trial must start by day 425, must be over consecutive days, and must end within 30 days at day 455 or sooner
- Trial must be over consecutive days
- Court has 15 days to issue order –may extend for up to 15 additional days

PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT

(Timeline shows the latest date for each event)

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***Only three exceptions.** The Admit/Deny Hearing (ADH) on the permanency petition may be continued beyond month 12 ONLY if: (1) the child is on a trial home visit (THV) at the time the permanency petition is supposed to be filed, and then the ADH may be continued for the remaining length of the THV (a THV may last no more than 6-months); or (2) the child is in protective supervision with the parent from whom the child was removed; or (3) at least one other CHIPS petition has been filed within the last 5 years and the child has been in out-of-home placement for 365 days on those prior petition(s), then, if the agency establishes a compelling reason, the court may continue the ADH on the permanency petition for up to 6 months.[13]

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Judith Nord, Staff Attorney, State Court Administrator's Office, 651-282-3972

Children's Justice Initiative

August 2017

Permanency Decision

- Timing
  - ✓ Order filed not later than day 485 – within 15 days of last witness (not closing arguments)
  - ✓ Final submissions ordered at last witness, 7 days to submit briefs and proposed findings, 8 days to draft order
  - ✓ May extend for up to 15 days if in interests of justice and best interests of child

Section 4

Legally permissible options for extending timeline

PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT

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PCA Petition Filed[29]	Admit/Deny Hearing[30]	Pretrial Hearing[31]	Trial Start[32]	Findings Decision Filed[33]	Annual Review Hearing[34]

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TLCSPT Petition Filed[29]	Admit/Deny Hearing[30]	Pretrial Hearing[31]	Trial Start[32]	Findings Decision Filed[33]	Annual Review Hearing[34]

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Children's Justice Initiative

Strategy 1: Trial Home Visit

- Can only be with parent from whom removed
- Can be for up to 6 months
- Cannot be ordered prior to adjudication
- May be ordered only when parent has made substantial progress on case plan, is demonstrating capacity to appropriately care for child, and child will be safe
- Parent has physical custody, but agency has legal custody and can remove child without court order if necessary

Strategy 1: Trial Home Visit

- 12-month clock doesn't stop, but extra time for parent to work on case plan
- If child on THV and findings made, court may postpone commencement of permanency proceedings for remainder of 6 months
- Permanency proceedings must commence or re-commence within 30 days if THV disrupts

Strategy 2. Protective Supervision

- Child returned to parent from whom child removed under protective supervision of agency
- Parent has legal and physical custody
- Best practice is to order PS only after 6 months of THV
- PS gives parents more time to correct conditions, allows court to continue monitoring parent progress, and helps to ensure child safety when permanently reunified
- No time limit
- Permanency clock stops
- Regular monitoring to allow parent to increase and demonstrate capacity to safely parent child
- Agency must seek order to remove child

Strategy 3. Prior CHIPS Petition Where Child in OHP 365+ Days

- Because child is already at 12 months, county required to bypass CHIPIS and proceed directly to permanency
- But, county could file motion to proceed to CHIPS if compelling reason
- If court agrees, can proceed to CHIPS for up to 6 months
- At end of 6 months, must either reunify only if safe or proceed to permanency
- Gives parent additional time to correct conditions and increase capacity to safely parent child

Required Findings

Minnesota Judicial Branch | Minnesota Department of Human Services
Children's Justice Initiative

Best Interests and Reasonable/Active Efforts Findings Required Under Title IV-E

Judy Nord[1], Staff Attorney judy.nord@courts.state.mn.us or 651-282-3972
September 2017

Event: Hearing or Order	Timing Requirement	Required Findings (Bolded language must be included in court orders)	Consequence of Failure to Comply with Timing Requirement
Requirements for first orders or first hearings for: • **Involuntary removal of child (law enforcement hold or order for immediate protective custody)** • **Children over age 18 re-entering foster care**			
Order removing child based upon county's ex parte request for immediate custody	**Very first** court order removing the child	**Continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare and out of home placement is in the best interests of the child.** *Minn. Stat. § 260C.151, subd. 6* **AND** **The child is in surroundings or conditions that endanger the child's health, safety, or welfare requiring responsibility for the child's care and custody to be immediately assumed by the responsible social services agency.** Juv. Prot. Rule 28.02, subd. 1.	• No eligibility for Title IV-E reimbursement for entire length of placement. • Order cannot be amended to add missing language. • A nunc pro tunc order cannot be used to correct the timing issue.
Emergency Protective Care (EPC) Hearing within 72 hours of child's removal	**Very first** court order removing the child **If first order occurred ex parte** (see above), review and repeat at EPC hearing and include in order from EPC hearing	**Continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare and out of home placement is in the best interests of the child.** *Minn. Stat. § 260C.178, subd. 1(f)* **AND ONE OF THE TWO FOLLOWING "REASONABLE EFFORTS" FINDINGS** **Reasonable efforts (or active efforts[2] if the child is an Indian child) were made by the social services agency to prevent placement of the child in foster care.** Note, this finding means either that: (1) the agency has made reasonable efforts to prevent placement of the child in foster care by working with the family to develop and implement a safety plan; or (2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available that could allow the child to safely remain in the home. *Minn. Stat. § 260C.178, subd. 1(e); Minn. Stat. § 260.012(d); Minn. Stat. § 260.762; 25 USC § 1912(d)*	• No eligibility for Title IV-E reimbursement for entire length of placement. • Order cannot be amended to add missing language. • A nunc pro tunc order cannot be used to correct the timing issue.

Section 5

Applying Your Knowledge

Applying Your Knowledge

- By what day must out of home placement plan be filed?
- By what day must the permanency progress review hearing be commenced?
- By what day must the county file the permanency petition?
- By what day must the court commence the admit/deny hearing on the permanency petition?

Applying Your Knowledge

- How long may a trial home visit last?
- What about protective supervision?
- In a trial home visit, who has legal custody? Physical custody?
- Under protective supervision, who has legal custody? Physical custody?
- True or False: If parent had a prior *voluntary* TPR, county not permitted to proceed directly to TPR for new born child?

Questions

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