

legislative update 2009: child welfare



DEFINITION OF PARENT IS CLARIFIED IN RELATION TO OTHER MINNESOTA LAWS:

- **Paternity Statute.** Prior law defined parent in child protection cases as "birth or adoptive parent." The new law gets rid of this definition and uses the same definition of the parent and child relationship as in the paternity statute. For unmarried parents, the father and child relationship can be established through a paternity action in court or by signing a Recognition of Parentage.
- **Indian and Child Welfare Act (ICWA).** For matters governed by ICWA, a parent does not include an unwed father who has not been acknowledged or established.
- **Paternity Presumptions.** The definition of parent for child protection purposes includes as a parent someone who is legally presumed to be a father for the child under the presumptions in the paternity statute, Minn. Stat. section 257.55, such as a man who was divorced from the mother within 280 days before the child's birth.
- **Adoption Petitions.** The definition of parent also includes someone who would be entitled to notice of an adoption petition under Minn. Stat. section 259.49, subdivision 1. This includes, but is not limited to, a parent who: has "substantially supported the child," who married the mother within 10 days after the birth of the child, or who is openly living with the child or the mother or both. It also includes a man signed up on the Minnesota Fathers' Adoption Registry only if, after receiving notice of an adoption petition, he timely files an intent to retain parental rights and timely initiates a paternity action.
- **Genetic Testing.** The new law adds that, for the purposes of child protection proceedings, a man who is identified as a biological father by a genetic test is treated as a presumed father. This gives the biological father the right to notice of the proceedings and the right to be considered for the child to live with him if the child is being placed outside of the home. The

biological father must still comply with paternity establishment proceedings.

Research on child welfare cases has found that the earlier the father is identified, the greater chance that the father will be located and contacted. Changes to Minnesota law should help in this regard.



EFFORTS TO IDENTIFY AND LOCATE FATHERS ARE IMPROVED:

- **Law now defines what "diligent" efforts are required in identifying parents.** Prior law required that the child protection agency had to make "diligent efforts to identify, locate, and, where appropriate, offer services to both parents of the child" when the child was placed outside the home, but didn't define what those efforts were. Diligent efforts to locate the father now include:
 1. **Asking the custodial or known parent to provide information on the other parent,** including information about marriage, divorce, paternity actions, date of birth and Social Security number of the other parent, and their last known whereabouts or whereabouts of the relatives of the unknown/nonresident parent;
 2. **Obtaining information from the child support enforcement information system** that will help identify and locate the nonresident parent. The data practices provisions of Minnesota law were amended to make this happen. However, this change was made in anticipation of a federal rule change, that has now been delayed until the end of 2010. Until that time, it is permissible for child protection workers to ask the court to order disclosure of this information;
 3. **Requesting a search of the Minnesota Fathers' Adoption Registry thirty days after the child's birth;** and
 4. **Using any other reasonable means to identify and locate the father.**

Many changes affecting fathers were made to Minnesota's child protection laws, Chapter 260C, in 2009

Changes are effective Aug. 1, 2009

Our mission

The Minnesota Fathers & Families Network enhances healthy father-child relationships by promoting initiatives that inform public policy and further develop the field of fatherhood practitioners statewide.

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Leading Minnesota's campaign for healthy fatherhood.

Did you know?

Nonresident father involvement in child protection cases is associated with positive outcomes, including a higher likelihood of reunification and lower likelihood of adoption outcome. Children with highly involved fathers are discharged from foster care more quickly and have a substantially lower likelihood of a subsequent maltreatment allegation.

More about the Dads, Exploring Associations Between Nonresident Father Involvement and Child Welfare Case Outcomes, U.S. Dept. of HHS Study, 2008.

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- **Judicial oversight requires inquiry into identification and location of the parents at each hearing.** The court must ask all parties about the identity and whereabouts of each parent, if not known. The court is to determine whether both parents have been located and served with a summons or notice of the proceedings, and if diligent efforts are being made to identify and locate both parents.
- **Sworn testimony can be taken to identify or locate the other parent.** If a custodial parent has been uncooperative, and the county attorney requests it, the court must take sworn testimony from the custodial parent as to the identity or location of the other parent. The court can enter a protective order regarding information necessary to protect the custodial or known parent, child or family.
- **When paternity is not established, child protection may ask the court to defer its duty to develop a visitation plan** when it is in the best interests of the child, until such time as paternity is established or until genetic tests prove the biological relationship.
- **Under court’s duty to review and/or modify the visitation plan, more discretion to deny visitation.** Changes prior law from ordering visitation unless the court finds that it would endanger the child’s physical or emotional well-being to allowing visitation to also be denied if it is not in the child’s best interests, or if there is limited prior contact with the parent and child, or paternity is not established, as above.

LAW GIVES MORE GUIDANCE ON DETERMINING PARENTAL VISITATION WHEN CHILD TAKEN INTO CUSTODY AND REMAINING IN FOSTER CARE:

- **Child protection agency has duty to develop and implement visitation plan.** The court must include in its initial order “notice” that the agency has a duty to develop and implement a plan for parental visitation that promotes the parent and child relationship unless visitation would endanger the child’s physical or emotional well-being. The plan must be developed and implemented “as soon as possible” after the court’s order for the child to remain in foster care, consistent with the other provisions of this section (described below).
- **If no or only limited contact with other parent when case begins, must be assessment prior to visitation plan.** When a parent has had no or only limited visitation or contact with the child prior to the court order for the child to continue in foster care, the court “shall not order a visitation plan developed and implemented” until the agency has assessed the parent’s ability to provide for the day-to-day care of the child, as laid out in Minn. Stat. section 260C.212, subdivision 4.
- **Both parents must receive a summons to appear after a Child In Need of Protection or Services (CHIPS) petition is filed.** Prior law required only the person with custody or control of the child to be summoned and gave the noncustodial parent “notice.”
- **Effect on putative fathers registered with the Minnesota Fathers’ Adoption Registry (MFAR) is clarified.** A putative father timely registered with MFAR is entitled to notice of the CHIPS proceeding and notice of a Termination of Parental Rights (TPR) or permanent placement proceeding. A putative father who is not timely registered with MFAR who would not otherwise be entitled to notice is not required to get notice of these proceedings.
- **Changes don’t apply to Safeplace for Newborns Law.** The diligent effort requirements to locate the other parent do not apply for a newborn baby left with a hospital under the Safeplace for Newborns law, Minn. Stat. section 149.502. The requirement to search the Minnesota Fathers’ Adoption Registry also does not apply in this instance. When the child protection agency has taken custody of a newborn under this law, they have no duty to identify and locate either parent.

OTHER CHANGES:

For more information about research on child welfare agencies’ efforts to identify, locate and involve nonresident fathers, see MFFN’s Infosheet 15, at www.mnfathers.org.

For county and tribal child welfare agencies working to improve their practice with fathers, see the Minnesota Department of Human Services publication, “Working with Fathers: A Program Improvement Resource,” April 2009, at <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5575A-ENG>

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