

ENGAGING FATHERS IN CHIPS PROCEEDINGS

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Identifying and Locating Fathers

Minn. Stat. §260C.150

- ▶ Agency must make diligent efforts to locate
 - ▶ Asking known parent for information
 - ▶ Using child support enforcement information system
 - ▶ Search of the father's adoption registry
 - ▶ Any other reasonable means to identify and locate

Identifying and Locating Fathers

Minn. Stat. §260C.150

▶ Court Review

- ▶ Agency must describe its diligent efforts in the Court Report
- ▶ Court must inquire regarding whereabouts of absent father
- ▶ County Attorney can take sworn testimony from mother/legal custodian
- ▶ Court must make finding on reasonable efforts to identify and locate

Determining Father's Status: Custodial vs. Non-custodial

- ▶ Joint legal and physical custody if married
- ▶ Mother is sole custodian under Minn. Stat. §257.541 if:
 - ▶ Not married to father when child was conceived
 - ▶ Not married to father when child was born
 - ▶ Father has not established any form of custody through family court

Determining Father's Status: Adjudicated, Presumed, or Alleged

- ▶ Adjudicated
 - ▶ By court
 - ▶ Through Recognition of Parentage under Minn. Stat. §257.75

Determining father's status: Adjudicated, Presumed, or Alleged

- ▶ Presumed pursuant to Minn. Stat. §257.62 if positive genetic test
- ▶ Presumed pursuant to Minn. Stat. §257.55, if:
 - ▶ Married to mother when child born
 - ▶ Child born within 280 days of divorce, separation or death
 - ▶ Marries mother after child is born and (1) acknowledged paternity in writing; (2) is named on birth certificate; or (3) obligated to pay child support
 - ▶ Lived with and held child out as his
 - ▶ Declaration of parentage before 8/1/1995
 - ▶ ROP, but: (1) another presumed father; (2) more than one ROP; or (3) minor parent

Determining father's status: Adjudicated, Presumed, or Alleged

- ▶ Alleged father if:
 - ▶ Claimed by party or participant to be father
 - ▶ Child born prior to 1/1/1998
 - ▶ Filed an affidavit of intent to retain parental rights within 90 days of child's birth
 - ▶ Child born on or after 1/1/1998
 - ▶ Registered with father's adoption registry within 30 days of child's birth

Determining Father's Status: Parent Pursuant to Minn. Stat. §260C.007, Subd. 25

- ▶ Legally recognized parent-child relationship if:
 - ▶ Presumed father based on marriage & no action to declare nonexistence
 - ▶ Presumed father because lived with & held out as father & court adjudication or ROP
 - ▶ Competing presumptions & court adjudication or ROP
 - ▶ No presumption but court adjudication or ROP
 - ▶ Positive genetic test & court adjudication or ROP
 - ▶ If Indian child, any father EXCEPT an unmarried father whose paternity has not been acknowledged or established

Rights in Court Proceedings

- ▶ Father has right to be heard if an established parent-child relationship (Minn. Stat. §260C.163, Subd. 2)
 - ▶ Disposition
 - ▶ Parental visitation
 - ▶ Out of home placement plan
- ▶ Right to intervene as a party
- ▶ Right to appointment of counsel

Rights in Court Proceedings: Party vs. Participant (Juv. Pro. Rules 21 &22)

- ▶ In CHIPS proceeding, father is a party if:
 - ▶ Custodial parent
 - ▶ If Indian child, father is a party UNLESS is an unmarried father whose paternity has not been acknowledged or established
- ▶ Any non-custodial father who is adjudicated, presumed, or alleged is a participant

Determining father's status: Party vs. Participant (Juv. Pro. Rules 21 &22)

- ▶ In permanency/TPR proceeding, father is also a party if:
 - ▶ Adjudicated
 - ▶ Presumed
- ▶ Alleged father is only a participant

Determining father's status: Party vs. Participant (Juv. Pro. Rules 21 &22)

- ▶ Rights of father if a party:
 - ▶ Notice of proceedings
 - ▶ Legal representation
 - ▶ Present at hearings
 - ▶ Conduct discovery, bring motions, subpoena witnesses, participate in settlement discussions; make arguments; present evidence; cross-examine witnesses
 - ▶ Request review of referee's findings & recommended order; court's disposition
 - ▶ Bring post-trial motions and appeal

Determining father's status: Party vs. Participant (Juv. Pro. Rules 21 &22)

- ▶ Rights of father if a participant:
 - ▶ Notice of proceedings
 - ▶ Present at hearings
 - ▶ Offer information at the discretion of the court

Assessing the non-custodial father

Minn. Stat. §260C.219

- ▶ Agency must:
 - ▶ Identify, locate, and offer services
 - ▶ Assess whether father is willing/capable of providing care to the child
- ▶ Assessment may include background check under Minn. Stat. §260C.209 if reasonable cause of criminal history or history of maltreatment of any household member over 13
- ▶ Consider Minn. Stat. §518.179

Assessing the non-custodial father

Minn. Stat. §260C.219

- ▶ If Agency finds that placement of the child in the home of the father would endanger the child, Agency:
 - ▶ May deny placement
 - ▶ Must provide 15 days notice of intention to use the study to recommend against putting the child in the care of the father and court must allow father to be heard
 - ▶ Must prepare out of home placement plan for father

Assessing the non-custodial father

Minn. Stat. §260C.219

- ▶ If father determined to be appropriate, Agency:
 - ▶ May seek authority from custodial parent or court to have non-custodial father assume care of the child
 - ▶ Can request that court order child into father's home with protective supervision (Minn. Stat. §260C.201, Subd. 1(1))
 - ▶ Does not confer legal custody
 - ▶ May be conditions and a case plan
 - ▶ Must have a permanency hearing
 - ▶ Must require non-adjudicated father to cooperate with paternity establishment

Case planning with fathers

- ▶ Agency must case plan with father when child is in out of home placement (Minn. Stat. §260C.178, Subd. 7)
- ▶ If child not out of the home or placed with non-custodial parent, Agency only required to case plan with custodial parent (Minn. Stat. §260C.201, Subd. 6)
- ▶ No case plan required when prior involuntary TPR or reasonable efforts determined to be futile

Case planning with fathers

- ▶ If father refuses to case plan:
 - ▶ Motion to make father a party
 - ▶ State attempts to engage and refusal in case plan
 - ▶ Notify court of efforts despite refusal

Case planning with fathers

- ▶ If father is incarcerated:
 - ▶ Must develop out of home placement plan
(In re Children of Wildey, 669 N.W.2d 408 (Minn. App. 2003))
 - ▶ Not required to adjust non-custodial parent's case plan when incarcerated during CHIPS
(In re Welfare of L.S., 2006 WL 224320)
 - ▶ Not required to establish parent-child relationship when one never existed
(In re Welfare of Children of R.W., 678 N.W.2d 49, 56 (Minn. 2004))

Relative Search

Minn. Stat. §260C.221

- ▶ Must exercise due diligence to ID & notify prior to child's out of home placement or within 30 days of placement
- ▶ Must include father's family even if paternity is not adjudicated
- ▶ Must use any reasonable means to ID

Establishing Rights for Fathers

- ▶ Establish father-child relationship under Minn. Stat. §257
 - ▶ May occur at same time as CHIPS matter in a separate family court action (Juv. Pro. R. 50)
 - ▶ Juvenile court has original and exclusive jurisdiction over 260C matters
 - ▶ Family court has jurisdiction to determine parentage, child's name, and child support; no determinations on custody or parenting time until 260C case is complete
 - ▶ Agency must provide copies of petition and orders to child support
- ▶ Establish permanent custody with non-custodial father (TLPC)

Establishing When not the Father Pursuant to Minn. Stat. §257

- ▶ Presumption by marriage may be renounced by joinder to ROP
- ▶ ROP may be vacated
- ▶ Presumption of paternity may be rebutted through:
 - ▶ An action to declare non-existence of father-child relationship
 - ▶ Court adjudication of another as father
 - ▶ Marriage dissolution judgement

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