

# Child Protection

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## What Constitutes Child Maltreatment Under Minnesota Law?

**Neglect:** Neglect is the most common form of substantiated child maltreatment. Neglect typically involves the failure of the child's caregiver to:

- Provide the child with necessary food, clothing, shelter, medical or mental health care services, or appropriate supervision;
- Protect the child from conditions or actions that endanger the child; or
- Ensure that a child attends school in accordance with the law.

Other forms of neglect include exposing a child to certain drugs during pregnancy or the chronic and severe use of alcohol or a controlled substance by a parent (or person responsible for the care of the child) that adversely affects the child's basic needs and safety.

**Physical Abuse:** Physical abuse is any physical injury or threat of harm or substantial injury, inflicted by a caregiver upon a child other than by accidental means. The impact of physical abuse can range from minor bruises to severe internal injuries or death. Physical abuse does not include reasonable and moderate physical discipline of a child that does not result in an injury.

**Mental Injury:** Mental injury is harm to the child's psychological capacity or emotional stability evidenced by an observable and substantial impairment of the child's functioning.

**Sexual Abuse:** Sexual abuse is the subjection of a child to a criminal sexual act or threatened act by a person responsible for the child's care or by a person who has a significant relationship to the child or is in a position of authority.

See Minn. Stat. § 626.556, subd. 2 and Minn. Stat. § 260C.007, subd. 6.

## Reporting Suspected Child Maltreatment

Call the county social service agency, police or tribal child welfare agency (if applicable) if you believe that a child is being abused or neglected.

**Mandated Reports:** Certain professionals including but not limited to those engaged in the practice of the healing arts, social services, psychological or psychiatric treatment, child care, education, or law enforcement are required by law to file a report if they *know or have reason to believe* that child maltreatment has occurred. Minn. Stat. § 626.556, subd. 3. Lawyers are not included in the list of mandated child abuse reporters.

**Voluntary Reports:** Other people, such as neighbors or relatives, are encouraged to make a report if they think a child is being abused or neglected.

Rule 1.6 of the Rules of Professional Conduct provides that a lawyer may reveal information relating to the representation of a client if the lawyer reasonably believes the disclosure is necessary to prevent reasonably certain death or substantial bodily harm.

**PRACTICE TIP:** For guidance on this issue as it relates to a potential child maltreatment report, you may seek an advisory opinion from The Office of Lawyers Professional Responsibility (651-296-3952).

## What Happens After a Report Is Made?

The report is first "screened" to see if the allegations meet the statutory criteria for child maltreatment. *Screening Guidelines* have been developed to provide direction to social service agencies; the content of the *Screening Guidelines* is intended to track with Minn. Stat. § 626.556.

If a report is "screened in," (i.e., it meets the statutory criteria warranting involvement with child protection), the case is assigned to one of two response tracks:

### 1 Family Assessment Response ("Alternative Response")

When the alleged child maltreatment does not involve sexual abuse or substantial child endangerment, the report may receive a Family Assessment. The Family Assessment is defined as a "comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs...." Minn. Stat. § 626.556, subd. 2. In contrast to the Investigative Response, the Family Assessment Response is intended to be a non-confrontational, strength-based model.

The Family Assessment ultimately leads to a determination of whether:

- services are needed to address the safety of the child and other family members; and
- there is a risk of subsequent maltreatment.

The Family Assessment does not include a determination as to whether child maltreatment occurred.

Following the assessment, the family may be offered services on a "voluntary" basis. If the family accepts, the agency creates a service plan for the family and arranges for mutually agreed-upon services to reduce risk for the child. If the family doesn't cooperate with the Family Assessment Response process or declines to use the proposed services, the response track may be changed to the Investigative Response.

### 2 Investigative Response ("Traditional Method")

When sexual abuse or substantial child endangerment is alleged, such reports must be investigated. Other case types may also be referred for an investigation. The police and other professionals may be involved with the investigation. Investigations must begin immediately and include direct contact with the child and the child's parent (or caregiver). Given the stakes, some parents opt to have counsel present during the initial interview. The investigation can proceed even if the parent(s) refuses to cooperate. When there is serious harm or risk of serious harm to a child, the police are authorized to remove a child from his/her family home for a period of 72 hours (after which point, the court may authorize continued removal). The focus of an investigation is fact-finding related to the current safety of a child and the risk of subsequent maltreatment. The investigation must ultimately determine whether:

- child maltreatment occurred; and
- child protection services are needed.

**Administrative Finding:** Upon a finding of child maltreatment, a letter will be sent to the person accused of maltreatment informing him/her of the maltreatment determination and his/her right to appeal the determination. The appeal is an administrative "fair hearing" governed by Minn. Stat. § 256.045, subd. 3b. A child maltreatment finding is part of the state and county background checks required for certain care-giving jobs, volunteering positions and licenses.

- This administrative maltreatment determination stands on its own and is totally separate from any future judicial determination or adjudication that a child is in need of protection or services (CHIPS).
- **PRACTICE TIP:** People frequently ignore this maltreatment determination letter and/or do not tell counsel about it. Counsel needs to be aware of timing requirements and collateral consequences of a maltreatment determination.

**Juvenile Court:** Upon a finding that there was child maltreatment and that child protection services are needed, the county or tribe will file a CHIPS (Child in Need of Protection or Services) Petition with the Juvenile Court – unless voluntary services are offered as an alternative.

**Criminal Charges:** Depending on the facts, the alleged maltreatment (e.g., criminal sexual misconduct or malicious punishment of a child) may also result in criminal charges.

*Continued on reverse.*



## What Happens in a Typical CHIPS Case?

Although a private party may file a CHIPS Petition, most are initiated by the county social service agency. The allegations must be based upon one or more factors set forth in Minn. Stat. § 260C.007, subd. 6. If the Petition is proven by clear and convincing evidence, the child is adjudicated as being a child in need of protection or services.

In many CHIPS cases, the children are placed into foster care early in the process. Social service agencies must identify and notify a child's relatives if the child needs foster care (and potentially a permanent placement out of the home), consistent with Minn. Stat. § 260.012 and Minn. Stat. § 260C.221.

CHIPS court records and hearings are no longer "closed." With few exceptions, anyone can review CHIPS court records and attend court hearings.

**PRACTICE TIP:** Although the Register of Actions for CHIPS cases are not viewable from a remote online search of the Minnesota Trial Court Public Access website (most commonly known as "MNCIS"), you may review accessible records for CHIPS cases at the courthouse.

The primary goal in CHIPS cases is to maintain or return a child to the family if it is safe and in the child's best interests. In most cases, social services is required to provide reasonable efforts to families to either maintain the child in the home or reunify the child with the parent.

CHIPS cases have several stages and a series of court hearings, beginning with an Emergency Protective Care and/or Admit/Deny hearing, and if the CHIPS petition is denied, progressing to a Pretrial Hearing and culminating in a Trial.

After a CHIPS adjudication, there are various types of review hearings and the law provides a limited time for parents to remedy the conditions that led to the CHIPS adjudication. A six-month permanency progress review is required. In most cases, permanency placement determination proceedings must begin by the twelve-month mark following an out-of-home placement. If a child cannot be returned to the care of the custodial parent(s) in accordance with the case timelines, a permanency petition is filed. In those cases, permanent placement options for children include:

1. Termination of parental rights → guardianship to commissioner of human services (legally freeing the child for adoption);
2. Voluntary consent to adopt → adoption (guardianship vests with commissioner of human services pending the child's adoption);
3. Transfer of permanent legal and physical custody to a relative or noncustodial parent;
4. Permanent custody to the agency for placement in foster care; or
5. Temporary legal custody to the agency for a specified period of time in foster care.

## What Happens in CHIPS Cases Involving ICWA?

The Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.*, is a federal law that provides a variety of substantive and procedural protections in state child protection cases involving children who are either a member of a federally recognized tribe or eligible for membership in a federally recognized tribe and the biological child of a tribal member. Tribes must receive timely notice of CHIPS cases involving such children so that the tribe may participate in the state court proceeding as a party or choose to exert tribal jurisdiction over the eligible child.

There are eleven federally recognized tribes in the state of Minnesota. Some of the tribes in Minnesota have their own court system and hear child welfare matters. ICWA does not apply to tribal courts. Because each of these tribes is sovereign, they each have their own rules, codes and laws.

A cornerstone in the application of ICWA in state court is active and early participation and consultation with the child's tribe in all case planning decisions. Before the placement of the Indian child in foster care or the termination of the Indian parent's parental rights, the state must show that they have made active efforts to provide remedial services and rehabilitative programs to the family in an effort to keep the family intact, and that these efforts have proved unsuccessful. 25 U.S.C. § 1912 (d)

In any foster care or preadoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

1. A member of the child's extended family;
2. A foster home, licensed, approved or specified by the tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution approved by a tribe or operated by an American Indian organization that has a program suitable to meet the child's needs.

## What Laws and Rules Govern CHIPS Cases?

- General provisions of the Juvenile Court Act, Minn. Stat. § 260.011 – 260.91
- Child protection provisions of the Juvenile Court Act, Minn. Stat. § 260C.001 – 260C.637
- Minnesota Indian Family Preservation Act, Minn. Stat. § 260.751 – 260.835
- Indian Child Welfare Act, 25 U.S.C. 1901, *et seq.*
- The Minnesota Rules of Juvenile Protection Procedure
- The Minnesota Rules of Evidence, except as otherwise provided by statute or the Minnesota Rules of Juvenile Protection Procedure
- Minnesota General Rules of Practice for the District Courts Rules of Guardian Ad Litem Procedure in Juvenile and Family Court

## Resources

- Minnesota Judicial Branch, *Minnesota Judges Juvenile Protection Benchbook*, November 2011
- Minnesota Department of Human Services, *Family Guide to Child Protection*, October 2015
- Minnesota Department of Human Services, *Minnesota Child Maltreatment Intake, Screening and Response Path Guidelines*, January 2018