

Improving child welfare laws to benefit fathers and kids: SUMMARY OF 2010 PROPOSED LEGISLATION



The Minnesota Fathers & Families Network is introducing legislation this session that would:

- clarify the definition of parent in child protection cases;
- give “party” status to noncustodial parents in court hearings;
- clarify that noncustodial parents have the right to have a hearing on their visitation plan;
- give the court discretion to allow the child protection agency to allow visitation between a noncustodial parent and child prior to the full vetting of a parent as the temporary place for the child to live, on a case-by-case basis;
- while a child in need of protection or services (CHIPS) petition is pending, allows county workers to contact a putative father who registered late on the Minnesota Fathers’ Adoption Registry (later than 30 days after the birth of the child).

Why is this needed?

- **Minnesota, as well as several other states, is under a Program Improvement Plan with the federal government for not meeting important criteria on father engagement measures in child protection cases.** Statutory and policy changes are needed, along with other measures, to clarify and improve work with fathers in child protection cases.
- **Child protection workers, county attorneys and judges need to know who is and isn’t a legal parent.** It can be confusing to understand different paternity and family court laws. Child protection workers have enough to do—they shouldn’t need to consult a lawyer to figure out who is and isn’t a legal dad. Our changes would clarify who is a legal parent, consistent with the paternity statutes.
- **To remove barriers to full involvement of noncustodial parents in CHIPS matters.** It is important that noncustodial parents have rights to speak and act in court. Currently a noncustodial father is treated as a “participant” and does not have these rights. A participant only has the right to 1) receive a notice and copy of the CHIPS petition; 2) to attend court hearings; and 3) to speak at the discretion of the court. To become a party, a father needs to file a notice of intervention, which is an additional and unnecessary hurdle, and contributes to the perception that he is a ‘second class’ parent. Party status is important because it gives the right to speak and be heard by the court, to make a motion (request) to the court, and other important rights. Right now, a noncustodial parent with a legally established relationship with his child who files a notice to become a party is automatically granted party status.¹
- **To remove barriers to fathers’ visitation with their children.** It is difficult to challenge an agency’s determination about visitation time without a clear right to a hearing. Without the judge hearing information from the parent whose visitation is being impacted, it is impossible to make a visitation decision that is in the child’s best interest. Likewise, a 2009 law does not give judges the discretion to allow interim visitation while the child protection agency is making a full investigation of a noncustodial parent’s ability to care for the child at home, for a parent who previously had no or limited visitation leading up to the court’s involvement. While this may sound reasonable, there are many situations in which children still have an important connection and bond with their father, despite having lost contact with him. Judges should have the discretion on a case-by-case basis to allow agencies to determine visitation in these cases.
- **The Minnesota Fathers’ Adoption Registry (MFAR) was primarily created to protect the rights of putative fathers in adoption cases, but has become a source of locating fathers in child protection cases.** Location of fathers through MFAR was identified in statute in 2009 as part of the diligent efforts requirement for county agencies to identify, locate and offer services to both parents.² Searching the registry prior to a permanency related adoption is not discretionary; what happens, though, when a late registration is discovered is not currently clear. The new

Although family court now uses the term “parenting time,” Chapter 260C—child protection—still uses “visitation”

Current information as of 2/24/10

Fathers are important resources for children in child welfare cases.

How the system treats and engages fathers matters.

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.



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language makes it clear that it is *permissible*, in a CHIPS proceeding, for the county agency to contact a putative father who registered late on MFAR for the purposes of seeking the putative father or his relatives as possible placement option for a child. There is still a duty of the putative father to establish paternity.

How does this benefit children?

- **Nonresident father involvement in child protection cases is associated with positive outcomes.** This includes a higher likelihood of reunification and lower likelihood of an 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.³

How does this benefit the state and county?

- **When children are placed with their fathers instead of in foster care or adoption, it saves money and fosters the parent-child bond.** (It also prevents mothers from losing their parental rights.) The average cost of one month of foster care, for one child under 11 years old, is \$585/month.⁴ In 2007 there were 6,756 children in foster care in Minnesota, with an average length of stay of 21.9 months.⁵ Through statutory and policy changes that decrease barriers to father involvement, we could save an average of \$12,811 per child every time a child is placed with a father instead of in foster care.

Frequently asked questions:

Q: Isn't a CHIPS case about the custodial parent? Why does a noncustodial parent need rights in these proceedings?

A: CHIPS cases involve the rights of the noncustodial parent as well as the custodial parent.

1) **Determining the Noncustodial Parent's Rights of Visitation and Day-to-Day Care of the Child.** When the court has jurisdiction over a parent and child because of a finding of abuse or neglect, they have jurisdiction over both parents. When a noncustodial parent gets to see his or her child, whether it is supervised or unsupervised, whether the child is placed with the noncustodial parent instead of in foster care or with another relative, and what conditions a noncustodial parent must meet to have visitation (such as random urinalysis)—all of these are decisions that are made in the CHIPS case. A family court judge cannot make these determinations while a CHIPS case is pending.⁶ When a child is in foster care, the social services agency must assess whether a noncustodial or nonadjudicated parent is willing and capable of providing for the day-to-day care of the child temporarily or permanently.⁷ These are serious determinations involving the rights of the noncustodial parent and child.

2) **Requiring Involvement of the Noncustodial Parent in Concurrent Planning and Case Plans.** Most CHIPS cases proceed under "concurrent planning".⁸ This means that at the same time the agency is working to return the child to the home of the custodial parent(s), the agency must also be planning for a back-up long-term solution (a concurrent plan). A noncustodial parent is to be the first person looked at for the permanency solution and must participate in concurrent planning if they want to remain a long-term option. A noncustodial parent is given a case plan of actions to be corrected and/or services he must complete to demonstrate that he will be an appropriate permanency option.⁹

Q: If we give noncustodial parents party status, won't that cost money for appointment of attorneys?

A: No. Under Minnesota law, judges have discretion to appoint an attorney for an indigent parent—custodial or noncustodial—when they deem it "appropriate."¹⁰ Making noncustodial parents a party to the CHIPS case doesn't change that discretion.

For more information, please contact Melissa Froehle, Policy and Program Director, MFFN, (651) 222-7432 or mfroehle@mnfathers.org. More information about child welfare and father engagement is available at www.mnfathers.org.

1. See Minn. R. Juv. Prot. P. 21 (parties) and 22 (participants). Rule 23 states that any parent who is not a legal custodian of the child shall have the right to intervene as a party, and intervention shall be deemed accomplished upon service of the notice of intervention unless a party objects. Objection is usually limited to the factual basis of the intervention (e.g. that he is not legally the father).
2. See Minn. Stat. § 260C.150, subd. 3(a)(3) (2009).
3. Malm K., Zielewski E., and Chen, H. *More About the Dads: Exploring Associations between Nonresident Father Involvement and Child Welfare Case Outcomes*. (Washington, D.C.: The U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2008) available at: <http://www.urban.org/url.cfm?ID=411641>.
4. The foster care payment is the direct payment made to the foster care. National Resource Center for Family-Centered Practice and Permanency Planning. Hunter College School of Social Work, Foster Care Maintenance Payment; Additional costs not included: Initial clothing allowance \$389 ages 0-11; \$685 ages 12-14; \$744 ages 15-18. Administrative, training, and judicial costs.
5. Center for Law and Social Policy and Children's Defense Fund, *Child Welfare in Minnesota (Fact Sheet)*, January 2010, available at: http://www.clasp.org/admin/site/publications_states/files/child-welfare-financing-minnesota-2010.pdf
6. Minn. Stat. § 260C.101, subd. 1 and subd. 4.
7. Minn. Stat. § 260C.212, subd. 4(a)(1).
8. See Minn. Stat. § 260C.213, subd. 1(b) ("concurrent planning involves a planning process for children who are placed out of the home of their parents pursuant to a court order...The responsible social services agency shall develop an alternative permanency plan while making reasonable efforts for reunification of the child with the family, if required by section 260.012").
9. See Minn. Stat. § 260C.212, subd. 1(c)(3)(i)-(ii) and subd. 4(a)(2)(i).
10. Minn. Stat. § 260C.163, subd. 3(a).