

Best Interests and Reasonable/Active Efforts Findings Required Under Title IV-E Foster Care Eligibility and Minnesota Statutes

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Event: Hearing or Order	Timing Requirement	Required Findings (Bolded language must be included in court orders)	Consequence of Failure to Comply with Timing Requirement
<ul style="list-style-type: none"> Involuntary removal of child, including law enforcement holds or orders for immediate custody or emergency protective custody Children age 18+ re-entering foster care 			
Order removing child based upon county's ex parte request for immediate custody	First court order removing the child	<p>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</p> <p>AND</p> <p>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; Juv. Prot. Rule 28.02, subd. 1</p>	<ul style="list-style-type: none"> No eligibility for Title IV-E 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	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	<p>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)</p> <p>AND ONE OF THE TWO FOLLOWING "REASONABLE EFFORTS" FINDINGS</p> <p>Reasonable efforts (or active efforts² if the child is an Indian child) were made by the social services agency to prevent placement of the child in foster care.³ Note: The order must either list the specific efforts made by the agency or must reference the social worker report filed with the court that specifies in detail the efforts made. Minn. Stat. § 260C.178, subd. 1(e); Minn. Stat. § 260.012(d); Minn. Stat. § 260.762; 25 USC § 1912(d)</p> <p>OR</p> <p>Reasonable efforts to prevent placement and for rehabilitation and reunification are not required because the petition establishes a prima facie case for an expedited permanency proceeding under Minn. Stat. 260.012(a).⁴ Note: The order must either list the specific efforts made by the agency or must reference the social worker report filed with the court that specifies in detail the efforts made.</p>	<ul style="list-style-type: none"> No eligibility for Title IV-E 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

¹ With attribution to Ann Ahlstrom, former CJI staff attorney.

² Active efforts to prevent the breakup of the Indian family are required under the Indian Child Welfare Act (ICWA), [25 U.S.C. § 1912](#), [Minn. Stat. § 260.012\(c\)](#), and [§ 260C.178, subd. 1\(e\)](#), and [§ 260.762](#), among others, require the court to make determinations about the agency's active efforts consistent with the ICWA. For a definition of "active efforts," see the [Code of Federal Regulations, 25 CFR § 23.2 \(Dec. 2016\)](#).

³ Making 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.

⁴ This finding of "reasonable efforts not required" is appropriate in CHIPS "expedited permanency cases," also called "CHIPS bypass cases," identified under [Minn. Stat. § 260.012](#)⁴ where, consistent with [Minn. Stat. § 260C.503, subd. 2](#), the county bypasses CHIPS proceedings and proceeds directly to permanency (TPR) if the court determines the petition establishes a prima facie showing of the existence of one of the specified types of bypass cases. When a case is a bypass case and a permanency petition is filed, an admit/deny hearing must be held within 10 days of the filing of the petition. [Minn. Stat. § 260C.507\(b\)](#).

Event: Hearing or Order	Timing Requirement	Required Findings (Bolded language must be included in court orders)	Consequence of Failure to Comply with Timing Requirement
At a CHIPS IDH hearing if the child is in foster care and the time for filing the permanency petition is being extended	Not later than 12 months after court-ordered removal. ⁵	The agency has made reasonable efforts, or active efforts in the case of an Indian child, to finalize the permanent plan for the child.	<ul style="list-style-type: none"> • Eligibility for Title IV-E will cease if the Admit/Deny hearing is not timely held and the findings not timely made • Eligibility may be re-established once the court holds the hearing and makes the findings
<ul style="list-style-type: none"> • Voluntary foster care placement under Minn. Stat. Chapter 260C – placement not due to child’s disability • Voluntary foster care for treatment under Minn. Stat. Chapter 260D – placement due solely to child’s disability 			
Review of placement of child in voluntary placement under Minn. Stat. Chapter 260C (child not placed due to disability)	First hearing on petition – hearing must be within 20 days of service of the petition for review of voluntary placement ⁶	<p>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. The child’s needs are being met. Minn. Stat. § 260C.141, subd. 2(b)</p> <p>AND</p> <p>Reasonable efforts to reunify the child and the parent or legal custodian are being made and the child will be returned home within three months of this order. Minn. Stat. § 260C.141, subd. 2</p>	<ul style="list-style-type: none"> • No eligibility for Title IV-E 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
Review of placement of child in voluntary foster care for treatment under Minn. Stat. Chapter 260D (child placed due to disability)	In order issued within 175 days of the agreement for voluntary foster care for treatment ⁷	<p>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. The child’s needs are being met. Juv. Prot. Rule 43.03; Minn. Stat. 260D.06, subd. 2(e);</p> <p>AND</p> <p>Reasonable efforts to reunify the child and the parent or legal custodian are being made and the child will be returned home within three months of this order.</p>	<ul style="list-style-type: none"> • No eligibility for Title IV-E 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

⁵ [Minn. Stat. § 260C.505\(a\)](#) requires a permanency petition to be filed within 11 months of the child’s removal from home, and [Minn. Stat. 260C.507\(a\)](#) requires an admit/deny hearing on the petition to be commenced no later than 12 months after the child is ordered placed out of the home. The findings must be made at the time of the Admit/Deny Hearing and in the order resulting from the Admit/Deny Hearing.

⁶ When a child has been in foster care for reasons other than disability and is not returned home within 90 days of the voluntary placement agreement, the county must file a petition asking the court to continue voluntary foster care for up to an additional 90 days or file a CHIPS petition, TPR petition, or permanency petition. [Minn. Stat. § 260C.141, subd. 2\(a\); Minn. Stat. 260C.227.](#) A hearing on the petition must be commenced within 20 days of service of the petition. The best interests and reasonable/active efforts findings must be made during the hearing. [Juv. Prot. Rule 44.02, subds. 3 and 4.](#) If child not returned home by day 180, the county must file a CHIPS petition, TPR petition, or permanency petition.

⁷ Within 165 days of the date of the agreement for voluntary foster care for treatment, the agency shall file with the court and serve upon the parties a written report regarding the reason for and status of the child’s voluntary placement and attaching an out of home placement plan. Within 10 days of receipt of the report (i.e., by day 175), the court must issue an order with the required findings. [Minn. Stat. 260D.06, subd. 2\(e\).](#) [Juv. Prot. Rule 44.03, subds. 1 and 2.](#)

Event: Hearing or Order	Timing Requirement	Required Findings (Bolded language must be included in court orders)	Consequence of Failure to Comply with Timing Requirement
Permanency proceedings, including termination of parental rights, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary custody to the agency			
Admit/Deny Hearing on TPR or Permanency Petition⁶ or at a CHIPS IDH hearing if the child is in foster care and the time for filing the permanency petition is being extended	Not later than 12 months after court-ordered removal. ⁸ ----- For permanency cases resulting from a CHIPS bypass, finding must be made at EPC and reviewed and repeated in permanency Admit/Deny order.	The petition states a prima facie basis that the agency has made reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian and to finalize the permanent plan for the child Minn. Stat. § 260C.507(c) ----- Reasonable efforts to prevent placement and for rehabilitation and reunification are not required because the petition establishes a prima facie case for an expedited permanency proceeding under Minn. Stat. 260.012(a). ⁹ Minn. Stat. § 260C.507(c); Minn. Stat. § 260.012(a) (CHIPS bypass or expedited permanency proceedings).	<ul style="list-style-type: none"> • Eligibility for Title IV-E will cease if the Admit/Deny hearing is not timely held and the findings not timely made • Eligibility may be re-established once the court holds the hearing and makes the findings
Trial on TPR or Hearing on any Permanency Petition	By month 14 for most trials	Reasonable efforts were made to reunify the child and the parent and to finalize the permanent plan for the child. Minn. Stat. § 260C.301, subd. 8 OR for ICWA cases: Active efforts were made to prevent the breakup of the Indian family. 25 U.S.C. §1912(d)	
Hearing or Trial on “Expedited TPR” or “CHIPS Bypass” Permanency Petition	For permanency cases resulting from a CHIPS bypass, finding must be made within 60 days of filing of petition	Reasonable efforts to prevent placement and for rehabilitation and reunification are not required because the petition establishes a prima facie case for an expedited permanency proceeding under Minn. Stat. 260.012(a) Minn. Stat. § 260C.507(c); Minn. Stat. § 260.012(a); Minn. Stat. § 260C.301, subd. 8 OR for ICWA cases: Active efforts were made to prevent the breakup of the Indian family. Note: the order must either list the specific efforts made by the agency or must reference the social worker report filed with the court that specifies in detail the efforts made. 25 U.S.C. §1912(d)	

⁸ [Minn. Stat. § 260C.505\(a\)](#) requires a permanency petition to be filed within 11 months of the child’s removal from home, and [Minn. Stat. 260C.507\(a\)](#) requires an admit/deny hearing on the petition to be commenced no later than 12 months after the child is ordered placed out of the home. The findings must be made at the time of the Admit/Deny Hearing and in the order resulting from the Admit/Deny Hearing.

⁹ This finding of “reasonable efforts not required” is appropriate in CHIPS “expedited permanency cases,” also called “CHIPS bypass cases,” identified under [Minn. Stat. § 260.012](#)⁹ where, consistent with [Minn. Stat. § 260C.503, subd. 2](#), the county bypasses CHIPS proceedings and proceeds directly to permanency if the court determines the petition states a prima facie case for one of the specified types of bypass cases. When a case is a bypass case and a permanency petition is filed, an admit/deny hearing must be held within 10 days of the filing of the petition. [Minn. Stat. § 260C.507\(b\)](#)

Event: Hearing or Order	Timing Requirement	Required Findings (Bolded language must be included in court orders)	Consequence of Failure to Comply with Timing Requirement
Additional Findings for Disposition of Permanent Custody to Agency	Not later than 12 months after court-ordered removal	<p>The agency has established compelling reasons for the child to continue in foster care. No other permanency disposition is in the best interests of the child.</p> <p>AND</p> <p>The responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or relative who would agree to adopt the child or to a transfer of permanent legal and physical custody of the child, but these efforts have not proven successful.</p> <p><u>Minn. Stat. § 260C.515, subd. 5</u></p>	
Periodic reviews after child comes under guardianship of commissioner, is in the permanent custody of the agency, or is in foster care after age 18			
Reviews of Child Under State Guardianship (adoption)	Hearings to review the status of progress toward adoption are required at least every 90 days following a TPR	<p>The agency is making reasonable efforts to finalize the adoption of the child.</p> <p><u>Minn. Stat. § 260C.607, subd. 4(a)(1); Minn. Stat. 260C.605, subd. 1</u></p>	<ul style="list-style-type: none"> • Eligibility for Title IV-E will cease if the hearing is not timely held and the findings not timely made • Eligibility may be re-established once the court holds the hearing and makes the findings
Reviews of Permanent Custody to the Agency	At least annually and permanency order issued	<p>The agency is making reasonable efforts to finalize the permanent plan for the child.</p> <p>This means:</p> <p>(1) the agency has made reasonable efforts to identify a more legally permanent home for the child than is provided by an order for permanent custody to the agency for placement in foster care; and</p> <p>(2) the agency's engagement of the child in planning for independent living is reasonable and appropriate.</p> <p><u>Minn. Stat. § 260C.521, subd. 1(b) and (c); Minn. Stat. § 260C.203;</u></p>	<ul style="list-style-type: none"> • Eligibility for Title IV-E will cease if the annual review hearing is not timely held and the findings not timely made • Eligibility may be re-established once the court holds the hearing and makes the findings
Reviews of children in voluntary foster care after the child's 18 th birthday	At least annually; foster care may be supervised independent living once the child is 18	<p>The agency is making reasonable efforts to finalize the permanency plan by supporting the youth's continued success in placement, planning for independent living as demonstrated by the youth's progress in achieving independent living goals, and preparing the child for independence.</p> <p><u>Minn. Stat. § 260C.451, subd. 9; Children's Bureau Program Instruction, PI-10-11</u></p> <p>See also, definition of "child" at <u>Minn. Stat. § 260C.007, subd. 4</u></p>	<ul style="list-style-type: none"> • Eligibility for Title IV-E will cease if the annual review hearing is not timely held and the findings not timely made • Eligibility may be re-established once the court holds the hearing and makes the findings