

# 2011

## Post Permanency Bench Reference Guide



Ramsey County CJI Team

Second Judicial District

5/18/2011

## **A. Purpose**

This Post Permanency Bench Reference Guide has been created to aid Minnesota's Second District Court Judges rotating onto the Child Protection Bench. Additionally, it may be used as a tool for professionals involved in child protection hearings to make post-permanency review hearings more effective for children. The material has been organized in a manner that provides a clear and concise representation of the post-permanency process in Ramsey County.

## **B. State Guardianship Cases Generally**

### 1. Overview

Following Termination of Parental Rights<sup>1</sup> (TPR) or the Parent's Execution of a Consent of Parent to Adoption<sup>2</sup> (PECPA), the court's role in the case shifts to one of reviewing the supervising agency's (RCCHSD) progress toward achieving a timely permanent placement for the child.

The final TPR or PECPA order appoints the Commissioner of the Minnesota Department of Human Services (DHS) as the guardian and legal custodian of the child. Many of DHS's responsibilities as the legal guardian are delegated to Ramsey County Community Human Services Department, hereafter the Agency, which assumes responsibility for the care, custody and placement of the child. The Minnesota DHS does not, however, delegate its authority to consent to the child's adoption.

The Agency case is transferred from the Program Unit in the Agency to the Permanent Connections Unit (PCU) in the Agency, which involves a change in workers for the child. The PCU worker learns about the child's history and the permanency plan before making decisions regarding the child's permanent home. As the legal guardian for the child (through the delegation from DHS) the Agency PCU worker has the authority to make major decisions for the child including decisions of placement, medical care and surgery, psychiatric care and school enrollment. The PCU workers' responsibility includes ensuring that the child's immediate needs are met, identifying and recruiting adoptive families, reporting to the court the actions it has taken to achieve

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<sup>1</sup> Minn. Stat. §260C.201, subd. 11 (2010)

<sup>2</sup> Minn. Stat. § 260C.201, subd. 11 (2010); § 259.24 (2010)

permanency, and projecting dates for eliminating permanency barriers and actually attaining permanency for the child.

The court shall retain jurisdiction in a case where adoption is the intended permanent placement disposition until the child's adoption is finalized, the child is 18 years of age, or the child is otherwise ordered discharged from the jurisdiction of the court.<sup>3</sup> Judicial oversight is necessary to make sure that the Agency is making steady progress towards the permanency plan for the child and ensuring that the child's immediate needs are met. The GAL and counsel for the child also continue on the case as long as the court retains jurisdiction.

## 2. The Importance of Timelines

The Juvenile Court Bench *must* play a critical role in post-permanency cases to insure that the cases move expeditiously towards adoption finalization and are not allowed to stagnate due to procedural or substantive obstacles. By conducting meaningful and effective Post-TPR Review Hearings, the Court can greatly reduce the time period between termination of parental rights and adoption finalization.

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<sup>3</sup> Minn. Stat. §260C.317, subd. 3(b) (2010)

## REVIEW HEARINGS

### A. Post-Permanency Review Hearings - Generally

1. Types of Post-Permanency Hearings
  - a. Post-TPR
  - b. Post Consent to Adopt
  - c. Long-Term Foster Care
  - d. Children in Voluntary Foster Care for Treatment
  
2. Players in Post-Permanency Hearings<sup>4</sup>
  - a. ***The Agency's Permanent Connections Unit:*** The Permanent Connections Unit of the Agency provides services to children who are under the guardianship and legal custody of the Minnesota Commissioner of Human Services and who are the financial responsibility of Ramsey County.
  
  - b. ***Ramsey County Attorney's Office (RCAO):*** The RCAO represents the Agency and advocates their position. The county attorney is also responsible by statute, to advance the public's interest in the welfare of children. The county attorney will request specific findings of the court, which are required for the Agency to receive Federal reimbursement for applicable services and/or placements.
  
  - c. ***The Guardian Ad Litem (GAL) Program:*** A GAL is appointed by the court at the beginning of a child protection court case. The GAL gathers information about the children and family and makes independent recommendations to the judge about what they believe is in the children's best interests. The GAL has no control over the person or property of the child and does not provide a home for the child. The GAL does not function as the child's attorney and does not provide direct services to the child.

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<sup>4</sup> For more information about the specific roles of these parties please see The Ramsey County Juvenile Justice Initiative Partner Handbook, [http://www.mncourts.gov/Documents/0/Public/Childrens Justice Initiative/CJI Partners Handbook \(Ramsey County\).pdf](http://www.mncourts.gov/Documents/0/Public/Childrens%20Justice%20Initiative/CJI%20Partners%20Handbook%20(Ramsey%20County).pdf)

- d. ***The Child's Attorney:*** Children over the age of ten (10) are appointed an attorney at the beginning, or at any time during a child protection court case. In Ramsey County, the entity that provides representation to children in child protection matters is the Children's Law Center (CLC). The child's attorney advocates for his or her client's wishes. As part of advocating for the child's wishes, an attorney must counsel his or her individual client regarding the child's legal position and requests. The attorney listens to the child, gathers information from all the parties, explains the child's options and possible and/or likely outcomes to the child, and follows the child's directions.

3. Reports to the Court

- a. ***Post-TPR/Post-CTA and LTFC review hearings:*** For Post- TPR review hearings and LTFC review hearings, the Agency and GAL are required to provide reports to the court at least five (5) days before the hearing.

- i. The Agency Court Report addresses:

- Where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;
- Whether the agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child and, if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of the Indian Child Welfare Act (ICWA).
- Whether the consent of the Commissioner of Human Services to separate the child from siblings for adoption under Minn. Stat. § 259.24 and Minnesota Rule 9560.0450, subd. 2 needs to be obtained; and
- Whether a visitation plan for the siblings has been developed or, if no visitation plan exists, the reason why;
- What efforts the agency has made to identify non-relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and
- If an adoptive home has been identified whether:

- Placement has been made in the home;
- An Adoption Placement Agreement has been signed;
- The child qualifies for adoption assistance payments, and if so, the status of the adoption assistance application;
- An adoption petition has been filed;
- An adoption finalization hearing has been scheduled; and
- Whether there are barriers to adoption and how those barriers may be removed.<sup>5</sup>

ii. The GAL Court Report provides:

- A brief summary of the issues that brought the child and family into the court system;
- A list of resources or persons contracted who provided information to the GAL since the last court hearing;
- A list of all documents relied upon when generating the court report;
- A summary of information gathered regarding the child and family since the last hearing;
- A list of any issues of concern to the GAL about the child and family's situation;
- A list of recommendations designed to address the concerns and advocate for the best interests of the child.<sup>6</sup>

3. Notice Required

- a. The court administrator shall serve upon each party, participant and attorney written notice of the date, time and location of the next hearing. The notice shall be:
- Delivered at the close of the hearing
  - Mailed at least five (5) days before the date of the next hearing, or
  - Mailed ten (10) days before the date of the hearing if mailed to an address outside the state.<sup>7</sup>

**B. Post CTA/Post TPR Review Hearings Specifically**

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<sup>5</sup> Minn. RJPP 43.03, subd. 1 (2010)

<sup>6</sup> Minn. RJPP 38.01, 38.02 (2010)

<sup>7</sup> Minn. RJPP 32.04 (2010)

1. Purpose: for the Court to ensure timely adoption finalization for the child(ren). It is imperative that the Court review:
  - a. The specific recruitment efforts the Agency has made to find an adoptive family or other permanent living arrangement for the child; and
  - b. The efforts the agency has taken to finalize the adoption or other permanency plan.
2. Frequency of Hearings

A hearing must be held every 90 days following Termination of Parental Rights or Consent to Adopt for the court to review progress toward an adoptive placement and the specific recruitment efforts the Agency has taken to find an adoptive home.<sup>8</sup>

3. Expectations Court should have at Specific Periods of Review in the life of a Post-TPR, pre-adoption case

***a. Initial review hearing:***

- i. Case has been transferred from Program to Permanent Connections;
- ii. Resources available for adoption identified, if not all possible recruitment efforts have been explored, including when appropriate:
  - Child has been registered on the State Adoption Exchange;
  - Recruitment has been done on the state and national public photo Web sites ([www.mnadopt.org](http://www.mnadopt.org) and [www.adoptuskids.org](http://www.adoptuskids.org))
  - Recruitment has been done on the statewide adoption listserve;
  - Internal County Resources;
  - Permanency Task Force presentation
  - Local newspaper feature
  - Thursday's Child segment on KSTP-TV
  - Child specific recruitment – PPAI agency
- iii. Process to gather medical information for the child has started;
- iv. Process to complete evaluations and assessments has started, as necessary;

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<sup>8</sup> Minn. Stat. §260C.317, subd.3 (b) (2010)

- v. Second relative search has been completed (should be done by the time the permanency petition is filed);
- vi. Worker is in the process of writing the social/medical history

b. ***Six months after first hearing:***

- Adoption Placement Agreement signed
- Placement in a preadoptive home
- Social/medical history has been completed
- Sibling separation has been requested of DHS if appropriate

c. ***Year after initial review hearing***

- Adoption finalized
- On Consent to Adopt cases: if the adoption has not been finalized at the one-year review, the Agency must certify in the report to the court that the failure to finalize the adoption within one year is not due to the adoptive parent's actions.<sup>9</sup>

4. Best Practices

- a. Out-of-Home Placement Plan. An out-of-home placement plan is created for any child in foster care, including pre-adoptive placement. The plan must include:
- A description of the residential facility and how the placement plan is designed to achieve a safe placement for the child in the least restrictive, most family-like setting available;
  - The specific reasons for placement of the child in a residential facility;
  - Description of the services offered and provided to prevent removal of the child from the home and reunify the family;
  - Description of any services/resources that were requested since placement and whether those services/resources were provided and if not, the basis for denial;
  - The visitation plan;

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<sup>9</sup> If a Post Consent to Adopt fails because the designated adoptive parent is no longer a viable option, the matter reverts to the Post Termination of Parental Rights review procedure in which reasonable efforts towards identifying an adoptive home are required.

- Documentation of steps to finalize adoption or legal guardianship of the child, including child-specific recruitment efforts;
  - Efforts to ensure the child’s educational stability while in foster care;
  - Efforts by the agency to ensure oversight and continuity of health care services;
  - Health records of the child;
  - An independent living plan.
- b. Planning for youth 16 or older. For youth age 16 and older, the court should review the agency’s reasonable efforts to implement the independent living plan (ILP).<sup>10</sup> Goals of an ILP include:
- Obtain a high school diploma or its equivalent;
  - Completed driver’s education course or has demonstrated ability to use public transportation in community;
  - the child is employed or enrolled in postsecondary education;
  - money management;
  - planning for housing;
  - social and recreational skills; and
  - establishing and maintaining connections with the child’s family and community

## 5. Findings

The court may:

- Find that the Agency has made reasonable efforts either:
  - Towards finding an adoptive home (Post-TPR hearings)
  - Towards finalizing an adoption (Post-Consent To Adopt hearings)

## 6. Order

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<sup>10</sup> Minn. Stat. §260C.212, subd.1(c) (2010)

- Continued guardianship with the Commissioner of Human Services;
- Continue the matter under the court's jurisdiction for the purpose of reviewing progress to adoption in 90 days

## 7. Considerations

- a. Adam Walsh Background Check. The Federal Adam Walsh Child Protection Act of 2006 was created to strengthen laws to protect children from sexual exploitation and violent crime. As part of the effort to protect children, the Minnesota legislature increased background study requirements for child foster care and adoption. The requirements include:
  - Completing an FBI fingerprint record check on all individuals studied in relation to licensed child foster care or adoption;
  - Reviewing substantiated child maltreatment findings available through the Social Service Information System (SSIS) for all 87 counties for all individuals studied;
  - Completing a review of another states' data system for any individual who has lived in another state in the last 5 years;
  - Completing the background study before placement.
- b. Interstate Compact on the Placement of Children (ICPC) <sup>11</sup>. The ICPC is an agreement among all fifty states that coordinates the movement of children across state lines for the purpose of placement in foster care, adoptive homes, group homes, residential treatment centers, or on a trial basis with a parent.

The law was enacted by all fifty states, the District of Columbia, and the U.S. Virgin Islands to ensure the children placed across state lines have the same protections that children within state lines have.

When considering an interstate placement, the Compact requires that the prospective sending agency submit a written notice of intent to place to their Compact Administrator who then forwards it to the Compact Administrator in the receiving state.

Upon receiving the written notice and supporting documentation, the Compact Administrator in the receiving state forwards the referral to the appropriate authority in his or her state for action. This authority will usually be a local public or private child social service agency. The action

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<sup>11</sup> Minnesota Dept. of Human Services, Guide to Interstate Compact on Placement of Children (2010) ([http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_001471#](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_001471#))

needed on the request will vary depending on the nature of the placement and may include a study of the prospective adoptive or foster/relative family.

Once the local agency completes the necessary work, it prepares a report that includes its recommendation about whether or not the placement should be made. The agency forwards the information to the Compact Administrator in its own state. If the agency's review is favorable and if the Compact Administrator decides that the relevant state laws are met, it approves the placement.

If the request to place a child has been approved by the receiving state, then the responsible agency in the sending state makes the decision whether or not to make the placement. If the placement will be made, the sending and receiving agency work together to arrange the details of the actual placement.

- c. Sibling Separation. Siblings who are state wards at the same time should be placed together for foster care and adoption at the earliest possible time unless it is determined not to be in the best interests of a sibling or unless it is not possible after appropriate efforts by the agency.

If the plan is that siblings under guardianship of the commissioner at the same time are not going to be adopted by the same family at the same time, the agency must request and receive consent from the commissioner of Human Services in order to separate the siblings. *Exception:* The commissioner's consent to separate is not required for siblings who are under guardianship based on the court's acceptance of the consent of the parent(s) to adoption under 260C.201, subd. 11(d)(5).

## **C. Long-Term Foster Care (LTFC)**

### 1. Purpose

The purpose of LTFC review hearings is to determine whether long-term foster care continues to be the best permanent plan and to ensure appropriate planning for the future status of the child.

### 2. Petition

A Long Term Foster Care Petition must be filed with the Court when the Agency is requesting Long Term Foster Care.

### 3. Frequency

Court reviews for orders of LTFC must be conducted at least yearly and must review the child's out of home placement plan and the reasonable efforts of the agency to finalize the permanent plan for the child.<sup>12</sup>

The court retains jurisdiction through the child's minority in LTFC cases, unless the court extends jurisdiction to age twenty-one.<sup>13</sup>

#### 4. Expectations

- Annual Review Hearings. During the annual review hearings, the Court must review the child's out-of-home placement plan and the reasonable efforts of the agency to finalize the permanent plan for the child, including the agency's efforts to:
  - Ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child's needs and best interests;
  - Identify a specific long-term foster home for the child, if one has not already been identified;
  - Support continued placement of the child in the identified home, if one has been identified;
  - Ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and
  - Plan for the child's independence upon the child's leaving long-term foster care placement.<sup>14</sup>
- Best Practices
  - i. Out-of-Home Placement Plan: Same as listed above for Post TPR and Post CTA cases.
  - ii. Planning for youth 16 or older. Same as listed above for Post TPR and Post CTA cases.

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<sup>12</sup> Minn. Stat. §260C.201, subd. 11(g) (2010)

<sup>13</sup> Minn. Stat. §260C.317, subd. 3(d) (2010)

<sup>14</sup> Minn. Stat. §260C.201, subd 11(g) (2010)

- iii. Foster care benefits until 21. A child in foster care past the age of 18 can continue in foster care, with services until the age of 21 if the child is:
- Completing secondary education of equivalent
  - Enrolled in postsecondary or vocational school;
  - Participating in a program designed to remove barriers to employment;
  - Employed and working at least 80 hours per month; or
  - Incapable of doing any of the above due to a medical condition

A youth who left foster care while under the guardianship of the commissioner as dependent or neglected, retains the ability to return to foster care for placement at any time between the ages of 18 and 21.

5. Necessary findings

- There are compelling reasons that LTFC is in the best interests of the child;
- The Agency has made reasonable efforts to finalize and support a permanent plan for the child;

6. Order

- Approve continued placement in foster care;
- Continue the matter under the court's jurisdiction for the purpose of reviewing the child's placement in LTFC every 12 months as long as the child remains in foster care.

7. Considerations when ordering a child under Guardianship with the DHS into LTFC: The court may order a child who is a ward of the Commissioner of Human Services to be placed in LTFC if it approves of **the agency's determination of compelling reasons**. The agency must first make exhaustive efforts to recruit, identify and place the child in an adoptive home, and the child must have been in foster care for at least 24 months after the Termination of Parental Rights and the subsequent order transferring Guardianship of the child to the Commissioner of Human Services.<sup>15</sup>

**D. Children in Voluntary Foster Care for Treatment – 260D<sup>16</sup>**

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<sup>15</sup>Minn. RJPP 42.11, subd (3)(a) (2010)

<sup>16</sup>See Attached Addendum, *Child in Voluntary Foster Care for Treatment*, Prepared by Jessica Fischer, Ramsey County Attorney's Office (2009)

1. Introduction: This process is used when an agreement between the parent(s) and social services agency is reached and a child enters voluntary foster care for treatment due to a disability. Often the parents are planning on behalf of their child but are unable to presently care for them at home.
2. Definitions:
  - a. Voluntary foster care for treatment: A child in voluntary foster care for treatment means a child who is emotionally disturbed or developmentally disabled or has a related condition and is in foster care under a voluntary foster care agreement between the child's parent and the agency due to concurrence between the agency and the parent that the child's level of care requires placement in foster care.
  - b. Voluntary foster care agreement: provides the Agency the legal authority to place the child in foster care for treatment. This agreement must be in writing and signed by the child's parent(s) and the agency.
3. Court Process
  - a. The court's first involvement is when the Agency files a report with the court within 165 days of a voluntary foster care agreement. The Court must review the report and issue an order within 180 days of the voluntary placement (or Federal Reimbursement for the placement will be lost for the duration of the placement). The Court must determine whether continuing the voluntary placement is in the child's best interest, whether the parent and Agency are appropriately planning for the child. This is also an appropriate time for the Court to appoint the GAL Program.
  - b. If the child remains in placement for 13 months from the date of the voluntary foster care agreement or 15 of the last 22 months, the Agency must either:
    - i. Terminate the voluntary foster care agreement;
    - ii. File a petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment; or
    - iii. File a petition requesting Termination of Parental Rights
  - c. If the Agency proceeds by filing a petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment a Permanency Review hearing is held. The parent is not required to attend this hearing but may. **The parent does not admit or deny the petition and there is no adjudication.** If the parent does appear at the hearing, the Court simply inquires of the parent whether he/she consents to continue the voluntary placement. At this hearing the Court:

- i. Approves the compelling reason to continue the child in voluntary out-of-home placement and not proceed to permanency;
- ii. Finds reasonable efforts have been made to finalize a permanency plan for the child; and
- iii. Should continue the matter on for a one-year review.

## *ADDENDUM*

## **Child in Voluntary Foster Care for Treatment**

*Prepared by Jessica Fischer, Ramsey County Attorney's Office (2009)*

### **I. CHILD IN VOLUNTARY FOSTER CARE FOR TREATMENT** (ED-DD/Emotionally Disturbed-Developmentally Disabled)

#### **A. APPLICABLE LAW:**

1. Minn. Stat. § 260D.
2. Proposed Minn. R. Juv. Prot. Proc. 42.16 and 43.
3. ICWA (25 U.S.C. § 1901, et. seq.)

#### **B. PURPOSE**

1. Actions under 260D are not CHIPS actions.
2. According to Minn. Stat. §260D.01:
  - a. The purpose of this chapter is ... to ensure the child's parent retains legal custody of the child and associated decision-making authority...
  - b. The legal parent-child relationship shall be supported under this chapter by maintaining the parent's legal authority and responsibility for *ongoing planning* for the child and by the agency's assisting the parent, where necessary, to exercise the parent's ongoing right and obligation to visit or to have reasonable contact with the child.
  - c. *Ongoing planning* means:
    - i. Actively participating in the planning and provision of educational services, medical, and dental care for the child;
    - ii. Actively planning and participating with the agency and the foster care facility for the child's treatment needs; and
    - iii. Planning to meet the child's need for safety, stability, and permanency, and the child's need to stay connected to the child's family and community.

## C. PROCEDURE

1. **Voluntary foster care agreement.** The child's parent and the agency enter a voluntary foster care agreement. They agree that the child's treatment needs require foster care due to:

*Emotional Disturbance.* A level of care determination by the agency's screening team informed by the diagnostic and functional assessment under Minn. Stat. § 245.4885; or

*Developmental Disability.* A determination regarding the level of services needed by the responsible social services' screening team under Minn. Stat. § 256B.092, and Minnesota Rules, parts 9525.0004 to 9525.0016.

- a. The agency must inform a child age 12 or older that the child has a right to:
  - i. Be consulted in the preparation of the case plan,
  - ii. Visit parent and siblings as determined safe and appropriate by parent and agency,
  - iii. Have rights under Minn. R. 2960.0050 as a resident of a state-licensed facility. [260D.04]
2. **Out-of-Home Placement Plan.** An out-of-home placement plan shall be prepared within 30 days after any child is placed in foster care by a voluntary agreement between the agency and the child's parent pursuant to Minn. Stat. § 260D. [260C.212, subd. 1.]
3. **Administrative Review.** Initial administrative review required under Minn. Stat. § 260C.212, subd. 7, must take place prior to submission of the 165-day court report. [260D.05]
4. **165-Day Report to Court.** The agency shall forward a written report to the court within 165 days of the date of the voluntary agreement. The report shall contain or have attached the following information:
  - a. A statement of facts that necessitate the child's foster care placement;
  - b. The child's name, date of birth, race, gender, and current address;
  - c. The names, race, date of birth, residence, and post office addresses of the child's parents or legal custodian;

- d. A statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minn. Stat. § 260.751 to § 260.835;
- e. The names and addresses of the foster parents or chief administrator of the facility in which the child is placed;
- f. A copy of the out-of-home placement plan required under Minn. Stat. § 260C.212, subd. 1;
- g. A written summary of the proceedings of the administrative review required under Minn. Stat. §§ 260C.212, subd. 7, and 260D.05; and
- h. Any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.
  - i. Additional Requirements for Children Who are Emotionally Disturbed. In the case of a child in placement due to emotional disturbance, the written report shall include, as an attachment, the child's individual treatment plan developed by the child's treatment professional, as provided in Minn. Stat. § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minn. Stat. § 125A.023, subd. 3(c).
  - ii. Additional Requirements for Children Who have Developmental Disability. In the case of a child in placement due to developmental disability or a related condition, the written report shall include as an attachment, the child's individual service plan as provided in Minn. Stat. § 256B.092, subd. 1b; the child's individual program plan as provided in Minnesota Administrative Rules, part 9525.0004, subpart 11; the child's waiver care plan; or the child's individual interagency intervention plan as provided in Minn. Stat. § 125A.023, subd. 3(c).
  - iii. Report Requirement to Include Information about Child's Disagreement. If, at the time required for the report under this rule, a child age 12 or older disagrees about the foster care facility or services provided under the out-of-home placement plan required under Minn. Stat. § 260C.212, subd. 1, the agency shall include information regarding the

child's disagreement, and to the extent possible, the basis for the child's disagreement in the report.

- i. The agency must inform a child age 12 or older, the child's parent, and the foster parent/facility, of:
  - i. The reporting and court review requirements listed above; and
  - ii. Their right to submit information to the court.
    1. If any of the three parties (child over 12, parent, foster parent/facility) wants to submit information to the court, the agency shall advise them of the date by which the agency needs the information in order to submit it along with the 165-day report.
    2. The agency must inform the parties that they have a right to be heard in person by the court and how to exercise that right.
    3. The agency must inform the parties that an in-court hearing will be held if requested.

5. **Initial Court Review.** The court must make the following determinations within 10 days of receiving the 165-Day Report:

- a. Whether voluntary foster care is in child's best interests;
- b. Whether parent and agency are appropriately planning for the child; and
- c. In the case of a child 12 or older who disagrees with the facility or services in the OHP, whether to appoint counsel or GAL. [260D.06, subd. 2(e)]
- d. Unless requested by parent, representative of foster care facility, or child, no in-court hearing is required for the court to make findings and issue an order. [260D.06, subd. 2(f)]
  - i. If the court approves the placement, it shall issue an order containing "explicit, individualized" findings, and send a copy to all parties. [260D.06(g)].
    1. The court may make this determination even if child disagrees. *Id.*

- ii. If the court finds that placement is NOT in best interests of child, or that parents or agency are NOT appropriately planning for the child, it shall:
  1. Notify the agency, parent, foster parent/facility, child 12 or older, and county attorney.
  2. Set a hearing and appoint a GAL. [260D.06, subd. 2(j)]

**6. Permanency.** When a child continues in voluntary foster care as defined in Minn. Stat. § 260D.02, subd. 10, for 13 months from the date of the voluntary foster care agreement, or has been in placement for 15 of the last 22 months, the agency must:

- a. Terminate the voluntary agreement and return the child home [260D.07(a)(1)];
- b. File a TPR petition [260D.07(a)(3)]; or
- c. Determine there are compelling reasons to continue the voluntary foster care arrangement, and seek judicial approval of its determination [260D.07(a)(2)].
  - i. If seeking approval to continue the voluntary arrangement, the agency shall file a “Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment.” [260D.07(b)]
  - ii. The petition should include the following information:
    1. The date of the voluntary placement agreement;
    2. Whether the petition is due to the child's developmental disability or emotional disturbance;
    3. The plan for the ongoing care of the child and the parent's participation in the plan;
    4. A description of the parent's visitation and contact with the child;
    5. The date of the court finding that the foster care placement was in the best interests of

the child, if required under section 260D.06, or the date the agency filed the motion under section 260D.09, paragraph (b);

6. The agency's reasonable efforts to finalize the permanent plan for the child, including returning the child to the care of the child's family; and
  7. A citation to this chapter 260D as the basis for the petition.
- d. The court shall set the date for a permanency review hearing no later than 14 months after the child has been in placement; or within 30 days of the petition date when the child has been in placement 15 of the last 22 months [260D.07(e)].

## **7. Termination of Voluntary Placement Agreement [260D.10]**

- a. Parents. The child's parent may terminate a VPA under this chapter upon written notice to the agency of the termination of the agreement. The termination of a voluntary foster care agreement regarding an Indian child shall be governed by Minn. Stat § 260.765, subd. 4.
- b. Agency. The agency may terminate a VPA under this section upon written notice of the termination of the agreement to the parent. Prior to sending notice of termination of the voluntary foster care placement agreement, the agency shall contact the parent regarding transition planning. Written notice by the agency shall be considered received by the parent three business days after mailing by the agency.
  - i. Upon receipt of notice of the termination of the voluntary foster care agreement, the agency, the parent, and the facility may agree to a time that the child shall return home. The scheduled time to return home shall meet the child's need for safety and reasonable transition. Unless otherwise agreed by the parent and the agency, the child's return home shall not occur sooner than 72 hours and not later than 30 days after written notice of termination is received or sent by the agency.
  - ii. A parent who disagrees with the termination of a voluntary foster care agreement by the agency under this chapter has the right to a fair hearing

under section 256.045 to appeal the termination of the voluntary foster care agreement. When the agency gives written notice to the parent of the termination of the agreement, the agency must also give the parent notice of the parent's right to a fair hearing under section 256.045 to appeal the agency's decision to terminate the voluntary foster care agreement.

- c. Transition planning. The agency and the child's parents shall engage in transition planning for the child's return home, including establishing a scheduled time for the child to return home, an increased visitation plan between the parent and child, and a plan for what services will be provided and in place upon the child's return home.
- d. Notice of termination of voluntary foster care agreement does not terminate the agreement. The voluntary foster care agreement and the agency's legal authority to place the child are terminated by the child's return home or by court order.

#### **8. Transferring from CHIPS to EDDD [260D.09]**

- a. The agency must file a motion:
  - i. To terminate jurisdiction under section 260C.193, subd. 6, and
  - ii. To dismiss the order for foster care under section 260C.178 or 260C.201, subd. 1,
- b. The agency must file the Petition for Permanency Review required under section 260D.07 (b).

### **D. COURT HEARINGS**

#### **1. Permanency Review Hearing**

- a. At the permanency review hearing, the court shall:
- b. Ask the parent:
  - i. Have you reviewed the petition?
  - ii. Is the petition accurate?
  - iii. Do you agree to the continued voluntary foster care arrangement?

- iv. Are you satisfied with the agency's R/E to finalize the permanency plan?
- v. Do you consent to the court entering an order that approves the agency's R/E and compelling reasons?
- vi. **The parent does not admit or deny the petition – she consents to continue voluntary placement.**

b. Ask the GAL/other parties:

- i. Do you consent to the court entering an order that approves the agency's R/E and compelling reasons. [260D.07(g)]

The court may take the following actions:

- a. Approve compelling reasons, and
- b. Find reasonable efforts to finalize a permanency plan for the child. [260D.07(h)]. *See definition below.*
  - i. If so, it shall continue the matter under the court's jurisdiction for the purposes of reviewing the child's placement every 12 months while the child is in foster care. [260D.07(k)]
  - ii. If NOT, it shall dismiss the petition and either
    - 1. The child must be returned to the care of the parent, or
    - 2. The agency must file a CHIPS or TPR petition. [260D.07(j)]

## **2. Annual Review Hearing**

- a. At the annual review hearing, the court shall:
- b. Determine whether the agency has made reasonable efforts to finalize the permanency plan. *See definition below.*
- c. Set a 12-month review date.

**Reasonable efforts for purposes of 260D means the exercise of due diligence by the agency to:**

1. Ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests;
2. Engage and support the parent in continued involvement in planning and decision making for the needs of the child;
3. Strengthen the child's ties to the parent, relatives, and community;
4. Implement the out-of-home placement plan required under section 260C.212, subd. 1, and ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child; and
5. Ensure appropriate planning for the child's safe, permanent, and independent living arrangement after the child's 18th birthday.
6. [260D.08(b)].