

Reducing Trauma to Children by Ensuring Involvement of Fathers
(Paternity and Juvenile Protection Cases)
October 2013

- I. **Reasonable and Diligent Efforts**
- A. **Agency must make diligent efforts to identify and locate both parents.** [Minn. Stat. § 260C.150, subd. 3.](#)
1. Asking custodial parent to identify nonresident parent of child
 - a. Provide information to verify identity including dates and locations of marriages and divorces
 - b. Dates and locations of paternity proceedings
 - c. Date and place of child's birth
 - d. Full legal name
 - e. Date of birth or approximate age
 - f. Social Security number
 - g. Whereabouts, or last known whereabouts
 - h. Whereabouts of relatives
 2. Obtain information to identify and locate nonresident parent from child support system [IV-D agency, Prism]
 3. Request search of Minnesota Fathers' Adoption Registry
- B. Reasonable efforts to identify, locate and where appropriate, offer services to both parents. [Minn. Stat. § 260C.212, subd. 4](#)
1. Assess whether noncustodial parent is willing and capable of providing day-to-day care for the child.
 2. Consider putative father for day-to-day care only if there is positive genetic test
 3. Seek authority from custodial parent or court to have noncustodial parent assume day-to-day care of child if willing and capable after assessment.
 4. Require paternity establishment as part of case plan.
 5. Prepare an out-of-home placement plan addressing the conditions that each parent must meet before the child can be in that parent's day-to-day care if child cannot be placed in care of either after assessment.
 6. If both parents not identified and located, include in report to court a description of diligent efforts to locate any parent whose identity or whereabouts remains unknown no later than first review hearing. [Minn. Stat. § 260C.150, subd. 6.](#)
- C. Reasonable efforts to finalize a permanent plan includes: [Minn. Stat. § 260C.219.](#)
1. Assess noncustodial parent's ability and willingness to provide day-to-day care for the child.
 2. Where appropriate, provide services necessary to enable noncustodial parent to safely provide care.

- D. Assessment may include background study under [Minn. Stat. § 260C.209](#).
 - 1. If there is reasonable cause to believe the noncustodial parent or household member over age 13 has a criminal history or history of maltreatment of child or vulnerable adult.
 - 2. Results may not be used to determine parent incapable of providing day-to-day care unless agency reasonably believes placement of child in the home would endanger child's health, safety or welfare.
 - 3. Parent must be provided 15 days' notice that it intends to use the study to recommend against putting child with that parent and court shall afford parent an opportunity to be heard concerning the study.

- E. Agency's relative search must include both maternal relatives and paternal relatives of child. [Minn. Stat. § 260C.221\(a\)](#).

- II. Juvenile Protection Proceedings.
 - A. Definitions of Fathers. [Minn.R.Juv.Prot. 2](#).
 - 1. Adjudicated father: individual determined by a court or pursuant to a Recognition of Parentage to be the biological father of the child
 - 2. Alleged father: individual claimed by a party or participant to be the biological father of a child.
 - 3. Presumed father: individual presumed to be the biological father of a child under [Minn.Stat. § 257.55, subd. 1](#).
 - 4. Legal custodian: person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.
 - 5. Parent: birth, legally adjudicated, or adoptive parent of a child. For Indian child, parent also includes any Indian person who has legally adopted the child by tribal law or custom, but not including an unmarried father whose paternity has not been acknowledged or established.

 - B. Definitions of Parent: [Minn. Stat. § 260C.007, subd. 25](#).
 - 1. Legal parent and child relationship that confers legal rights, privileges, duties and obligations consistent with Parentage Act or Recognition of Parentage.
 - a. Presumption of paternity under [Minn. Stat. § 257.55, subd. 1\(a\)\(b\)or\(c\)](#), and no action to declare nonexistence of father and child relationship [based on marriage].
 - b. Presumption of paternity under [Minn. Stat. § 257.55, subd. 1\(d\)](#), and court ordered adjudication or ROP [lived with and held out as father].
 - c. Presumption of paternity under [Minn. Stat. § 257.55, subd. 1\(e\)\(f\)\(g\)or\(h\)](#), and court ordered adjudication of paternity [competing presumptions].

- d. No presumption of paternity under [Minn. Stat. § 257.55](#) but court ordered adjudication of paternity or ROP.
 - e. Positive genetic test and father and court ordered adjudication or ROP.
 - f. Biological parent of Indian child, or any Indian person who has lawfully adopted child by tribal law or custom, but does not include unmarried father whose paternity has not been acknowledge or established per [Minn. Stat. § 260.755, subd. 14.](#)
- C. CHIPS Proceedings.
- 1. Per Rules of Juvenile Protection Procedure:
 - a. Legal custodians are parties. [Minn.R.Juv. Prot. 21.01](#)
 - b. For Indian child, parents as defined in [Rule 2.01\(16\)](#) are parties.
 - c. Any other parent is participant; includes alleged, adjudicated or presumed father. [Minn.R.Juv.Prot. 22.01](#)
 - 2. Per [Minn. Stat. § 260C.151](#):
 - a. Parents, guardians and legal custodians, as defined by [Minn. Stat. § 260C.007](#), are served with summons/petition.
 - b. Putative fathers, including presumed fathers and fathers who timely registered with Fathers' Adoption Registry are to receive Notice of the proceeding.
- D. TPR and Permanency Proceedings. [Minn.R.Juv.Prot. 21.01, subd. 3](#)
- 1. Per [Minn.R.Juv.Prot. 21.01, subd. 3](#):
 - a. Noncustodial parent, adjudicated or presumed fathers are parties.
 - b. Any person entitled to notice of adoption proceeding is party.
 - c. Alleged fathers are participants.
 - 2. Per [Minn.Stat. § 260C.151, subd. 2a](#):
 - a. Summons/petition served on parents of child, as defined by [Minn. Stat. § 260C.007](#).
 - b. Putative father who timely registered with Fathers' Adoption Registry or who is otherwise entitled to notice of adoption proceeding to receive Notice of proceedings.
 - c. No notice required to putative father who did not register or who is not otherwise entitled to notice of adoption proceeding unless presumed as father under [Minn. Stat. § 257.55](#).
- E. Right to participate in proceedings. [Minn. Stat. § 260C.163, subd. 2.](#)
- 1. Parent with legally recognized parent and child relationship must be provided right to be heard, including issues of:
 - a. Disposition
 - b. Parental visitation
 - c. Out-of-home placement plan

2. Right to be heard does not confer party status, which is governed by Rules of Juvenile Protection Procedure.
 3. Court shall appoint counsel for parent, as defined by [Minn. Stat. § 260C.007](#), who desires counsel but who is unable to employ it if such appointment is appropriate.
 4. Father with positive genetic test to be treated as if presumed father
 - a. Right to notice of proceedings.
 - b. Right to be assessed and considered for day-to-day care.
 - c. Duty to cooperate with paternity establishment proceedings.
- F. Parent-child relationship may be established in Juvenile Protection proceeding under requirements of Parentage Act [[Chapter 257](#)] and Rules of Juvenile Protection Procedure. [Minn. Stat. § 260C.150](#).
1. Agency may petition on behalf of noncustodial parent to establish permanent custody under [Minn. Stat. § 260C.515, subd. 4](#).
 2. If paternity has not already been established it may be established in same proceeding in same manner as under [Chapter 257](#).

III. Court Responsibilities

- A. Inquire at first hearing whether identities and whereabouts of both parents known and correctly reflected in the petition. [Minn. Stat. § 260C.150, subd. 4](#).
 1. If not known, make inquiry on record of any party/participant present regarding identity and whereabouts of unknown parent.
 2. Make similar inquiry at subsequent hearings if information still lacking.
- B. At request of county attorney, have known parent sworn for purpose of answering questions on identity and/or whereabouts of child's other parent. [Minn. Stat. § 260C.150, subd. 5](#).
 1. Make protective orders if disclosure of information would cause either custodial parent or child or other family member to be endangered.
 2. Waive notice to noncustodial parent if notice would endanger custodial parent, child or family member.
- C. No later than first hearing under the Rules of Juvenile Protection Procedure make findings on whether: [Minn. Stat. § 260C.150, subd. 6](#).
 1. Agency made diligent efforts to identify both parents
 2. Both parents have been located
 3. Both parents served under the Rules.
- D. If agency has not made diligent efforts, or both parents not served as required by Rules, order agency to take further steps to identify and locate both parents and what specific efforts appropriate.

- E. If agency has made diligent efforts to identify and locate both parents and identify and/or whereabouts remains unknown, make findings on reasonable efforts. [Minn. Stat. § 260C.150, subd. 7.](#)
 - 1. May also find that further reasonable efforts for reunification with that parent would be futile.
 - 2. May relieve agency of requirement to locate and offer services to both parents upon finding of good cause. [Minn. Stat. § 260C.212, subd. 4\(a\)\(4\).](#)

- IV. Custody, Visitation and Parenting Time
 - A. Joint legal and physical custody if married and not divorced, unless a court order establishes otherwise; e.g.,
 - 1. Order for temporary relief in marriage dissolution proceeding.
 - 2. Order for protection in domestic abuse proceeding

 - B. Mother is sole legal and physical custodian of child if not married to the father until court order establishes otherwise. [Minn. Stat. § 257.541](#)
 - 1. Agency has authority to set up visitation between child and father only with permission of mother or court.

 - C. Court adjudication of paternity must contain provisions for custody and parenting time [formerly visitation]. [Minn. Stat. § 257.66, subd. 3](#)

 - D. Definitions. [Minn. Stat. § 518.003](#)
 - 1. Legal custody: the right to determine the child's upbringing, including education, health care and religious training.
 - 2. Physical custody: routine daily care and control and residence of the child.
 - 3. Joint legal custody: both parents have the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training.
 - 4. Joint physical custody: routine daily care and control and residence of the child are structured between the parents.
 - 5. Parenting time: the time a parent spends with a child regardless of the custodial designation regarding the child; formerly known as "visitation".

 - E. Father can be awarded custody or parenting time only after court ordered adjudication of paternity or ROP.