

### *MCAA CHIPS Conference – Breakout 3*

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## Paternity and Fathers

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### Paternity

The responsible social services agency shall make diligent efforts to identify and locate both parents of any child who is the subject of proceedings under Chapter 260C. 260C.150, Subd. 3

If there is no legal father of the child(ren), a parent and child relationship may be established in the CHIPS action or in a separate paternity action. 260C.150, subd. 1

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### Paternity – Diligent Efforts to Identify

#### **“Diligent efforts”**

1. Asking the mother who the father is and for all identifying information
2. Checking with child support (or county attorney) regarding any pending paternity or child support actions, evidence of a ROP, etc.
3. Searching the Father’s Adoption Registry 30 days after birth and filing the results with the court.
4. Other “reasonable means” - i.e. family members, social media, etc.
5. County attorney can take sworn testimony from the mother or “known parent” in Court

\*\* The agency may disclose data which is otherwise private under section 13.46 or 626.556 in order to carry out its duties under this provision. 260C.148, Subd. 3(b).

\*\* The Court is also required to inquire as to the identities of both parents. 260C.148, Subd. 4.

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### Paternity – Diligent Efforts Findings

1. As soon as possible, but not later than the first review hearing required, the agency shall describe its diligent efforts to locate any parent who remains unknown or who the agency has been unable to locate.
2. The court shall determine whether (1) diligent efforts have been made by the agency to identify both parents of the child, (2) both parents have been located, and (3) both parents have been served with the summons or notice of the proceedings.
3. When the court finds the agency has made diligent efforts to identify and locate both parents and one or both remain unknown or cannot be located, the court may find that further reasonable efforts for reunification with the parent who cannot be identified or located would be futile.

260C.150, Subd. 7

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### Paternity – Presumptions

§257.55

A man is presumed to be the biological father of a child if:

1. He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court.
2. Before or after the child's birth, he and the child's biological mother have attempted to marry each other but the marriage is or could be declared void, voidable, or otherwise invalid
3. A ROP is executed; or with his consent, he is named as the child's father on the child's birth record; or he is obligated to support the child under a written voluntary promise or by court order;
4. The man receives the child into his home and openly holds out the child as his biological child;

\*\*\* Any presumption can be rebutted by Court Order.

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### Paternity – Fathers and Custody

Once the legal or presumed father has been identified, what is the custodial status of the child prior to the CHIPS action?

#### Questions to Consider:

1. What was the mechanism of paternity establishment?
  - \* Recognition of Parentage (ROP)
  - \* Paternity Adjudication Order
  - \* Marital Presumption
  - \* Other Legal Presumption (Minn. Stat. §257.55)
2. Is there a Court Order addressing the child's custody?
  - \* Divorce/Dissolution Cases
  - \* Custody (Establishment/De Facto/ Third Party)
  - \* Prior CHIPS Transfer of Custody to Relative
3. Is the mother married?

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## Paternity – Fathers and Custody

### **Recognition of Parentage (ROP)**

- An executed Minnesota Recognition of Parentage on file with the state registrar of vital has the force and effect of a judgment or order determining the existence of the parent and child relationship
- If the father is the legal father of the child by virtue of an executed ROP; and the mother was not married when the child was conceived and/or when the child was born; and there are no known Court Orders addressing the child's custody; **THEN** the mother is the child's sole legal and physical custodian under Minnesota Statutes Section 257.541, Subd. 1
- The father is a Participant in the CHIPS action. He does not enter an Admission or Denial and does not have an automatic right to counsel.

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## Paternity – Fathers and Custody

### **Paternity Adjudication Order**

- If the father is the legal father of the child by virtue of a paternity adjudication Order, THEN custody is as found in the Order.
- If the father was awarded either joint or full legal or physical custody of the child, the father is a Party in the CHIPS action. He is required to enter an Admission or Denial and has the right to counsel at public expense if he financially qualifies.
- If the father was not awarded joint or legal custody- even if he was awarded parenting time- he is a Participant in the CHIPS action. He does not enter an Admission or Denial and does not have an automatic right to counsel.

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## Paternity – Fathers and Custody

### **Marital Presumption**

- If the father is the legal father of the child by virtue of marital presumption and the parties remain married and there are no Orders addressing the child's custody, **THEN** the father is the child's joint legal and joint physical custodian.
- If the marriage of the parties has been dissolved by court Order or there are any Orders addressing the child's custody, THEN custody is as found in the Order.
- If the father has, or was awarded, either joint or full legal or physical custody of the child, the father is a Party in the CHIPS action. He is required to enter an Admission or Denial and has the right to counsel at public expense if he financially qualifies.
- If the father was not awarded joint or legal custody- even if he was awarded parenting time- he is a Participant in the CHIPS action.

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## ICWA – Indian Fathers

There are additional ways that an unwed father can be considered a parent under the Indian Child Welfare Act (ICWA).

In addition to establishing paternity under Minnesota law by court Order or execution of a ROP, individual tribal customs, rules and laws control whether paternity has been acknowledged in another way sufficient to give an unwed father status as a parent for ICWA purposes.

ALL Indian parents are parties from the beginning of the case and the rights associated with party status, such as the right to counsel at court appointed expense, etc.

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## Placement – Non-Custodial Parent/Father

1. The Agency is required to assess a non-custodial parent's ability and willingness to care for the child "temporarily or permanently" and to provide services necessary to enable that parent to safely provide care
2. The Agency is required to develop a reunification plan for all fathers- legal, presumed, alleged- unless the Court relieves the Agency of the requirement to provide reasonable efforts / offer a plan to a parent.
3. If the parent has not been adjudicated, the Agency shall require the father to cooperate with paternity establishment as part of the case plan.
4. The plan shall be as comprehensive as possible based on the information known and the circumstances. All parents shall have a plan- even if incarcerated.  
Minn. Stat. §260C.219

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## *Father's Rights in 260C Cases*

Type of Father	"Right to be Heard" §260C.163, Subd. 2	CHIPS	Permanency
Alleged Father	No	Participant	Participant
DNA Confirmed (w/out adjudication)	No- right does not apply until adjudicated	Participant	Party
Presumed Father Minn. Stat. §257.55	Yes	Participant- Right to Intervention	Party
Adjudicated Father w/out Custody	Yes	Participant- Right to Intervention	Party
Legal Custodian Legal or physical custody	Yes	Party	Party
Indian Father (ICWA)	Yes	Party	Party

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## Rights of Parties

## Rule 21

1. Notice pursuant to Rule 32;
2. Legal representation pursuant to Rule 25;
3. Be present at all hearings unless excluded pursuant to Rule 27;
4. Conduct discovery pursuant to Rule 17;
5. Bring motions before the court pursuant to Rule 15;
6. Participate in settlement agreements pursuant to Rule 19;
7. Subpoena witnesses pursuant to Rule 13;
8. Make argument in support of or against the petition;
9. Present evidence; cross-examine witnesses; request review of the referee's findings and recommended order pursuant to Rule 7;
10. Request review of the court's disposition and bring post-trial motions pursuant to Rule 45;
11. Appeal from orders of the court pursuant to Rule 47; and any other rights as set forth in statute or these rules.

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## Rights of Participants

## Rule 22

1. Notice and a copy of the petition pursuant to Rule 32;
2. Attendance at hearings pursuant to Rule 27; and
3. Right to offer information at the discretion of the court, except as provided in subdivision 2.
4. Right to be served a copy of the Social Services and Guardian ad Litem Reports.
5. Court Orders are not required to be served upon Participants under Rule 10.

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## Fathers- Right to Intervention

### Intervention of Right

- Any parent who is not a legal custodian of the child shall have the right to intervene as a party.
- A person with a right to intervene shall serve and file a notice of intervention, which shall include the basis for the intervention. The intervention shall be deemed accomplished upon service of the notice, unless a written objection is timely filed and served.

### Permissive Intervention

- Any person may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

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## Fathers- Effect of Intervention

### Right to Representation and Appointment of Counsel

- Every party and participant has the right to be represented by counsel.
- Appointment of counsel for a parent or legal custodian (except where the sole basis for the petition is habitual truancy) where the parent desires counsel, the Court finds that such appointment is appropriate, but the person is financially unable to obtain counsel under the guidelines set forth in section 611.17.

### Admission or Denial

- Every party must enter an Admission or Denial to the pending Petition
- In a termination of parental rights (TPR) matter, only the parents of the child are required to admit or deny the petition.

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## Relative Search Efforts

- It is also important to identify Fathers in CHIPS cases due to the requirement in Minn. Stat. §260C.221(a) that “the responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child’s removal from the parent.”
- The relative search required by this section “shall include both maternal relatives and paternal relatives of the child.” Minn. Stat. §260C.221(b).

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## Relative Search Efforts

- Relative search efforts and the identification of both maternal and paternal relatives can be very important if a case moves to permanency. If the child cannot be reunified with either parent, there may be relatives on either or both sides of the family who can be a permanency option for the child.
- Identification of fathers and relative search efforts may also be important in identifying other (“half”) siblings to the child and establishing ongoing connections for the child.

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