



Tip of the Month – July 2008

Understanding CHIPS Cases

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Introduction

On June 5, 2008 the Minnesota Board of Public Defense, announced that Public Defenders outside of Hennepin County would no longer be handling child protection matters.² However, custodial parents and sometimes the children and guardians ad litem in child protection matters are still entitled to representation at the public expense.³ In essence, this means that there will be an increase in court appointed attorneys on child protection matters, and more of a demand for attorneys to volunteer in these matters. This article provides an overview of child protection cases. Due to the complicated nature of these cases, this article is merely an overview of the subject, providing practitioners with a roadmap to the complicated child protection statutes. This article also includes suggestions for attorneys new to this area of practice. While VLN typically does not represent clients in CHIPS proceedings, VLN clients often have had interaction with juvenile court. The following overview will help family law attorneys as they advise clients at clinics or represent their clients in family court.

A CHIPS Primer⁴

Child in Need of Protection or Services (CHIPS) cases are governed by Minnesota Statutes Chapter 260C *et. seq.*⁵ Generally a CHIPS case is initiated by a report to Social Services most often concerning possible child abuse or neglect.⁶ Social Services then investigates the matter and if it is determined that there is a substantial likelihood the child is either abused or neglected, a social services report is made and forwarded to the county attorney's office. At this time, if the concerns regarding possible child abuse or neglect are serious enough, the county attorney's office will apply to the courts for an *ex parte* order for emergency protective care which most likely will include a CHIPS petition.⁷ An

¹ The author is currently a law clerk to Judge Kristine R. DeMay. Judge DeMay currently has a Juvenile Calendar.

² Richard Meryhew, *State to Pare the Ranks of Public Defenders by 23*, STAR TRIBUNE, June 5, 2008, <http://www.startribune.com/local/19572244.html>.

³ Minn. Stat. §260C.163 subd. 3 (2008).

⁴ This Primer addresses children that are in need of protection or services due to conditions other than the child's behavior. Different statutes and standards apply when a CHIPS matter concerns social services intervention regarding a child with an emotional disturbance or developmental disability. *See generally* Minn. Stat. §260C.212 subd. 9 (2008).

⁵ Minn. Stat. §260C.0001 *et. seq.* (2008).

⁶ However, any reputable person may file a CHIPS petition with the court without an investigation or report to Social Services, so long as they set forth the requisite statutory grounds. Minn. Stat. §260C.141 subd. 1 (2008). Specifically, an individual filing a CHIPS petition must include: (1) a statement of facts which, if proven, would establish that there is a child in need of protection or services; (2) a statement that the petitioner has reported the circumstances underlying the petition to social services and social services did not address the problem; (3) a statement whether there is an existing juvenile or family court custody order or a matter pending in family or juvenile court concerning the child; and (4) a statement of the relationship of the petitioner to the child. *Id.*

⁷ Minn. R. Juv. Prot. P. Rule 28.02 (2008).

ex parte order for emergency protective care immediately removes the child and places the child with either a safe parent or in foster care. The CHIPS petition attached to the application for emergency protective care is based on the report of social services and sets forth the requisite statutory grounds alleging that the child is in need of protection or services as defined pursuant to Minn. Stat. §260C.007 (2008).

After a child is removed from their parents' custody, an emergency protective care (EPC) hearing must be held within seventy-two hours, otherwise release of the child to the parent is required.⁸ At an EPC hearing, the court reviews the grounds which lead to the child's removal, confirms the child's name and date of birth, as well as the parent's address and determines whether there are sufficient safeguards to allow the child's return to the parent's custody or whether continued custody by a parent would be contrary to the welfare of the child.⁹ Most often, until the circumstances which led to the child's removal are thoroughly investigated, a court will err on the side of caution and not return the child to the parent's care and custody. At this time, if a parent is not already cooperating or working with social services, it would most certainly be in their best interests to start.

After an EPC hearing is held, the matter then progresses to an admit/deny hearing wherein a parent either admits or denies the allegations contained within the CHIPS petition.¹⁰ If a child is placed outside of the home, the admit/deny hearing must be held within ten days of their removal from their parent's care and custody.¹¹ Before the admit/deny hearing, social services will have provided a parent with their recommendations regarding what matters need to be addressed to allow the child to return home, or if the child is in the home, to allow for dismissal of the CHIPS petition. At this stage, most recommendations will focus on psychological and parenting evaluations. A parent need not admit the CHIPS petition in order for the court to order them to undergo psychological or parenting evaluations. Note that if a parent recognizes that there was a need for social services intervention, an admission to the CHIPS petition, followed by cooperation with social services regarding their case plan,¹² is the most effective means to ensure the child's return to their care and custody and dismissal of the CHIPS petition.

If a parent continues to deny the CHIPS petition the matter will progress towards trial. Should the matter reach trial, the county must prove by clear and convincing evidence that the subject child of the CHIPS petition is in need of protection or services.¹³ Even before the CHIPS petition is admitted, however, it is essential that a parent know the clock starts ticking towards permanency the moment the child is placed out of the home.¹⁴ For children eight years of age and under, permanency must be addressed six months from the time of their removal from the parent's home.¹⁵ For children over eight years of age, permanency must be addressed twelve months after their removal from the paternal home.¹⁶ Permanency means the county attorney will file a Permanency Petition most likely seeking termination of parental rights, a transfer of custody, or long-term foster care (LTFC) (LTFC is a

⁸ Minn. R. Juv. Prot. P. Rule 29.01 (2008).

⁹ Minn. R. Juv. Prot. P. Rule 30.08 – 30.11 (2008).

¹⁰ Minn. R. Juv. Prot. P. Rule 34.01 (2008).

¹¹ Minn. R. Juv. Prot. P. Rule 34.02 (2008).

¹² A case plan is most often an Out-of-Home Placement Plan (OHPP). A OHPP is essentially a road map for a parent to have the child returned to their care and custody. Depending on a parent's relationship with their social worker, they may have significant input into their OHPP. An OHPP is completed only after a parent undergoes the necessary parenting, psychological and, if need be, chemical dependency assessments.

¹³ Minn. R. Juv. Prot. P. Rule 39.04 subd. 1 (2008).

¹⁴ Minn. Stat. §260C.201 subd. 11, 11a (2008).

¹⁵ *Id.* subd. 11a.

¹⁶ *Id.* subd. 11.

permanency option for children twelve years of age and over).¹⁷ Most parents do not want their child protection matter to progress to permanency. Therefore, it is in their best interest to cooperate to the best of their ability in working the Out-of-Home Placement plan.

As with the CHIPS Petition, if a parent denies the Permanency Petition, the matter will progress towards trial. On termination of parental rights matters (slightly the most common), the county must prove the statutory grounds¹⁸ by clear and convincing evidence and the court must find that reasonable or active¹⁹ efforts to rehabilitate the parent and reunite the child have failed.

As mentioned above, this was a *very* brief overview of child protection matters.²⁰ The area is fairly particularized, but with the dearth of public defenders handling these cases after July 8, 2008, more attorneys will be needed to assist clients on these extremely important matters. The following tips may come in handy for those attorneys willing to get their feet wet on these matters.

TIPS

1. These may sound like a no-brainers, but quite frequently we see attorneys in juvenile court who do not do the following:
 - a. Have an understanding of the Child Protection Statutes and the Rules of Juvenile Protection Procedure;²¹
 - b. Bring a copy of the Child Protection Statutes and Rules of Juvenile Protection Procedure with you to a hearing (you never know what will happen!);
 - c. Read the report and recommendations of Social Services and the guardian ad litem (if applicable) as far in advance as possible and then make sure you discuss your client's position on them before the court date. Note that social services and the guardian ad litem must provide you with a copy of their reports at least five days in advance of a hearing.²²
2. Ask your client if they are a member or are eligible for membership in a American Indian Band. If they are, this means the case falls under the Indian Child Welfare Act (ICWA) which requires social services to exert active efforts, as opposed to reasonable efforts, to prevent separation of parent and child. Also, should ICWA apply, the American Indian Band is also a party to the child protection matter.²³
3. As with any client, assess your client's psychological status. If they need chemical dependency treatment, counseling or another service to address their psychological status, urge them to seek the service out as soon as possible. Voluntary action on a parent's part goes a long way with the court and may aid in your client's relationship with social services.

¹⁷ *supra*, note 10.

¹⁸ See Minn. Stat. §260C.301 (2008).

¹⁹ Active efforts are required from the county in Indian Child Welfare Act cases. See Minn. R. Juv. Prot. P. Rule 39.05 subd. 3 (b)(2) (2008).

²⁰ The Minnesota Court system has made a flow chart of the CHIPS process available at <http://www.mncourts.gov/?page=177#Flowchartbk>.

²¹ Although they are at times as difficult as the Internal Revenue Code or the Immigration and Naturalization Act, you need to understand how they work!

²² Minn. R. Juv. Prot. P. Rule 38.05 subd. 3 (2008).

²³ See Indian Child Welfare Act (ICWA) Compliance, National Indian Child Welfare Association, http://www.nicwa.org/Indian_Child_Welfare_Act/.

4. Impress upon your client the need not to be angry with social services and the need for their cooperation with social services and the guardian ad litem. Cooperation, namely by following a case plan, will lead to the child's return home (i.e. reunification).
5. Remember that this is a very tough area of practice for attorneys. If you feel yourself getting burnt-out take a breather!