

Overview of the legal issues related to children and mental health questions
 By: Wright S. Walling

A.	Getting into the "system"	
	1.	Introduction on jurisdiction
	a.	<u>Jurisdiction</u> : the authority by which courts and judicial officers take cognizance of and decide cases; the legal right by which judges exercise their authority. It exists when court has cognizance of a class of cases involved, proper parties are present (personal jurisdiction), and the point to be decided is within the powers of the particular court.
	b.	<u>Venue</u> : not to be confused with jurisdiction; it relates only to place where or territory within which either party may require case to be tried.
	c.	In Minnesota, district courts are courts of general jurisdiction. We no longer have municipal or county courts.
	d.	In Hennepin County, Ramsey County, St. Louis County and some of the suburban counties in the Twin Cities metropolitan area, we have separate juvenile, family, and probate court rooms and judges (in Hennepin and Ramsey counties, there are actually separate buildings housing juvenile court). Yet, these are all part of the district court and any district court judge can hear juvenile, family, and probate court matters
	e.	Some of these courts have their own social services departments that serve the parties that appear before these specialty courts. (e.g., Hennepin County has a Department of Children and Family Services) a separate probation department that serves juvenile court and a Department of Family Court Services that serves family court). These departments have their own social workers and often psychologists.
	f.	It is critical when trying to access services for children to understand the local <u>practices</u> of each county (often this is difficult information to obtain) and the structure of the district court.
	g.	Separate statutes govern the various types of proceedings and all have their unique requirements of what pleadings must be filed to commence a proceeding. Examples include: Chapter 257 governs paternity and custody proceedings; Chapter 259 governs adoption and name changes; Chapter 260 governs juvenile delinquency, CHIPS, TPR's, child abuse; Chapter 518 governs marriage dissolution and custody; Chapter 518B governs domestic abuse; Chapter 253B governs civil commitments;
	h.	In some cases there may be more than one chapter involved in one proceeding and more than one specialty court may also be involved. (e.g., a CHIPS case could involve a custody dispute, domestic abuse, and a delinquency petition). You may want the court to consider all of these matters at once. The legal concepts of consolidation, joinder, and intervention are often important, as is an understanding of different burdens of proof in the various actions.
	i.	Efforts at combined jurisdiction: Ramsey County Pilot Project; practice in Greater Minnesota; practices in other states

	j.	Increasing role for administrative proceedings: administrative law judges are part of the executive branch and not the judicial branch; ALJ's often are found in separate departments (such as Department of Human Services) and they are also found in the state's Office of Administrative Hearings. There is an increasing prevalence in child of administrative process support matters and matters involving children with disabilities. Do not confuse Administrative Law Judges with Referees.
	k.	Often the goal when dealing with children's mental health issues is to get services for the child and to protect the child and others from the child's actions. Often the obtaining of services requires either the cooperation of a county agency or an order from the district court.
	2.	Voluntary placements of children
	a.	The majority of children probably receive services without an intervention by the county social services agency or the court. Parents turn to schools, churches, private physicians and therapists, and their medical insurance providers. However, there are some treatment facilities that require either a court order or the involvement of a local social service agency. Court orders or the support of the local social service agency can be obtained by the "voluntary placement" of a child by the parent(s) or legal guardian.
	b.	<u>Statutory Limitations on voluntary placements</u> . Per Minn. Stat. §257.02, no person other than parents or relatives may assume the permanent care and custody of a child under 14 years of age unless authorized so to do by an order or decree of court. Except in proceedings for adoption or by a consent decree entered under Section 257.0215 (see next paragraph), no parent may assign or otherwise transfer to another parental rights or duties with respect to the permanent care and custody of a child under 14 years of age and any such transfer shall be void.
	c.	<u>Voluntary custody consent decrees</u> . A parent may transfer legal and physical custody of a child to a relative by a consent decree entered under Minn. Stat. §257.0215. The court may approve a proposed consent decree if the custody arrangement is in the best interests of the child and all parties to the decree agree to it after being fully informed of its contents. A consent decree must transfer legal and physical custody of the child to a named relative and state that this includes the ability to determine the child's residence, make decisions regarding the child's education, religious training, and health care, and obtain information and public services on behalf of the child in the same manner as a parent. The decree must also indicate whether the transfer of custody is temporary or permanent, and include an order for child support in the guidelines amount (518.551) and an allocation of child care costs (518.551), subject to income withholding, and including an order for medical support. Either a parent or a relative who is party to a consent decree under this section may file a motion to modify or terminate the consent decree at any time and a party who has custody of a child per a voluntary consent decree must seek modification of the consent decree before transferring physical or legal custody of the child to anyone. For purposes of this statute, "relative" means an adult who is a stepparent, grandparent, brother, sister, uncle, aunt, or other extended family member of a minor by blood, marriage, or adoption. See also Minn. Stat. §257.85 which deals with "relative custody assistance" and Chapter 257A which deals with "designated caregiver agreements."

		d.	<p><u>Voluntary placements through the local social service agency.</u> Parents or legal guardians seeking services for a child may approach the local social service agency. If this will involve a placement out of the home with the local agency arranging and supporting the placement, the parents or legal guardian will need to enter in to a voluntary placement agreement with the agency. There are several statutory requirements that must be followed:</p>
		(1)	<p><u>Licensure:</u> Any person not exempted from the requirement for foster care licensure under Chapter 245A receiving a child in the person's home because of the death, injury, or illness of the child's parent if the person intends to keep the child for more than 30 days must notify the commissioner of human services in writing within 30 days after the child is received. The commissioner or its agent then must investigate the circumstances surrounding the child's entry into the home and take appropriate action to assure for the child and parents and foster parents the full protection of all laws of Minnesota relating to custody and foster care of children. In order for the county to place a child with a relative to provide foster care for a child, an individual who is related to the child, other than a parent or legal guardian, must be licensed by the commissioner or its agent. Sec. 245A.03</p>
		(2)	<p><u>Case plans and other requirements of voluntary placements.</u> Per Minn. Stat. §257.071, even where a child is placed in a residential facility by voluntary release of the child by the parent or parents, a case plan must be prepared within 30 days. A residential facility under Minn. Stat. §257.071 includes any group home, family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision. A case plan means a written document which is ordered by the court or which is prepared by the social service agency responsible for the residential facility placement and is signed by the parent or parents, or other custodian of the child, the child's legal guardian, the social service agency responsible for the residential facility placement, and, if possible, the child. It shall set forth the reasons for the placement, the actions to be taken by the parents to eliminate or correct the problems, the financial responsibilities and obligations of the parents, the visitation rights and obligations, the social and other supportive services to be provided, the date on which the child is to be returned to home of parents, the nature of the efforts to be made by the social service agency to reunite the family, and notice to the parents that placement of the child in foster care may result in termination of parental rights, but only after notice and a hearing as provided in Chapter 260.</p>
		(3)	<p><u>Placement decisions</u> are to be made based on the best interest of the child, with a preference for placing with relatives and important friends and pursuant to factors contained in Section 260.181, subd. 3.</p>
		(4)	<p>If possible, siblings are to be placed together.</p>

		<p>(5) <u>Notice requirements.</u> The local social service agency must inform a parent considering voluntary placement of a child who is not developmentally disabled or emotionally handicapped of the following: (a) the parent and the child each has a right to separate legal counsel before signing a voluntary placement agreement, but not to counsel appointed at public expense;(b) the parent is not required to agree to the voluntary placement, and a parent who enters a voluntary placement agreement may at any time request that the agency return the child. If the parent so requests the child must be returned within 24 hours of receipt of the request; (c) evidence gathered during the time the child is voluntarily placed may be used at a later time as the basis for a petition alleging the child is a CHIPS child or as the basis for a TPR petition; (d) if the local social service agency files a CHIPS or TPR petition, the parent would have the right to appointment of separate legal counsel and the child would have a right to the appointment of counsel and a GAL as provided by law, and that counsel will be appointed at public expense if they are unable to afford counsel, and (e) the timelines and procedures for review of voluntary placements and the effect the time spend in voluntary placement on the scheduling of a permanent placement determination hearing under Section 260.191, subd. 3b(5). (Note: 1998 legislative amendments now define court-ordered placement for purposes of calculating permanency timelines as 60 days after the date on which the child is voluntarily placed outside the home. Unless the child is developmentally disabled or emotionally handicapped, if a child has been placed in a residential facility pursuant to voluntary release by the parents and is not returned home within 90 days after initial placement in the residential facility, the social service agency responsible for the placement shall return the child to the home of the parent or file a petition to extend the placement for 90 days. The case plan must be updated when a petition is filed and must include a specific plan for permanency. If the court approves the extension, at the end of the second 90 day period, the child must be returned to the parent's home, unless a CHIPS petition is filed. See Minn. Stat. §257.071 for separate review procedures for developmentally disabled and emotionally handicapped child placements.</p>
--	--	---

			(6)	<p><u>Reviews of voluntary placements.</u> Upon a petition for review of voluntary foster care status, the court may: (a) find that the child's needs are being met, that the child's placement in foster care is in the best interests of the child, and that the child will be returned home in the next six months, in which case the court shall approve the voluntary arrangement and continue the matter for six months to assure the child returns to the parent's home. (b) in the case of a developmentally disabled and emotionally handicapped child voluntarily placed, the court may find that the child's needs are being met and that the child's placement in foster care is in the best interests of the child, in which case the court shall approve the voluntary arrangement. The court shall order the social service agency to bring a petition under section 260.131, subd. 1 or 1a, as appropriate, within 12 months; (c) find that the child's needs are not being met and order the agency or the parents to take whatever action is necessary and feasible to meet the child's needs and order disposition under section 260.191; or (d) find that the child has been abandoned by the parents financially or emotionally, or that the developmentally disabled child does not require out-of-home care because of the handicapping condition, in which case the court shall order the social service agency to file an appropriate petition pursuant to sections 260.131, subd. 1 or 260.231.</p>
	3.	Court-ordered placements		
		a.	Juvenile court	
			1)	overview of juvenile court (types of cases, participants, comparison with other courts)
			a)	<u>Judges</u>
				<p>Minnesota statutes provide that in Hennepin and Ramsey Counties the district court is the juvenile court. In both counties, the chief judge of the district designates one or more judges to hear cases arising under §§ 260.011 to 260.301 (juvenile code). The chief judge's designee to hear such cases as a principal or exclusive assignment can be for no longer than six years out of any 12-year period. In the Hennepin County court, the district court judge, juvenile court division, is a district court judge subject to the administrative authority and assignment power of the chief judge pursuant to statute. Minn. Stat. § 260.019.</p> <p>In counties in Minnesota where the population is 200,000 or less, the probate court is considered to be the juvenile court. Minn. Stat. § 260.021, subd. 4.</p>
			b)	<u>Referees</u>

				<p>In certain counties, the courts use referees to hear juvenile court matters. The chief judge of the judicial district may appoint one or more suitable persons to act as referees. Referees hold office at the pleasure of the judges of the district court and must be learned in the law unless they held a referee position prior to January 1, 1983. The judge may direct that any case or class of cases be heard in the first instance by a referee in the manner provided for the hearing of cases by the court. Upon conclusion of the hearing, the referee must transmit to the judge all papers related to the case, together with findings and recommendations in writing. The order signed by the referee is then counter-signed by the judge. Notice of a referee's findings, together with a statement relative to the right of rehearing, are to be given to the minor, the minor's parents, guardian or custodian of the minor, and any other person directed by the court. Notice may be mailed or provided at the time of the hearing.</p> <p>The minor, the minor's parents, guardians or custodians are entitled to a hearing by the judge of the juvenile court if within three days after receipt of the referee's findings they file a request for a hearing. The court then may allow such a hearing at any time. If no request for a hearing is made before the judge, findings and recommendations of the referee become the decree of the court when confirmed by order of the judge.</p>
			c)	<u>Jurisdiction</u>
			(1)	<u>Subject Matter Jurisdiction</u>

					<p>With the exception of certain specific cases, juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, a juvenile traffic offender, a juvenile petty offender, a child in need of protection or services, a child neglected and in foster care, any proceedings concerning any minor alleged to have been delinquent, a juvenile petty offender or juvenile traffic offender prior to having become 18 years of age. The juvenile court also has exclusive jurisdiction over adoption. The juvenile court's jurisdiction specifically excepts criminal proceedings in which a child's delinquent act is such that the child's act combined with the child's age results in the child's case being heard in district court. Minn. Stat. § 260.111, subd. 1 and 1(a).</p> <p>Juvenile court also has original and exclusive jurisdiction in proceedings concerning the termination of parental rights to a child; the appointment and removal of a juvenile court guardian of the person for a child where parental rights have been terminated; judicial consent to the marriage of a child when required by law; and foster care status of a child who has been placed in a residential facility based upon a voluntary release of the child's parent or parents. Minn. Stat § 260.111, subd. 2.</p> <p>The juvenile court also has jurisdiction in proceedings concerning alleged acts of domestic child abuse. Minn. Stat. § 260.111, subd. 3.</p>
				(2)	<u>Personal Jurisdiction</u>
					<p>The child or children about whom the allegations of a petition pertain; the juvenile court has jurisdiction over a parent, guardian or custodian of a child who is subject to the jurisdiction of the court. The court also has jurisdiction over a parent, guardian or custodian who has a right to notice pursuant to the rules of juvenile court of any matter pending with the court. In any proceeding concerning a child in need of protection or services, the court also has jurisdiction over the parent, custodian or guardian of the child for purposes of a disposition order. Minn. Stat. § 260.111, subd. 4.</p> <p>In a child in need of protection or services proceeding when an Indian child is a ward of a tribal court with federally recognized child welfare jurisdiction, the Indian tribe itself retains exclusive jurisdiction notwithstanding the residence or domicile of an Indian child. Title 25, U.S.C., § 1911; Minn. Stat. § 260.111.</p>
				d)	<u>Types of Cases</u>
					Juvenile court handles delinquency cases, children in need of protection or services (CHIPS) cases, adoption, terminations of parental rights, and orders for protection for domestic child abuse.

			e)	<u>Participants</u>
				Participants in juvenile court are a child’s custodian, guardian and parent(s). As part of a pilot project, the juvenile courts in certain counties, including Hennepin County, allow non-participants and non-parties to be present in the courtroom. Nonetheless, only certain individuals have a <u>right</u> to attend hearings. In the following categories the following individuals have a right to attend hearings:
			(i)	With regard to delinquency, juvenile petty offenses and juvenile traffic offenses, the following individuals may attend: (a) the child; (b) guardian ad litem and counsel for the child; (c) the parent, parents, legal guardian or legal custodian of the child and their attorney; (d) the spouse of the child, if any; (e) the prosecuting attorney; and (f) persons who are authorized by the court to be present. Individuals with a right to participate are: (a) the child; (b) the prosecuting attorney; (c) the guardian at litem; (d) the parents, legal guardian or legal custodian, except that they may not participate separately at hearings until the dispositional stage of the proceedings, and a parent, legal guardian or legal custodian may not participate as counsel for the child unless licensed to practice law; (e) attorneys for the parties with a right to participate have a right to participate in the proceeding on behalf of their clients. Rules of Juv. P. 2: 2.04, 2.07.
			(ii)	In protection matters: (a) children under the age of 12 have the right to participate through the child’s guardian ad litem and may personally participate upon order of the court; (b) Children 12 years of age and older who are the subject of a petition have the right to participate in all hearings unless excluded from the hearings by the court. When the child has been excluded from a proceeding, the child may participate through the child’s counsel and the guardian ad litem; (c) The parents and guardian of a child who is the subject of a petition have a right to participate in all hearings unless excluded by court order, in which case their attorney has the right to participate on their behalf; (d) The county welfare board has the right to participate in hearings through the county attorney, and the county also has a right to participate in protection matters when the county attorney has not drafted and filed the petition; (e) The guardian ad litem of a child or of the parent of a child who is the subject of a petition has the right to participate; (f) When the petition has been drafted and filed by counsel other than the county attorney pursuant to the rules of juvenile procedure, the court may permit the petitioner to participate. If the petitioner is excluded from the hearing, the person has the right to participate through their attorney. R. of Juv. P. 39 and 43.
			2)	Children in Need of Protection or Services, or “CHIPS” cases
			a)	CHIPS defined
				<u>A “CHIPS” child, or child in need of protection or services, is defined as a child who is in need of protection or services because the child:</u>
			(1)	is abandoned or without parent, guardian or custodian;

				(2)	has been a victim of physical or sexual abuse, resides with or has resided with a victim of domestic child abuse, resides with or would reside with a perpetrator of domestic child abuse or child abuse, or is a victim of emotional maltreatment;
				(3)	is without necessary food, clothing, shelter, education or other required care for the child's physical or mental health or morals because the child's parent, guardian or custodian is unable or unwilling to provide that care;
				(4)	is without the special care made necessary by a physical, mental or emotional condition because the child's parent, guardian or custodian is unable or unwilling to provide that care;
				(5)	is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition;
				(6)	is one whose parent, guardian or custodian for good cause desires to be relieved of the child's care and custody;
				(7)	has been placed for adoption or care in violation of law;
				(8)	is without proper parental care because of the emotional, mental or physical disability or state of immaturity of the child's parent, guardian or other custodian;
				(9)	is one whose behavior, condition or environment is such as to be injurious or dangerous to the child or others, including criminal activity in the child's home;
				(10)	has committed a delinquent act before becoming 10 years old;
				(11)	is a runaway;
				(12)	is an habitual truant;
				(13)	has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification proceeding, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense;
				(14)	is one whose custodial parent's parental rights to another child have been involuntarily terminated within the past five years; or
				(15)	has been found by the court to have committed domestic abuse perpetrated by a minor and has been ordered excluded from the child's parents' home by an order for protection minor respondent and the parent or guardian is either unwilling or unable to provide an alternative safe living arrangement for the child.
					Minn. Stat. § 260.015, subd. 2a.
				b)	<u>private vs. county CHIPS cases</u>
					There are two ways to access the county juvenile court system in a CHIPS proceeding: one is by bringing a private CHIPS petition; and the other is working a case through the county department of human services or bureau of social services in the particular county where a child is found.

				(i) Content of Petition: Certain basic things must be contained in either a private or county filed CHIPS petition. The petition must contain the following information: (1) a statement that the child is the subject of a juvenile protection matter and a statement of facts in support of the claim that the child is the subject of a protection matter; (2) The name, date of birth and residence and post office address of the child, and the names, residences and post office addresses of the child's parent or parents when known; the name, residence and post office address of the child's guardian if there is one of the person having custody or control of the child or of the nearest known relative if no parent or guardian can be found; and the name, residence and post office address of the spouse, if any, of the child. (3) a citation of the subdivisions of Minnesota Statutes on which the petition is based, together with a recitation of the relevant portion of the subdivisions.
--	--	--	--	---

				<p>(ii) Generally it is hoped that the county will act when it receives a report that a child is a child who is in need of protection or services. However, from time to time there are cases in which a county for whatever reason has refused to act on behalf of a child. It is in those cases that a private petitioner may petition the court to get services for a child and/or a family. The Minnesota Statutes provide that any reputable person, including an agent for the Commissioner of Human Services, any person having knowledge of a child in this state or a child who is a resident of this state who appears to be delinquent, in need of protection or services, or neglected and in foster care, may petition the juvenile court for a finding that a child is a child in need of protection or services. If the individual filing on behalf of the child is not a county attorney or an agent of the Commissioner of Human Services, they must file a form developed by the state court administrator and provide it to court administration. The court administrator must then review the petition before it is filed to determine that it is complete. The court administrator <u>may</u> reject the petition if it does not indicate that the petitioner has contacted the local social service agency. Minn. Stat. § 260.131.</p> <p>An individual who is filing a private CHIPS petition need not seek review of a local social services agency's action or decision not to pursue a CHIPS petition on behalf of a child in order to have that petition heard. The court must determine whether probable cause exists to believe that a need for protection or services exists before the matter is set on for hearing. If the matter is set on for hearing by the district court, the court administrator must notify the local social service agency by sending notice to the county attorney of the hearing.</p> <p>In addition to the necessary items outlined above, the private CHIPS petition must also contain a statement that the petitioner has reported the circumstances underlying the petition to the local social service agency and protection or services were not provided to the child.</p> <p>The private petition must also contain a statement of whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court concerning the child and a statement of the relationship of the petitioner to the child and any other parties. The court may not allow a private CHIPS petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents. Minn. Stat. § 260.131.</p>
				<p>c) CHIPS procedures and practices</p>

The first appearance on a CHIPS petition will be a hearing at which the parents will be expected to admit or deny the allegations of the petition. If there is an admission, the court can immediately deal with the dispositional phase of the case. If there is a denial of the allegations, then the matter is typically set on for pretrial. If the child has been placed outside the child's home by court order, the first appearance must be within ten days of the child's being placed. If a child is not in out-of-home placement, then the appearance shall be within 20 days after the child or the child's parents and guardian have been served with the petition. If there has been a settlement agreement by the parties, that agreement must be read into the record prior to questioning of the person admitting the allegations of the petition. If there has been a denial, then typically in Hennepin and Ramsey Counties and several other counties in the state, there would be a pretrial conference, which is not mandatory under the rules but typically would occur as an opportunity for motions regarding possible trial issues and an opportunity for the parties to meet with the court and determine not only the status of the case but whether a possible settlement could be reached. The rules require that a trial on a CHIPS petition be commenced within 90 days of the date of the denial of the allegations of the petition or, for a child not placed outside the home, within 120 days from the date of the denial of the allegations of the petition.

There is a movement amongst individuals dealing with CHIPS and termination proceedings to work toward settlement and mediation of these matters to resolve them prior to the need for a trial.

When private CHIPS petitions are brought before the court, it is wise to present to the court not only the petition itself but, as factual backup for the petition, documentation from professionals dealing with the child with specific recommendations as to what treatment is in the child's best interests. A private CHIPS petition is used by parents regarding their own child when family resources have been exhausted and mental health, chemical dependency or other specific issues as to the child remain unsolved and in need of treatment. When the county has been unwilling to assist the family in providing the services that professionals are recommending to the family on behalf of the child, then a private CHIPS petition can assist the family in getting needed help.

Additionally, non-family members and individuals not parents of the child can and have brought CHIPS petitions on behalf of a child or children when they believe the family itself needs services through the county and the county has refused to provide those services. Some of these instances occur when grandparents are concerned about their grandchildren and how the parents are caring for the children and feel that there is a need for intervention by the county on behalf of the child or children. In these situations, it is not only the children that need help but also the parents themselves that need therapy, parenting classes, chemical dependency treatment, mental health treatment and other help that the county has been unwilling or unable to provide on behalf of the family, and the family itself cannot force the needed help without a court order.

				d) <u>Dispositional Options</u>
--	--	--	--	---------------------------------

After there has been an adjudication of dependency or neglect or a finding that the child is in need of protection or services, the court may conduct a disposition hearing immediately after the finding is made or continue the matter for a disposition hearing at a later time. The court does, however, have to make a disposition of the matter within 45 days from finding the allegations of the petition proven for a child not outside the home and in no matter longer than 180 days from finding that the allegations of the petition have been proved. When the child has been removed from the home, a disposition hearing must take place within 15 days from finding the allegations of the petition proven, and in no matter longer than 30 days from the findings date. Rules of Juvenile Procedure, 62.02.

At any time during the CHIPS pendency, the court may order, upon its own motion or the motion of the county attorney or counsel for a person with a right to participate, an investigation of the personal and family history and environment of the child and for medical, psychological or chemical dependency evaluations of the child and any participant.

Dispositional hearings are different from trial proceedings in that they are to be conducted in an informal manner designed to facilitate an opportunity for all participants to be heard on what they believe to be an appropriate disposition. The court in a dispositional hearing may receive into evidence any information that is relevant to the disposition of the case, including reliable hearsay and opinions. The only exception is privileged communications. Rules of Juvenile Procedure 62.04. The disposition order issued by the court must contain written findings of fact to support the disposition ordered and shall also set forth the disposition plan, why the plan is in the best interests of the child, and what alternative dispositions were recommended and why such alternatives were not ordered.

Dispositional options for the court are: (a) to place the child under the protective supervision of the local social services agency or child placing agency in the child's own home under conditions prescribed by the court to correct the child's need for protection or services; (b) to transfer legal custody to a child placing agency or the local social service agency, and when considering placement of the child outside the parents' home the court must consider a placement that will serve the needs of the child and best interests of the child, and the court is to consider placement consistent with the child's best interests in the following order: (1) an individual who is related to the child by blood, marriage or adoption; or (2) is an important friend with whom the child has resided or had significant contact.

There is a preference, wherever possible, that siblings be placed together unless it is not in the best interests of the child or children involved. (c) If the court determines that the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parents, guardian or custodian to provide that care. If the parent, guardian or custodian fails or is unable to provide the treatment or care, the court may order it be provided. The court is not to transfer legal custody of the child for the purpose of obtaining special treatment or care solely because

				e)	<u>Permanency Planning and the New Legislation</u>
					<u>Current Law</u>
				(1)	effective until July 1, 1999;
				(2)	court must conduct a hearing to determine the permanent status of a child no later than 12 months after out-of-home placement.
				(a)	Out-of-home placement begins to run 60 days after the date of a voluntary placement or the first court-ordered placement, whichever is earliest.
				(b)	12 months is calculated by adding all time when the child has been placed out of the home, including any out-of-home placements within the past 5 years when the previous placement was the result of a prior petition.
				(3)	If the child has been out of the home for 12 months or more the placement may be continued for up to 6 more months before a permanency determination if in the best interests of the child.
				(4)	At least 10 days before a permanency hearing, social services must file a permanency petition. No hearing has to be held if a termination petition is filed before the date.
				(5)	If a child cannot be returned home at the time for permanency there are basically three options available:
				(a)	Permanent legal and physical custody to a relative;
				(b)	termination of parental rights and adoption;
				(c)	long-term foster care.
				(i)	Child must be at least 12; or
				(ii)	Failure to locate adoptive family; or
				(iii)	child has a sibling and the child has a significant relationship to the siblings who are ordered into long-term foster care.
				(6)	If the sole basis for CHIPS is runaway, habitual truant or delinquent act before age 10, then the court can order foster care for a specified length of time.
				(7)	Best interests of child given court's decision
					<u>Law Effective July 1, 1999</u>
				(1)	Changes to the above related to the timing requirements for permanency.
				(2)	A hearing must be conducted 12 months after out-of-home placement to establish permanency.
				(3)	However, if the child was under 8 years of age at the time the CHIPS petition was filed, the hearing must be conducted no later than 6 months after out-of-home placement.
				(a)	at this hearing the court must review the case plan and progress on the plan, including services provided.
				(b)	the court may order social services to show cause why it has not filed a termination petition.

				(4)	The rest of the above-noted under current law continues to be the same.
			3)	Terminations of parental rights	
				a)	TPR defined
				A termination of parental rights results when a juvenile court severs all the rights of a parent to a child. Minn. Stat. § 260.221.	
				b)	procedures and practices
				A termination of parental rights may occur in two different ways:	
				(1)	A voluntary termination of parental rights occurs when a parent has consented in writing to the termination of his or her parental rights and demonstrates to the court that there is good cause to terminate parental rights. Minn. Stat. § 260.221, subd. 1(a).
				(2)	An involuntary termination of parental rights occurs when a parent does not agree to the termination of their parental rights to a child, and the court must make certain findings in order to terminate a parent's rights. There are several bases upon which a court may involuntarily terminate a parent's rights. They are as follows:
				(a)	<u>abandonment of the child</u> . Abandonment is presumed when the parent has had no contact with the child on a regular basis and not demonstrated consistent interest in the child's well-being for six months, and the social service agency has made reasonable efforts to facilitate contact, or the child is under two years of age and has been deserted by the parent under circumstances showing an intent not to return to care for the child. Notably, a court is not prohibited from finding abandonment in the absence of these presumptions. Prima facie evidence of abandonment also exists where adoption proceedings are pending and there is no notice requirement to the person under adoption statutes and the person has not registered with the father's registry or the person has registered with the registry but failed to file a denial of paternity; failed to timely file an intent to claim parental rights; or failed to timely file an intent to claim parental rights with entry of appearance form and initiate a paternity action; Minn. Stat § 260.221, subd. 1a.
				(b)	that the parent has substantially, continuously or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent-child relationship, including but not limited to providing the child with food, clothing, shelter, education and other care and control necessary for the child's physical, mental or emotional health and development if the parent is physically and financially able and reasonable efforts by the social service agency have failed to correct the conditions that form the basis of the petition;
				(c)	that a parent has been ordered to contribute to support of the child or financially aid in the child's birth and has

							continuously failed to do so without good cause. This portion of the statute cannot be construed to state a grounds for termination of a non-custodial parent's rights if that parent has not been ordered to pay support or cannot financially contribute to the support of the child or the child's birth;
						(d)	the parent is palpably unfit to be a party to the parent-child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship, either of which are determined by the court to be of a duration or nature that renders the parent unable for the reasonably foreseeable future to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed a parent is palpably unfit if the child was adjudicated in need of protection or services due to circumstances regarding abandonment, physical or sexual abuse of the child, failure to provide food, clothing, shelter, education or other required care for the child's physical or mental health, medical neglect, or the child is without proper parental care because of the emotional, mental or physical disability or state of immaturity of the child's parent, guardian or custodian, and the parent's parental rights to one or more other children were involuntarily terminated because of abandonment, substantial and continuous or repeated refusal to comply with the parental duties, palpable unfitness to be a party to the parent-child relationship, or failure to timely correct the causes that resulted in the child's removal and finding of the child to be in need of protection or services.
						(e)	That following a determination of neglect or dependency or of a child's need for protection or services, reasonable efforts fail to correct the conditions leading to the CHIPS determination. It is presumed reasonable efforts have failed upon a showing that a child has resided outside the parents' home under court order for a cumulative period of more than one year within a five-year period and adoption of the mandated case plan and conditions leading to the determination that the child was a CHIPS child will not be corrected within the reasonably foreseeable future (presumed by showing the child's out-of-home placement will not be corrected in the reasonably foreseeable future if parents have not substantially complied with the court's orders and a reasonable case plan and conditions which led to out-of-home placement have not been corrected), and reasonable efforts have been made by the social service agency to rehabilitate the parent and reunite the family. Reasonable efforts are also presumed to have failed upon a showing that the parent has

						been diagnosed as chemically dependent, the parent has been ordered to participate in chemical dependency treatment, treatment programs were offered to the parent and they were culturally, linguistically and clinically appropriate, and the parent has failed two or more times to successfully complete a treatment program or has refused two or more separate meetings with a caseworker to participate in a treatment program, and the parent continues to abuse chemicals.
						(f) a child has experienced egregious harm in the parent's care which is of a nature, duration or chronicity that indicates lack of regard for the child's well-being such that a reasonable person would believe such conduct contrary to the best interests of the child or of any child to be in the parent's care;
						(g) in the case of a child born to a mother not married to the child's biological father during conception or birth, is not entitled to notice of an adoption hearing under § 259.49 and the person has not registered with the father's adoption registry;
						(h) the child is neglected and in foster care; or
						(i) that the parent has been convicted of a crime of murder in the first degree, murder in the second degree, murder in the third degree, manslaughter in the first degree, assaulted another with a dangerous weapon resulting in substantial bodily harm, or assaulted someone in the third degree, any of which crimes have been with regard to another child of the parent, or if the assault has occurred against the surviving child or a violation or attempt at conspiracy to violate U.S. Code Title 18, §§ 1111(a) or 1112(a) with regard to another child of the parent.

				<p>Minn. Stat. § 260.221, subd. 1.</p> <p>A termination of parental rights petition is required to be filed by the county attorney within 30 days of a child's placement in out-of-home care if the child has been subjected to egregious harm, is a sibling of another child of the parent who was subjected to egregious harm, or is abandoned as an infant. Notably, this requirement is not mandatory when the county attorney determines that a transfer of permanent legal and physical custody to a relative is in the best interests of a child or there is a compelling reason documented by local social services that filing a petition would not be in the best interests of the child.</p> <p>In termination proceedings, the best interests of the child is paramount.</p> <p>In any proceeding under the termination of parental rights statutes, the court must make specific findings regarding the nature and extent of efforts made by social services to rehabilitate the parent and reunite the family; provision of services or further services for purposes of rehabilitation and reunification is futile and therefore unreasonable under the circumstances, or that reasonable efforts at reunification are not required under § 260.012.</p>
				c) Venue
				Termination of parental rights proceedings are to be held in the county where the child resides or where the child is found.
				d) Procedures in Terminating Parental Rights
				Any reputable person, including the Commissioner of Human Services, may petition the court for termination of parental rights. A termination of parental rights proceeding includes an arraignment on the termination of parental rights petition, usually followed with a pretrial on the issue, and then a trial is required on the issue of whether parental rights should be terminated.
				e) Effects of Termination of Parental Rights

				<p>As a result of a termination of parental rights, a child's parent's rights to a child are completely severed other than if, in a particular situation, a parent is made a party to a communication or contact agreement allowed under Minn. Stat. § 259.58 related to adoptions and future contact.</p> <p>A parent whose rights are terminated remains liable for unpaid balances of any support obligations owed under a previous court order until the effective date of the termination order. A termination severs all parental rights, powers, privileges, duties, immunities and obligations including any rights to custody, control, visitation or support existing between the child and parent, and the parent no longer has any standing to appear at any further legal proceeding concerning the child. Minn. Stat. § 260.241.</p> <p>Of important note is that an order terminating a parent-child relationship does not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor does it affect any rights and benefits that a child derives from the child's descent from a federally recognized Indian tribe. Thus, social security benefits remain in full force and effect if the child was entitled to them at the time the termination of parental rights occurs.</p>
			f)	<u>post-TPR dispositions</u>
				<p>Once a termination of parental rights occurs, the child is then freed for adoption. The benefits to doing a termination of parental rights for and on behalf of a child are that the child may then be adopted. Upon completion of a termination of parental rights the court retains jurisdiction and the guardian ad litem and counsel for the child continue on the case until an adoption decree is entered. A hearing must be held every 90 days following a termination of parental rights for a court to review the progress toward an adoptive placement and the specific recruitment efforts by the agency to find an adoptive family or other placement living arrangements for the child and to finalize the adoption or other permanency plan.</p>
			g)	<u>appropriateness of TPR in mental health cases</u>

				<p>The Minnesota Court of Appeals, in the case of <u>Welfare of D.C.M.</u>, 443 N.W.2d 853, Minn. Ct. App. 1989 (review denied September 21, 1989), held that it was not necessary to have an adoption pending for a child in order for a set of parents' parental rights to a child to be voluntarily terminated.</p> <p>In that case, the county objected to the termination of parental rights, claiming that the statutory intent was to enable the judicial system to legally remove a child from a destructive or unhealthy home environment without the consent of the natural parents, and secondly to facilitate adoption procedures by providing a means by which existing parental rights may be voluntarily terminated. <u>D.C.M.</u> was the subject of a termination of parental rights petition who had been removed from the home of his biological parents when he was approximately two years old and placed in a series of foster homes and potential adoptive placements. None of the homes were permanent. Steven and Kathleen Miles, the two parents who sought to voluntarily terminate their parental rights to D.C.M., took him into their home on June 25, 1984, and adopted him in May of 1985. The Miles knew that D.C.M. had emotional problems at the time of their adoption. They had two other adopted children, one older and one younger than D.C.M. D.C.M.'s problems continued after the adoption, and as a result D.C.M. began counseling with a therapist in May of 1986, and continued in counseling until the time of trial.</p> <p>The Miles felt they were unable to cope with D.C.M.'s problems and the way his behavior affected their family. Respite care allowed the Miles to have D.C.M. removed from their home for one weekend each month. In their petition to the court, the Miles cited a number of incidents which illustrated D.C.M.'s behavioral problems. The Court of Appeals stated that, "The affirmative evidence supporting termination includes the recommendations of D.C.M.'s long-term therapist, a private psychologist who saw D.C.M. for four consultations, D.C.M.'s guardian ad litem, and D.C.M.'s attorney. Only two individuals recommended that parental rights not be terminated – a county social worker who had minimal contacts with D.C.M. and a psychologist who did not meet with D.C.M. but reviewed the records." The trial court record also reflected that the Miles rejection of D.C.M. was complete and no evidence suggested that it was reversible. The court concluded that subjecting D.C.M. to additional reunification counseling was not in his best interests; that a finding that termination of parental rights was supported by substantial evidence; and the trial court properly granted the petition to voluntarily terminate the Miles' parental rights to the child.</p> <p>Notably, as can be seen by a review of the reasons for termination of parental rights of biological parents, it is often the testimony of mental health professionals involved with the treatment and care of a child that establish the basis upon which to determine that it is in the best interests of a child that his or her parents' parental rights be terminated. The importance of a mental health professional's testimony at trial for termination of parental rights or CHIPS proceedings cannot be underestimated in any circumstance.</p>
--	--	--	--	--

			4)	Adoptions
--	--	--	----	-----------

Adoption, as indicated above, is an alternative choice to permanency planning on behalf of a child. Adoption statutes set forth in Minn. Stat. § 259 et seq. establish the basis for an adoption. In order for a court to grant an adoption of a child, it must find that it is in the child's best interests that an adoption be granted. There are different types of adoptions, and they are: step-parent adoptions; agency placement adoptions; direct placement adoptions; adult adoptions; and foster parent adoptions. These different types of adoptions, though not necessarily defined or outlined by the statutes, are those which are commonly seen.

As is stated above with regard to termination of parental rights as well as CHIPS petitions, the mental health of the child involved in an adoption proceeding, as well as the adoptive parents, is something that at times does come into question before a court. This is particularly true in contested adoptions where the mental health of all parties involved in the adoption proceeding is usually examined. In a non-contested adoption proceeding, the mental health of the adoptive parents is examined to some degree by the social workers conducting the adoption study on the adoptive couple. In non-infant adoptions, the mental health of the proposed adopting parent, as well as the mental health of the child is examined by the court to determine that it is in the best interests of the child that the adoption be granted. Specifically, mental health professionals dealing with children in foster care are called upon to provide recommendations as to the best interests of the child being adopted by his or her foster parents or by another adoptive family. Issues with regard to a child's attachment to a particular care provider and how that attachment will be affected by severing a particular relationship and creating a new relationship are serious issues to be examined carefully when dealing with adoption of older children.

The legal effect of an adoption is to grant to an adopting parent or parents the relationship of parent and child as between themselves and the child or children being adopted. It creates an obligation on the part of the adopting parent to provide for love, care, guidance, financial support and other support as necessary to a child's well-being.

In order for a child to be freed for adoption, parental rights need to be terminated, either voluntarily or involuntarily, or the child's parents need to consent to the child's adoption.

Fairly newly established law allows for a future contact agreement to be a part of an adoption proceeding, thereby allowing the biological family to continue to have some relationship with a child in the future. Again, the issue of a contact agreement and whether it is in the best interests of a child is one which is looked at carefully by the social workers involved in a particular adoption case, be it of an infant or of an older child. Additionally, if the adoption is to be of a child who has spent time in the foster care system, the mental health professional who has been dealing with the child, including a psychologist or psychiatrist, should be consulted with regard to whether it is in the best interests of the child to have any future contact with the biological family and what specifically the limitations or the permutations of that contact should be. Agreements that have been entered into by the court, where the child is currently involved with a therapist, frequently defer the specifics of future

			5)	Delinquency
			a)	delinquency defined
				A delinquent child means a child:
			(1)	who has violated any state or local law except as provided in Minn. Stat. § 260.193, subd. 1, and except for juvenile offenders as described in Minn. Stat. § 260.015, subd. 9 to 23;
			(2)	who has violated a federal law or a law of another state and whose case has been referred to the juvenile court if the violation be an act of delinquency if committed in this state or a crime or offense if committed by an adult;
			(3)	who has escaped from confinement to a state juvenile correctional facility after being committed to the custody of the Commissioner of Corrections; or
			(4)	who has escaped from confinement to a local juvenile correctional facility after being committed to the facility by the court.
				<p>Minn. Stat. § 260.015, subd. 5(a).</p> <p>However, the term “delinquent” does not include a child alleged to have committed murder in the first degree after becoming 16 years of age, but the term “delinquent child” does include a child alleged to have committed attempted murder in the first degree. Minn. Stat. § 260.015, subd. 5(b).</p> <p>Minn. Stat. § 260.193, subd. 1, discusses juvenile traffic offenders; procedures; and dispositions.</p> <p>Minn. Stat. § 260.015, subd. 19-23, discuss respectively habitual truants; runaways; juvenile petty offenders; juvenile alcohol offenders; and juvenile controlled substance offenders.</p>
			b)	procedures and practices
				The Rules of Juvenile Procedure, Rules 1 through 35, outline the procedures and practices which are followed in delinquency, juvenile petty offenses and juvenile traffic offenses.
			c)	dispositional options
				<p>Minn. Stat. § 260.181 outlines the general provisions related to dispositions. General provisions include a discussion of the dismissal of the petition, consideration of reports, protection of the child’s best interests, and termination of jurisdiction.</p> <p>If the court finds the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:</p>
			(1)	counsel the child or the parents, guardian or custodian;

				(2)	place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the child's parents, guardian or custodian designed for the physical, mental and moral well-being and behavior of the child or with the consent of the Commissioner of Corrections, in a group foster care facility which is under the management and supervision of said Commissioner;
				(3)	subject to the supervision of the court, transfer legal custody of the child to one of the following: a child placing agency; or the local social services agency; or a reputable individual of good moral character; or a county home school; or a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed;
				(4)	transfer legal custody by commitment to the Commissioner of Corrections;
				(5)	order reasonable restitution;
				(6)	require the child to pay a fine of up to \$700.00;
				(7)	if the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian or custodian to provide it;
				(8)	cancel the child's driver's license;
				(9)	order the child remain enrolled in a public school until the child reaches the age of 18 if the child is enrolled in school, or complete all requirements needed to graduate from high school if the court believes it is in the best interests of the child and of public safety.
					Minn. Stat. § 260.185, subd. 1. <u>See also:</u> Minn. Stat. § 260.185, subd. 1(a), which discusses dispositions in relation to possession of a firearm or dangerous weapon.
				d)	probation department and services
					Any person committed to the Commissioner of Corrections from a county having a probation officer of the juvenile court may be placed on probation by the Commissioner under the supervision of the probation officer, who shall assume supervision as though it were pursuant to a judgment or order of the juvenile court. Minn. Stat. §242.22. Chapter 242 outlines how the juvenile probation department and services are structured.
			6)	Juvenile court orders for protection	

			<p>Minnesota Statutes provide that the local welfare agency may bring an emergency petition on behalf of a minor, family or household member or members seeking relief from acts of domestic child abuse. The petition has to allege the existence of immediate or present danger of domestic child abuse and has to be accompanied by an affidavit stating the specific circumstances from which relief is sought. Minn. Stat. § 260.133. If it appears from the petition or sworn affidavit that there are grounds to believe that the child is at risk of immediate and present danger of domestic child abuse, the court may grant an order without notice or hearing from any other party other than the petitioning party pending a full hearing. In such a temporary order the court may grant relief it deems appropriate, including restraining any party from committing acts of domestic child abuse, excluding the alleged abusing party from the dwelling which the family or household members share or from the residence of the child. In order to exclude a party from the dwelling, the court must also find that it is in the best interests of the child or children remaining in the dwelling to have that individual excluded and that a remaining adult family or household member is able to care for the child or children in the absence of the excluded party. Minn. Stat § 260.133, subd. 2. The local social services agency is to provide appropriate services to the family and household members during the period. The temporary order is effective for a fixed period not to exceed 14 days. Within five days of the temporary order being granted by the court, the petitioner must file a petition with the court alleging that the child is in need of protection or services, and the court must give the petition priority on its calendar. The court may renew the temporary order for protection one time for a period not in excess of 14 days if a petition has been filed with the court and the court determines upon informal review that the renewal is appropriate.</p> <p>An order issued under the domestic child abuse act must be served personally upon the respondent of that petition.</p> <p>The court may modify the terms of the order upon notice to all parties, and the hearing and the relief that is granted under the domestic child abuse act is in addition to other available civil and criminal relief.</p> <p>The order for protection which is granted as a result of the domestic child abuse act must be forwarded by the court administrator to local law enforcement agencies with jurisdiction over the residence of the child.</p>
		b)	Probate Court (see presentation by Bill Nieman)
		c)	Family Court
		1)	types of actions in family court primarily consist of divorce and legal separation, custody and visitation matters, paternity determinations, child support, and domestic abuse proceedings. Actions that are most likely to provide an ability to address children's mental health and behavioral issues include custody actions and domestic abuse proceedings.

		2)	unlike juvenile court, family court is served by a family court services unit that primarily does custody and visitation evaluations and mediation. Psychologists and social workers, if on staff or on contract, evaluate and make recommendations but generally do not provide the actual services. With the exception of the domestic abuse statute, the ability under the family court statutes to order treatment is limited to primarily withholding custody or restricting visitation unless certain requirements are met and ordering parenting education courses.
		3)	Third party or relative custody petitions are brought under Minn. Stat. §518.156. Any person can bring a custody petition in family court and the court analyses this under the best interest custody factors found in §518.17. If permanent custody with a relative or other person is a disposition considered under §260.191 of a CHIPS proceeding, a custody petition is filed under Chapter 518 and the juvenile court considers those criteria.
		4)	Family court does have a unique relative custody statute that allows relatives with whom a child has resided for a period of 12 months or more where the parent has had no regular contact with the child or has neglected to comply with the dues imposed upon the parent by the parent child relationship to obtain an emergency <u>ex parte</u> custody order. This may then be converted to a permanent custody order under the custody criteria of Chapter 518. The order must also state what conditions the parent must meet in order to have custody returned, in effect setting up a CHIPS-type case plan in a family court matter, but without any mandated review periods. While the statute says the court "may" notify the parent that he or she may request assistance from the local social service agency in order to meet the conditions set by the court, this is seldom done and most modifications occur under the modification of custody criteria of Minn. Stat. §518.18 (endangerment test).
		5)	The domestic abuse statute is found in Chapter 518B. A domestic abuse petition can be filed against any family member, apparently including against or on behalf of minors. The relief available includes restraining and no contact orders, awards of temporary custody, limitations on visitation, temporary support of children or spouses, providing the petitioner with counseling or other social services for the parties, and ordering the abusing party to participate in treatment or counseling services. Minn. Stat. §518B.01, subd. 6.
B.	Unique considerations for unique children		
	1.	children in foster care	
	2.	adopted children with special needs	
	3.	Native American children	
	4.	children with severe handicaps	
C.	Issues of consent by the child and/or the parent/guardian to receive treatment and services		
	1.	When addressing the issue of consent by a minor or a parent, we generally mean more than simply approving the treatment or services. The concept of "informal consent" includes this means being informed of, and understanding the diagnosis, nature and purpose of the proposed treatment; risks and consequences of proposed treatment; probability that treatment will be successful; feasible treatment alternatives being able to make a voluntary choice among alternatives; and prognosis if treatment is not given.	

2.	There is a presumption under Minnesota law that a parent's consent is necessary for treatment or services for a child, unless the child falls under certain circumstances when he or she is allowed to consent for himself or herself. While Minnesota law does not contain any provisions by which a minor becomes "emancipated" per se, there are several categories of minors who are considered emancipated for giving consent: (1) the minor is living separate and apart from parents and guardians and is managing his or her own financial affairs (Minn. Stat. §144.341); (2) the minor has married (Minn. Stat. Sec. 144.342); and (3) the minor has borne a child (Minn. Stat. §144.342).
3.	There are also several categories of care or services for minors that have unique consent requirements.
(a)	For the treatment of alcohol and other drug abuse, any minor may give effective consent for medical, mental and other health services to determine the presence of, or to treat alcohol and other drug abuse. If the consenting minor requests to leave the hospital, the facility head must release her or him within three days, unless the release is not in the best interest of the patient, her or his family, or the public. In that case, the facility shall petition for the person's commitment. Minn. Stat. §253A.03(2).
(b)	Any minor 16 years or older may request to be admitted to a facility as an informal patient for observation, evaluation, diagnosis, care and treatment for alcohol and other drug abuse without making formal written application. Any person under 16 may be admitted as an informal patient with the consent of a parent or legal guardian if it is determined by independent examination that reasonable evidence shows that the proposed patient is mentally ill or chemically dependent, and the proposed patient is suitable for treatment. Every patient admitted for chemical dependency must be informed in writing that the patient has a right to leave the facility after making such a request unless the patient is committed. Minn. Stat. §253B.04.
(c)	Any person may, by her or his request and with the consent of the head of the facility, be admitted to a hospital as an informal patient for <u>inpatient mental health services</u> . A person may not be admitted to the hospital if she or he objects and shall be free to leave the hospital within 12 hours of his or her request, unless committed. Minn. Stat. §253A.03(1). Any person under 16 may be admitted for such services with the consent of a parent or legal guardian if it is determined by independent examination that reasonable evidence shows that the proposed patient is mentally ill, or chemically dependent and the proposed patient is suitable for treatment. Every patient admitted for mental illness must be informed in writing that the patient has the right to leave the facility after making such a request unless the patient is committed. Minn. Stat. Sec. 253B.04.
(d)	A minor 16 years or older may consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care. Minn. Stat. Sec. 253B.03(6)(d).
4.	If the minor consented to the treatment, Minnesota law does not authorize release of medical and mental health records to anyone other than the minor. A medical professional may, however, inform the minor's parent or guardian of any treatment given or needed when, in the professional's judgment, failure to inform the parent or guardian would seriously jeopardize the health of the minor. Minn. Stat. §144.346.
D.	<u>Funding for services for children</u>

	Costs and expenses associated with children receiving mental health treatment or court-ordered examination and treatment, be it physical or mental health examinations or treatment, are deemed to be a charge upon the welfare funds of the county in which the proceedings are held upon certification of the judge of juvenile court. Minn. Stat. § 260.25, subd. 1(3). However, the court must order the local social services agency to require the parents or custodian while the child is under 18 to use the total income and resources attributable to the child for the period of care, examination or treatment and to reimburse the county for the cost of care, examination or treatment.
1.	Resources of the Child
	Income and resources attributable to the child include but are not limited to social security benefits, supplemental security income (SSI), veteran's benefits, railroad retirement benefits and child support. They are the first resources to be used to fund a child's treatment.
2.	Parental Contribution
	If the resources of the child are not enough to reimburse the county for full cost of the care, examination or treatment, the court must determine whether the parents have the ability to support the child and after giving the parents a reasonable opportunity to be heard, the court is to order, and the local social services agency must require the parents to contribute to the cost of care, examination or treatment of the child. The fee schedule applied in these cases is to be one established by the local social services agency which has been approved by the Commissioner of Human Services. The income of a step-parent who has not adopted a child cannot be considered as part of family income to determine the parental contribution to treatment for the child. Parental contribution is done through wage withholding.
3.	Private insurance
	The statute itself governing costs and expenses does not alter the benefits available through or by private insurance obtained by the parents. The statute does not extend the benefits supplied by a parent's plan for medically necessary treatment. See Minn. Stat. § 260.251, subd. 1(e).
4.	Medical Assistance
	Where the child is eligible for Medical Assistance or already enrolled in Medical Assistance before coming into the juvenile court jurisdiction, Medical Assistance continues to cover the treatment for the mental and physical health of the child.
5.	Adoption Subsidies
	Adoption subsidies provide a monthly stipend to individuals who are adopting a special needs child pursuant to Title IV-E of the Social Security Act, United States Code. The monthly stipend can vary in amount based upon the child's age and also upon the child's special needs. When a child who has been adopted through a subsidized adoption program is placed out of the home for treatment, there is a Medical Assistance backer to the private insurance of the adoptive parents, and the monthly stipend continues to go to the parents, but the county is limited in what it can recover from the adoptive parents for out-of-home placement to the amount of the base subsidy that the parents are receiving. The subsidy payments to the adoptive parents for special needs above the base rate for the subsidy are stopped by the state until such time as the child is returned to his or her adoptive home.

	<p>It is oftentimes funding issues which bring parents into the private CHIPS arena to obtain treatment for mental health purposes for a child or children in their home. Often the county programs that are being suggested or recommended to the family for treatment on behalf of a child in these situations are not sufficient given what mental health professionals who have already been working with the family are recommending on behalf of the family and the child involved. At this point the family can seek the assistance of the juvenile court as referenced above to assist in getting the necessary treatment as recommended by those working with the child.</p>			
E.	Recent legislative initiatives affecting children's mental health issues:			
	1.	<p>Minn. Stat. §145.9266 provides for the Commissioner of Health to design and implement an ongoing statewide campaign to raise public awareness about fetal alcohol syndrome and other effects of prenatal alcohol exposure. The campaign is to include messages directed to the general population as well as culturally specific and community-based messages. A toll free resources and referral telephone line is to be included in the message and the Commissioner of Health is to conduct an evaluation to determine the effectiveness of the campaign. The law also provides for the creation of a statewide network of FAS diagnostic clinics, professional training about FAS, a FAS community grant program, and the creation of an FAS Coordinating Board and provisions regarding federal funding, contracts, and donations.</p>		
	2.	<p>Minn. Stat. §256.01 has set up a Child Mortality Review Panel and a Citizens Review Panel to examine the policies and procedures of state and local welfare agencies and to evaluate the extent to which these agencies are effectively discharging their child protection responsibilities.</p>		
	3.	<p>Minn. Stat. §257.071 now provides that within 6 months after a child is initially placed in a residential facility, the local social service agency shall identify any relatives of the child and notify them of the need for a foster care home for the child and of the possibility of the need for a permanent out of home placement of the child.</p>		
	4.	<p>Minn. Stat. §257.0711, directs the Commissioner of Human Services is directed to establish a program for concurrent permanency planning for child protection services; develop guidelines and protocols for social service agencies engaged in concurrent permanency planning; provide ongoing technical assistance, support and training for local social service agencies and other individuals and agencies involved in concurrent permanency planning, develop a detailed evaluation plan and, by January 15, 2001, report to the appropriate legislative committees on the operation of the concurrent planning programs and the results of the evaluation. "Concurrent planning" means the development and provision of services aimed at reunification while simultaneously developing an alternative permanency plan for the child. Concurrent planning applies to all children placed by court order or voluntarily placed more than 60 days, except developmentally delayed children and emotionally handicapped children.</p>		
F.	Representing children and the role of the guardian ad litem: practice and ethical issues.			
	1.	Introduction		
		a.	Historical Perspective	
			1)	Guardian ad Litem
			2)	Counsel For Children
			a)	Juvenile Court
			b)	Mental Health Court

		b.	Understanding All Participants' Roles In System	
	2.	Guardian Ad Litem		
		a.	Role of Guardian ad Litem	
			1)	Juvenile Court
			2)	Family Court
			3)	Mental Health Court
		b.	Current rules For Guardian ad Litem	
		c.	Representation Of Guardian ad Litem	
			1)	Ethical Responsibilities
	3.	Representation Of Children		
		a.	Rules Of Professional Responsibility – Ethical Requirements	
		b.	When Should Children Have Lawyer	
			1)	Nature Of Court Proceeding
			2)	At A Certain Age
			3)	Objective Competing Criteria
		c.	Juvenile Court	
			1)	Current Rules
			a)	Age 12
			b)	Same Lawyer As Guardian ad Litem?
			2)	Proposed Rules
			a)	All Children Have Counsel
			b)	Competency Issue
			3)	Role Of Counsel – Is It Different? Who Is Your Client?
		d.	Mental Health Court	
			1)	Requirement Of Rules
			2)	Is Role Of Lawyer Different For Children
	4.	Conclusion		
		a.	A Look At The Future	
		b.	Is There A Conflict of Goals	
		c.	Does The System Get In The Way Of Children's Best Interests	