SNAPSHOTS on Minnesota Youth
Vol. 3, Issue 3
April 2011

Minnesota and the *UN Convention on the Rights of the Child: A Comparison*

YOUTH DEVELOPMENT RIGHTS - Part 1

Introduction

This third issue of the 2010-2011 *Snapshots on Minnesota Youth* series continues with the exploration of how Minnesota fares with the rights and protections afforded all children under the *United Nation's Convention for the Rights of the Child.*[1]

In 1989, world leaders convened in acknowledgement that youth under age 18 have rights and need special care and protection that adults do not. The Convention resulted in 54 Articles and two optional Protocols[2] that assert children everywhere have: the right to **survival**; to **develop** to the fullest; to **protection** from harmful influences, abuse and exploitation; and to **participate** fully in family, cultural and social life.

The 2010 *Snapshot* series will mirror the aforementioned survival, development, protection and participation priority areas, beginning with this issue dedicated to survival and health. Each *Snapshot* issue will explore:

- The key articles of the *UN Rights of the Child* that fall within that category;
- State-level data to illustrate the relevance of the issue to Minnesota youth; and
- How Minnesota law or policy guarantees or fails to provide each right or protection to children.

While the United States was an active participant in the drafting of the *UN Rights of the Child* and the Convention itself, we remain one of only two UN nations, the U.S. and Somalia, which have yet to ratify the treaty. Through ratification, nations commit themselves to protecting and ensuring children's rights and they agree to hold themselves accountable for this commitment before the international community. Parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

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Youth Development Rights: Part I

This Snapshot issue focuses on children's rights to **Development**. Rights in this series include: children's right to know and be raised by their parents unless it is contrary to their best interests; for adults to acknowledge youth's developing capacities; the right of children to maintain contact with both parents; the right to family unification; the right to special protections for youth with disabilities; and the right to special protections for youth living in foster care, institutions, or experiencing homelessness.

Part II of the Youth Development Rights topic (Spring 2011) will cover UN Articles related to children's rights to education; to play and leisure; and to practice their culture.

In Minnesota, children's rights and protections as it relates to their development are largely overseen by the Departments of Human Services, Health, and Education. In addition, Family or Juvenile Courts operated by the state's judicial system serve to ensure the equal application of these rights and protections for children and families. The courts also settle disputes when parties disagree on what course of action is in the best interest of the child.

In an attempt to provide uniformity when addressing the dynamic and challenging issues that families face, Minnesota has implemented an intricate system of laws, rules and procedures. Specifically, Minnesota Statutes Chapter 257 addresses the *Custody and Legitimacy of Children*; Chapter 518 governs the *Dissolution of Marriage*; Chapter 260C governs Child Protection matters including emergency protective care, the termination of parental rights, and youth requiring out-of-home placement or foster care. The Rules of Juvenile Protection Procedure and Rules of Juvenile Delinquency Procedure establish uniform practices for child protection and criminal matters in the juvenile courts. Administrative Rules Chapter 2960, the Licensure and Certification of Programs for Children, establishes the rights and protections for children while placed in the physical care and custody of the state.

Non-Discrimination: The *UN Convention on the Rights of the Child*, Article 2, emphasizes that states are to ensure rights to "each child within their jurisdiction

A Note About the Data

Due to the large number of rights drafted by the UN Convention's General Committee, only select articles will be chosen for exploration in this series. The full text for each of the 54 articles is available through the *Office of the United Nations High Commissioner of Human Rights.*[3] In addition, some articles contain subdivisions such that a portion of an article may be presented in one *Snapshot* issue and the remaining portion may appear in another.

It should be noted that each UN article is cited using specific UN language. Nations which have ratified the treaty are referred to in the articles as *States Parties*. This term is not referring to state subdivisions within a country, which is the common usage of the term in the United States.

The information in this *Snapshot* series is compiled from the most recently available publicly disseminated data at the state and federal level. Many topics covered in this issue relate to public health and social security programs, immigration and refugee data, and the application of state statute. Some of these topics are extremely complex such that only an overview can be provided in this format. The authors have aspired to accurately portray program services and requirements but acknowledge that nuances of program eligibility and application are not fully represented. Please contact the relevant state agency cited for further information.

This report is made possible, in part, by funding from the federal Office of Justice Programs, Bureau of Justice Statistics (Award #2009-BJ-CX-K018). The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice. The receipt of awarding agency funding does not constitute official recognition or endorsement of any project.

without discrimination of any kind." Minnesota's social services and legal systems are intended to result in a consistent response to family issues across our state's geographic and judicial boundaries. Ideally, these codified procedures reduce the likelihood that children and families will receive disparate treatment based on their race, religion, culture, gender, socioeconomic status, or disability—or because of the status, opinions, beliefs or political activities of their parents, consistent with *UN Rights of the Child* requirements.

The state of Minnesota has its own policy prohibiting discrimination. Minnesota Statutes section 363A.02 states that it is the public policy of the state to "secure for persons in the state freedom from discrimination." These protections apply in the following areas: employment, housing and real property, public accommodations, public services, and education. Generally, the policy prohibits discrimination based on race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation and age.

Preamble: Family as the Natural Environment for Children

In the Preamble of the *UN Convention on the Rights of the Child*, it is unequivocally stated that family is "the fundamental group of society." As such, families are named as the natural environment for the growth and well-being of all its members, particularly children, and the state should afford the family "the necessary protection and assistance so that it can fully assume its responsibilities within the community."

Family, the UN Committee asserts, "refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests." The definition of a family is left intentionally broad to accommodate a wide range of cultural values and to account for changing social standards. When implementing the *UN Rights of the Child*, States are asked to assess if their definition of a family corresponds with the flexible definition of the Convention.

A primary critique of the *UN Convention on the Rights of the Child* by opponents, including concerns voiced by United States interests, is that the government is given too much reach onto family affairs, or that the rights afforded children supersede the rights of parents. Proponents of the Convention counter that parents are clearly named as those responsible for their children's upbringing and that the state has an obligation to assist families in doing so. This analysis will not explore whether the *UN Rights of the Child* strike the appropriate balance between State interests and individual rights, rather whether Minnesota's policies are consistent with or in conflict with the Convention.

Minnesota's Definition of Family: Despite the pervasive use of the term *family* in both our national and state dialogue, just who and what constitutes a family is neither clearly defined nor uniformly applied at the federal or state level. Minnesota has no official definition of a family to guide state agencies that serve families and youth. Instead, the definition of a family may be determined by individual agencies; may be contingent on the sources of funding received (state or federal); or may depend on the kind of services provided.

The statutory definitions of family that do exist in Minnesota most frequently include: Parents and children, spouses, persons related by blood or adoption, persons who reside together, or persons who have a child in common. Minnesota's Domestic Abuse Act (518B), Human Rights Act (363A.03), Juvenile Court Act (260.011), and Family Investment Program (256J) all include some definition of family or

family members. Conversely, Minnesota's Family Connections Act (124D.25), Indian Family Preservation Act (260.751), and Early Childhood Family Education Program (124D.13) all either contain the word family or affect families directly, but don't expressly define what a family is.

While the lack of a uniform definition across agencies in some ways allows for great latitude to include non-traditional family arrangements, it also can be potentially difficult for individuals to advocate for their rights as a family or the rights of their child. The degree to which stepparents; unmarried couples; same sex couples; and children who are cared for or raised by relatives have rights, can largely be determined by the system in which families are operating or, in some cases, whether a legal precedent has been established by case law.

The prevailing definition of family can also affect many aspects of a child's life. Whether schools, health care providers, employers, courts, or the community as a whole respect and acknowledge a child's caregivers and family structure can affect whether a family receives state sponsored public assistance; whether a family member can stay home without consequence to provide care when a child is sick or injured; or whether children can be visited by or placed with a family member in the event they are removed from their home. All of these can serve to either assert or refute for a child the validity of their family system.

For full compliance with the *UN Rights of the Child*, Minnesota would have to initiate and adopt a broad, inclusive definition of family to be applied uniformly across state agencies.

Article 5: Parental Responsibilities and Children's Evolving Capacities

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

States implementing Article 5 are to assess whether there is a detailed legal definition of parental responsibilities, duties and rights; whether evolving capacities of children are appropriately respected in legislation; and whether, once a child has acquired "sufficient understanding" in relation to important matters, if he or she is entitled to make certain decisions for him/herself. Furthermore, the tenets of Article 5 supports that the state disseminate informational campaigns and education about children's developing capacities to parents and caregivers.

Rights of Parents: In Minnesota, a "parent and child relationship" is defined as "the legal relationship between a child and a child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations." Generally, biological and adoptive parents reserve the right to make choices on behalf of their children related to their place of residence, education, medical care and religious upbringing. Biological and adoptive parents are presumed to have these parental rights even if they never were or are no longer married. Acknowledgement of parentage outside of the institution of marriage is one way that Minnesota acknowledges non-traditional family arrangements.

Parents are presumed to have legal and physical custody over their children placing them in charge of their "care, custody and control." Generally, parents may not transfer permanent care and custody of a child to another person unless they do so via a Consent Decree through the courts. This is considered to

be a legal, voluntary transfer of parental rights and duties to another. Having done this, the third party then becomes a child's "legal guardian" and is able to make decisions on behalf of the child.

Nevertheless, informal family arrangements for the extended care of children while parents are absent or otherwise incapacitated routinely occurs without involvement by the juvenile courts or the Department of Human Services.

Responsibilities of Parents: In exchange for these parental rights, Minnesota parents and guardians have the responsibility to keep children safe from physical and emotional harm and provide for their basic needs. This includes the legal obligation to provide adequate food, clothing, shelter, medical care and education. Parents who fail to meet these obligations can be investigated for child neglect, abuse or endangerment.

Some failures on the part of parents to care for children are handled in Family Court. In such cases a parent or guardian may temporarily or permanently lose the custody of their children. A child, for instance, may be removed from the home so that the parents may address issues such as the cleanliness and safety of the home, so that children may get necessary medical care, or so that parents can address their personal issues such as chemical addiction or mental illness that are interfering with their ability to care for their children. In these cases, Social Services develop a plan for the temporary removal of children often with the goal of family reunification. In the most severe cases of abuse or neglect, a legal process may be initiated to remove the child from the custody of the parent permanently.

Some actions by parents toward children are considered criminal in nature and can result in imprisonment and fines. *Neglect or Endangerment of a Child* is a criminal offense in Minnesota defined as "a parent, legal guardian or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, supervision appropriate to the child's age." The charge presumes that the parent is reasonably able to make the necessary provisions and that the failure to do so has harmed the physical, mental or emotional health of the child. A parent or caregiver is also guilty of endangerment if they allow for the continual victimization of a child (such as physical or sexual abuse) or put a child in situations that a likely to substantially harm the child's physical, mental or emotional health.

In 2009, the Minnesota Department of Human Services reported that counties and select tribes assessed 17,218 reports of maltreatment involving 24,499 children. The majority, 11,427 cases, received a Family Assessment which is a strengths-based, family-focused method for working with families in the child protection system. In these assessments, no determination of maltreatment is made.

Of the 5,478 reports with full investigations, maltreatment was determined to have occurred in 3,163 cases. Non-medical neglect is the most common allegation of maltreatment. The second most prevalent maltreatment was physical abuse followed by sexual abuse.

Children's biological parents were responsible for 76 percent of alleged neglect cases, followed by 11 percent who were unmarried partners or stepparents. Other relatives accounted for four percent of alleged cases of child neglect.

Evolving Capacities and Age of "Sufficient Understanding": The only uniform age in Minnesota statue at which youth are granted common recognition of "sufficient understanding" to make decisions on their own behalf is when they reach the state's age of majority (18 years).

Various agencies and statutes, however, acknowledge the ability of youth of younger ages to make their own decisions or voice their personal preferences. As an example, children who are at least age eight can be given information by the court about their rights when their parents are separating and determining custody (518.275); youth who are age ten are considered to be able to answer for "delinquent acts" in the juvenile justice system (260B.007); youth between the ages of 13 and 15 have the ability to use personal water craft, snowmobiles and other off-road vehicles; youth ages 14 and over can procure traditional employment, elect not to consent to adoption, and be charged as an adult for crimes (181A.04; 259.24; 260B.125); and youth age 16 and over can consent to sex and are granted other privileges such as the ability to drive and use firearms with limited supervision (171.055; 97B.021). Youth age 16 and over can also consent to hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

While the ages settled upon during the process of drafting the legislation may include a clear rationale for the developmental stage of the child, it is not always clear when exploring statutes overall as to why some activities are permitted at some ages and others are not. Some laws, such as graduated driver's licenses allow for the gradual implementation of rights or liberties for youth.

Parents as Facilitators of Children's Exercise of Rights: Parents can, by giving their consent, assist youth in asserting and implementing their rights. Parents routinely give their consent for their children to participate in activities and services for youth education, recreation, development, care and enrichment.

In addition, parents and guardians can advocate and litigate for the rights of their children and override age restrictions implemented by the state. For example, with parental consent, youth can work earlier or later than the law allows (181A.04); withdraw from school (120A.22); marry (517.02); enlist in the military (federal); receive tattoos and select piercings (609.2246; 325F.814); possess firearms under age 16 (97B.021); consume alcohol in the parent's home (340A.503); and permit youth to travel across interstate and international boundaries. These are presumed to be mutually agreed upon choices between youth and their parents, and are intended to be undertaken in a child's best interest.

Parent and Caregiver Education on Evolving Capacities: Several state and federal programs support parental education regarding children's evolving capacities for no cost or nominal fees. Most services are provided through the public school district or public health. The following are examples of Minnesota programs that serve youth and families related to child development and evolving capacities:

Program	Summary
Early Childhood Family Education Programs (ECFE)	Early Childhood Family Education (ECFE) is a program for all Minnesota families with children between the ages of birth to kindergarten entrance. The program is offered through Minnesota public schools and is based on the idea that the family provides a child's first and most significant learning environment. Statutorily, ECFE programs must "educate parents and other relatives about the physical, mental and emotional development of children and to enhance the skills of parents and other relatives in providing for their children's learning and development."

Program	Summary
Help Me Grow (Special Education Services)	Minnesota's Infant and Toddler Intervention system is a partnership between the Departments of Education, Health and Human Services and families with young children, ages birth to three. Families who have an infant or toddler with developmental delays or disabilities work together with local service providers to access services and resources to help their child grow and develop.
Minnesota Parents Know	Minnesota Parents Know is a resource filled with convenient and trusted child development, health and parenting information. The Minnesota Parents Know Website is founded on the belief that parents are the first and most important teacher in a child's life. Parents are likely to benefit, however, from the aid and support of experts' information on child health, development, nutrition and safety in raising strong and healthy children.
Even Start	Even Start is a program that helps low-income parents and children to improve their education. Adults must have at least one child age 7 or younger to qualify for services. The goal of Even Start is to break the cycle of poverty and illiteracy. Research shows that children are more likely to learn to read well when their parents are able to read. With federal funds, the state awards grants to local partnerships. Services include early childhood education, adult literacy and adult basic education, and parenting education.
Head Start	Head Start is a full-service program for preschool children and their families. Head Start primarily serves three and four year olds from low-income families. Some agencies also provide a program for infants, toddlers and pregnant mothers. All local Head Start programs must reserve space (at least 10%) for children with disabilities. The overall goal of Head Start is to help young children be ready for school. Another goal of Head Start is to help families become self-sufficient through programs such as Adult Basic Education, family literacy and job training.
Home Health Visits – Public Health Nurses	The goal of the Family Home Visiting Program is to foster healthy beginnings, improve pregnancy outcomes, promote school readiness, prevent child abuse and neglect, reduce juvenile delinquency, promote positive parenting and resiliency in children, and promote family health and economic self-sufficiency for children and families. The 2007 legislature amended the Family Home Visiting statute originally passed in 2001 and increased Temporary Assistance for Needy Families (TANF) funding to Community Health Boards and Tribal Governments to support the services provided under the statute.
TEXT4BABY	Text4baby sends free text messages to pregnant women and new moms. The texts contain useful tips to help women care for their health and give their babies the best possible start in life. Women can sign up for the service and receive free SMS text messages each week, timed to their due date or baby's date of birth. They will receive the texts until their baby turns one year old. The Minnesota Department of Health is a text4baby outreach partner.

Program	Summary
Child Development Screenings	Minnesota's Early and Periodic Screening, Diagnosis and Treatment Program, known as Child and Teen Checkups (C&TC), is a comprehensive child health program for children birth to age 20 who are enrolled in Medical Assistance or MinnesotaCare. According to the Minnesota Department of Human Services, the purpose of the program is: "To identify potential health problems or handicapping conditions; to provide diagnosis and treatment of those health problems or conditions; and to encourage the development of good health habits."

Article 7: The Right to Know and Be Cared For by One's Parents

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

The first portion of Article 7, related to the right to birth registration and nationality was addressed in the first *Snapshot* in this series related to *Survival and Health*, the second portion related to the right to be known and cared for by one's parents is relevant to this Snapshot on Development.

States implementing the latter part of article 7 are asked to address the following: Do children have the right to know from the earliest date possible the truth about the particular circumstances of their parenting (such as by adoption or artificial conception); do all children have the right to know who their genetic parents are; is the refusal of this right limited to the grounds that it is necessary to protect the child or the parent from harm; does the domestic law contain a presumption that children should be cared for by their parents?

Presumption that Children Should Be Cared for By Parents: Minnesota Statutes presume that youth will be raised and cared for by their parents. Only when there is an official determination that a parent cannot or will not adequately care for their children may the State intervene.

Minnesota has a number of statutes that address the determination of parentage. It is presumed that a woman and a man, if they are married or are married within 280 days of a child's birth, are the biological parents of a new child when they sign the birth record. There is no requirement that the man verify paternity through genetic testing but if the couple is unmarried and the father wishes to have legal rights and responsibilities the man must complete a Recognition of Parentage form which legally asserts that he is the father.

In cases where parentage is in dispute the mother has "sole custody until paternity is established, either by the father's legally effective admission or by court action." The court may order blood or other genetic testing to verify the biological relationship between the child and the parents. If paternity has been established, the father may petition for rights of parenting time or custody and it is presumed that visitation will be granted. Visitation by a biological parent is typically only prohibited if there is a history of abuse in the relationship with the child.

In the event a parent, typically a mother, decides to put a child up for adoption, efforts must be made in Minnesota to contact the presumed or established father such that he may be given notice about the adoption proceedings. In this manner, Minnesota affords biological parents the opportunity to

step forward as an interested party in the care of their child even if their prior relationship was limited or non-existent.

Children's Right to Know their Parentage and Biological Parents: The extent to which a child receives information about their biological parents or conception in Minnesota is largely left to individual families to determine. There is no prohibition against a mother or father withholding information about the other parent; their medical history or their whereabouts should they choose to do so.

Under Minnesota Statutes 257.57 & 257.58 however, a child can be a party to a legal action to determine their biological parentage until they are age 19. In cases of adoption, the child is prohibited from making inquiries about their birth record until the age of 19. Upon request, a social services agency will then contact the birth parents of record to inform them that a request for disclosure has been made. The biological parents have the right to refuse the information from being shared. In these cases, the anonymity of the adult is protected over the best interests of the child.

In cases where a child is conceived through artificial insemination, the donor, while technically a biological parent, does not have a claim as a biological parent under the law in Minnesota. Information about the donor is released only by court order for "good cause."

In some cases, an alleged father may agree to make child support payments on behalf of the child but without a court establishment of paternity. The court may decide if "in the best interest of the child" that the alleged father's identity be kept confidential until the child turns 21. At that age the child may petition the court for the alleged father's identity, which may or may not be granted based on if "the court determines that disclosure of the information would be of greater benefit than nondisclosure."

While "best interest of the child" language is present in these statutes, there is also a presumption that the privacy or confidentiality of adults will be honored by the courts. These policies are inconsistent with *UN Rights of the Child* recommendations that children should have information about their parentage from the earliest date possible and that the withholding of the information should only be based on the need to protect the child or parent from harm.

Article 9: Separation from Parents

1. **States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.**

2. **In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.**

3. **States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.**

4. **Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause**

> **while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.**

States implementing Article 9 are to evaluate if the State authorities can only separate parents and children against their will when it is necessary to protect the best interests of the child; if domestic law allows judicial review on behalf of the child when there is disagreement between parents or between parents and child as to their child's residence or right to access a child by a parent; that contact between parents and child in a placement or institution is maintained to the maximum extent compatible with the child's best interests; and that the criminal justice system has regard for parents need to not be separated from their children.

Regarding separation proceedings, there is to be a competent authority who makes a best interest of the child determination that is subject to judicial review; all parties including children have a right to participate; there are to be no age limits regarding a child's right to be heard; and parents are entitled to know where their children are once separated.

Involuntary Separation of Children from Parents: In Minnesota, the state is not permitted to remove a child from a parent or legal guardian's custody except under very specific circumstances: A police officer may take into custody a child who has run away from home; is found in dangerous surroundings; or when the court has made a judicial determination that the child is in dangerous surroundings. The police may also take custody of children who are alleged to have committed a crime, youth who are under the influence of drugs or alcohol, and youth who need emergency psychiatric care or evaluation. Social service providers, probation officers, and health officials are also empowered to take youth into custody under some of these circumstances.

Once in custody, Minnesota has a process for timely judicial review. Youth accused of criminal acts (delinquents) may be detained for up to 36 hours, and youth taken into custody for their own safety may be held away from home for up to 72 hours on what is often called a "social services hold" or a "health and welfare hold." Following these time limits, youth must appear before a judge who will then determine if the youth may be released back to a parent, guardian or suitable relative, or if they are to remain in custody. The presumption is that the child will be released unless there is evidence that this is not in the child's best interest or that doing so jeopardizes community safety.

Another circumstance in which a child may be removed from the home is when the sole parent or caregiver him or herself is removed from a home due to arrest, injury, or death. Under these circumstances, temporary shelter or foster care for the child may be provided by the state while other arrangements are made.

Involuntary Termination of Parental Rights: Juvenile Courts or Family Courts in Minnesota hear cases in which a representative of the State (typically a county social services agency) has petitioned for a parent's rights over their children to be terminated. A parent's rights may be terminated if the parent abandons the child, or if the parent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship."

According to statute, petitioning for the Termination of Parental Rights is required if it is determined that the parent subjected the child to egregious harm; if the child has a sibling who has been subject

to egregious harm; has had a sibling abandoned; or if the parent has had parental rights involuntarily terminated or transferred to a relative on a previous child. Minnesota Statute dictates that "the best interests of the child must be the paramount consideration" in termination of parental rights cases and, where the interests of parent and child conflict, the interests of the child are paramount. In 2009, there were 1,225 petitions to terminate parental rights in Minnesota courts.

State Wards: When parents' rights are terminated, guardianship may be transferred to the commissioner of the Minnesota Department of Human Services. Children under state guardianship are at times referred to as state wards. According to the *2009 Minnesota Child Welfare Report*, compiled by the Department of Human Services, there were 1,235 state wards at the beginning of the 2009 and 1,118 total state wards at year end. This is a decline of 35 percent as compared to the year 2000.

As designated agents of the commissioner, county social service agencies are responsible for the placement, health and well-being of these children. It is the department's responsibility to work with county and private adoption agencies to find permanent families. Termination of Parental Rights resulted in 147 children to be placed under state guardianship in 2009.

In 2009, 652 children entered state guardianship and 653 were adopted. The average time between entering guardianship and adoption was just over 16 months. Also, 109 youth aged out of guardianship without a permanent home when they turned age 18. Youth ages birth to 5 were most likely to be adopted (60%), followed by youth ages 6-11 (26%), followed by fewer than 1 in 10 youth ages 12-14; and 1 in 20 youth ages 15-17.

Child Custody and Visitation; Presumption of Contact with Both Biological Parents: Family Court also handles matters when parents are divorced or separating. In 2009, the Minnesota State Court Administrator's Office indicated there were 48,891 Major Family Case Filings including dissolution with child, dissolution without child, child support, domestic abuse and other family cases. In cases where married couples divorce, separate or have an annulment, it is presumed that both parents will be granted contact with the child through either a joint custody arrangement or through court-ordered Parenting Time.

Generally, parenting time will not be withheld unless it can be demonstrated that it is not in the best interest of the child's safety or development. Grandparents can also request visitation time with children following a separation.

In the event that there is a custody dispute between parties wishing to have custody of a child, the court is to consider a variety of factors including the intimacy of the relationship between the child, parents and siblings; the stability of the home environment; the ability for the custodian to support the child's cultural, religious, and educational needs; and the reasonable preference of the child if they are of sufficient age to express preference. "Sufficient age", however, is not defined in statute.

The court will then make a determination as to who is to have legal custody and/or physical custody. The former is the authority to make decisions on behalf of the child relevant to their upbringing and the latter is the physical care and control of the child. Sole or joint physical or legal custody can result.

Child's Participation in Court Proceedings: In Minnesota Statute, a child who is the subject of a child protection proceeding, as well as their parents or legal custodians have the right to participate in all proceedings, including the opportunity to personally attend. Under the same statute, the court may make modifications to procedure that are in the best interest of the child including waiving the child's presence from the courtroom, taking a child's testimony informally, and requiring that the questions

for the child be submitted in advance. Also, "the minor and the minor's parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing." Out-of-court statements that would otherwise not be admissible in court are admissible for children who are under the age of 10 or who are mentally impaired.

When children are accused of criminal acts, they too have the right to attend the hearing. Under *Minnesota's Rules of Juvenile Delinquency Procedure*, the child's presence is required unless they voluntarily waive their right to attend by a willful absence or if they disrupt the proceedings and must be removed. In addition to being present, the child also has a right to participate in all hearings. In delinquency proceedings, youth generally participate through their attorney or public defender unless they waive their right to counsel. Children always have a right to be represented by counsel whenever there is a potential for out-of-home placement.

Youth in Placement: Parental Contact: In the event a child is removed from the home, there are provisions in Minnesota statutes that allow for ongoing contact. To begin, if a child is removed from the home without the parents consent, the parents or guardians have a right to know where their child has been placed. The parent must be notified of the reason for detention, the location of the facility where they are detained, and that they may make an initial visit to the facility to visit their child at any time. The only exception to this is if it is determined that a parent knowing the child's whereabouts would place the child's health and welfare in immediate endangerment, the location may be withheld.

When a child is in an out-of-home placement, be it a residential facility or a foster home environment, Minnesota Licensing Rules require that there be written policies regarding the use of phone, mail and visitation. The license holder may not restrict parent visiting rights beyond any limits set by the court and visiting policies must accommodate the parent's schedule. Facilities may vary significantly on which members of the family beyond parents/guardians are allowed to visit based on the facility's level of security, the type of services provided, and individual youths' case plan or treatment plan.

Parent in Placement: Child Contact: It is unknown how many adults in Minnesota jails and prisons are parents, or how many of these are primary care givers for their children. The federal Bureau of Justice Statistics estimated that in 2007, 52 percent of inmates in state facilities were parents of minor children. Of male inmates ages 25-34, 63 percent are estimated to have minor children and of female inmates ages 25-34, 81 percent are estimated to have children. Nationally it is estimated that 2.3 percent of children had a parent in prison. If this figure is applied to Minnesota, roughly 29,000 children would have an incarcerated parent.

According to the *2009 Minnesota Child Welfare Report*, 699 children in Minnesota were placed out-of-home primarily because their parent/ caretaker was incarcerated (6% of all child protection placements). It is presumed that most children who have parents go to prison are cared for by another parent or family member without any involvement from social services.

The Minnesota Department of Corrections has statewide visitation policies that apply to adult offenders being held in state correctional facilities. In order for a minor to visit a DOC inmate, the child must be listed on a Visiting Privilege Application along with their parent or guardian and they must include a copy of their birth certificate. While the DOC visiting program "is intended as an avenue to develop and maintain healthy family and community relationships" visitation is a privilege, not a right. As such, visiting can be suspended or revoked if rules are violated.

Minnesota's only prison for female offenders at Shakopee has several programs for women who are parents or expecting parents including the *Anthony Parenting Program* and the *Teen Program*. The

purpose of the programs is "to help offenders keep in contact with their children, maintain their families when possible, and provide opportunities for offenders to increase their parenting skills." The following are programs available at Minnesota Correctional Facility-Shakopee:

Program	Summary
Parenting the Future with Purpose (PFWP)	PFWP is a parenting education and support group for moms who would like to learn more about parenting. This group offers support in areas of discipline, communication with children, empowering children to reach their goals as well as many other topics. Participants are welcome to attend and learn how to parent from prison. PFWP is also offered upon release to moms who need jobs, reunification support, and many other services.
New Mother's Support Group	The New Mother's Support Group is an education and support group for incarcerated women who are either pregnant or have children under the age of three. The group discusses parenting from a holistic perspective, including the emotional, physical, and spiritual well-being of pregnant women, mothers, and their families.
Anthony Parenting Program	The Anthony Living Unit is dedicated to developing and maintaining an environment focused on creating parenting and family skills. Mothers with children ages newborn-11 are eligible to have one of their children participate in an extended visit within the facility one at a time. There are two types of visits that occur in the Anthony Parenting Program. The first are overnight visits – where the child spends the night in the Anthony Living Unit with their mother. There are also day visits that consist of an extended visit during the day, but do not include an overnight.
Teen Group	When the children "age out" of the Anthony program the mothers can participate in Teen Group, which is a weekly support group for mothers with children ages 12-17. Mothers share with one another the difficulties they are having with their children and their circumstances in a supportive environment. Once a month, the teens come to the facility for an extended visit with their mother and participate in programming aimed at developing healthy family bonds.
Girl Scouts	The Girl Scouts of River Valley facilitate a program within the MCF-Shakopee. Daughters of offenders form a Girl Scout troop and come to the facility for an extended visit with programming and activities quarterly. The girls also meet once a month outside of the facility for regular scout activities.

Article 18: Parents' Joint Responsibilities Assisted By the State

Article 18 supports that the state has the responsibility to render "appropriate assistance" to parents and legal guardians by supporting their child rearing responsibilities and creating child-supporting services and institutions, including child care services for working parents.

1. **States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.**

2. **For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.**

3. **States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.**

States implementing article 18 are asked to evaluate if their legislation supports parents' primacy of responsibility for children's upbringing and development; that good quality day care is available for all working parents; that mothers and fathers are entitled to maternity/paternity leave; that parents are ensured sick leave; that the state pays for parental leave where necessary; that the state encourages employment conditions which assist working parents in the exercise of their parental responsibilities; and that all parents are provided with, when necessary, financial support, housing, child-care equipment, day care and respite care, advice and counseling.

Quality Day Care Available to All Working Parents: Day care is a service that is licensed and regulated by the Minnesota Department of Human Services. Day care providers must maintain certain safety standards, staffing ratios and qualifications, policies and records, and conduct employee background checks.

According to the Minnesota Child Care Resource and Referral Network, the average cost of weekly childcare in a child care center in Minnesota is between $190.00 and $288.00 in the metro area and between $140.00 and $187.00 in greater Minnesota, depending on the age of the child. While the cost for child care in a home setting is less, weekly rates are still between $100.00 and $166.00 per child. The Minnesota Department of Human Services assesses the costs of child care in the state annually with the *Child Care Market Rate Survey*.

In Minnesota, day care is not a right for parents or caregivers. Families must arrange for and pay for their own day care needs. Some subsidies are available for low income parents who have day care needs, however these are often subject to specific parent requirements and waiting lists. Many insurance providers allow for the use of pre-tax dollars for day care costs.

According to a 2009-2010 household survey regarding access to child care completed by Wilder Research on behalf of the Minnesota Department of Human Services, the majority of families in Minnesota (70%) utilize family, friend and neighbor care (FFN). Forty–three percent use FFN as their primary child care either in their home or in someone else's home and 20 percent use FFN care exclusively. Thirty percent of parents state that they take "whatever child care is available" reflecting few options to meet their child care needs.

Low income households pay a much greater percentage of their total income for childcare: Families earning 200 percent of poverty and below put 29 percent of earnings towards child care as compared to families above 200 percent of poverty who pay nine percent of their income. According to Wilder, child care is considered affordable when it is 10 percent or less of a family's income. The following is a list of programs and assistance intended to meet Minnesotan's child care needs.

Program	Summary
Child Care Assistance (CCA)	CCA helps families pay for child care costs for all children age 12 and younger, and for special needs children through age 14. The child care being used must be pre-approved and the parent must be working 20 or more hours per week at minimum wage or higher, job searching or going to school.
Basic Sliding Fee	Basic Sliding Fee requires that a family be below 47% of State Median Income to be income eligible for Child Care Assistance. In most counties there is a waiting list for this program. Under Minnesota Statute 119B.035, families who are eligible for this program may also be eligible to receive a subsidy in lieu of assistance if they choose to provide their own at-home infant child care. This is called the "At Home Infant Child Care Program".
Minnesota Family Investment Plan (MFIP)	MFIP is the current welfare program that a family may be part of for up to 60 months (5 years). MFIP families are eligible for Child Care Assistance immediately and are not placed on a waiting list. They need to be job searching or employed 20 or more hours per week.
Transition Year Child Care Assistance	Transition Year Child Care Assistance is for families who are moving off MFIP and continue to receive child care assistance for up to one year. After this year, families are eligible to receive Basic Sliding Fee. If there is a waiting list, these families get priority.
Tax Incentives	The Child and Dependent Care Tax Credit permits parents to receive federal and state tax credits for child care expenses. Pre-tax Accounts for child and dependent care may be available through employers. This option requires you to estimate your annual expenses (up to $5,000) and draw those funds throughout the year from an account that has been set up using pre-tax dollars from your payroll deductions. The Earned Income Tax Credit and the Minnesota Working Family Credit are federal and state credits that help contribute to working families' income by increasing your tax return at the end of the year or by adjusting your monthly withholding.

Maternity/Paternity and Sick Leave to Care for Children: Employers in Minnesota must grant six weeks of unpaid leave to an employee who is a newly natural or adoptive parent. The employee may determine the length of the leave (take less time) but may not exceed six weeks without the employer's agreement. During this time the employer must continue to make available medical insurance or coverage previously in place. Also an employer may not retaliate against an employee who requests

or obtains parental leave. The name of the statute: "Parenting Leave" is gender neutral such that leave applies both to a mother and father and, presumably, both same sex parents who conceive or adopt a child.

State statute also allows for an employee to use his or her own accrued and available sick time to care for a sick or injured child for "reasonable periods". It does not include the use of an employee's short or long-term disability benefits, however. Finally, an employer must grant up to 16 hours of leave per year for parents to attend conferences or school related activities for their child provided they cannot be scheduled during nonworking hours. This does not have to be paid leave by the employers, but an employee can choose to use paid leave options such as vacation time.

Article 20: Children deprived of their family environment

1. **A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.**
2. **States Parties shall in accordance with their national laws ensure alternative care for such a child.**
3. **Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.**

States implementing article 20 are asked to evaluate if systemic efforts are made to place children with extended family when they can no longer be with their parents; if there is a legal obligation of the state to care for children deprived of their family environment; if foster parents are fully investigated and authorized, trained and monitored; if child care institutions are monitored, appropriately staffed, and respect human dignity; are children involved in placement decisions and are the number of moves between placements minimized; has the state adopted a strategy to address youth homelessness and street workers; and, when placed out of the home is the child's ethnic religious, cultural and linguistic background considered related to their continued upbringing?

Extended Family as Preferred Caregivers: According to Minnesota Child Protection Statutes, it is the policy of the state of Minnesota to ensure that the best interests of the child are served when children are placed out of the home. When being removed from the home, the first preference is that the child be placed with an individual related by blood, marriage or adoption, consistent with the *UN Rights of the Child*. If a relative cannot be identified, second preference is to place the child with an important family friend with whom the child has resided or has had significant contact. Child placing agencies are to exercise "due diligence" in identifying and notifying adult relatives prior to other placement when a child is in need of foster care.

Foster Care: Foster care, while a term that is sometimes used to describe all youth placed in care outside of their home, is also the specific arrangement where a child is cared for in the home of foster parents. When relatives and kin are not available, county social service and private foster care agencies recruit community members to become foster families. In Minnesota in 2009, more than 70 percent of the 12,000 children in out-of-home placement were in a foster home setting (8,400). Approximately 75 percent of children in out-of-home care were reunited with their birth parents or found permanency with relatives.

To protect children, foster care providers must complete an application process including a back ground check, their home must be inspected to meet certain safety and child welfare criteria, and applicants must go through training, all of which are consistent with the recommendations of the *UN Rights of the Child*. All persons providing foster care to Minnesota youth are licensed to provide care through the Minnesota Department of Human Services or the Minnesota Department of Corrections if serving juvenile justice system involved youth.

Child Care Institutions: When a foster home is not available or when a child needs a specific intervention, they may be placed in a residential youth facility. These facilities are used when a child is a threat to themselves or others; when they need a mental or chemical health intervention; or when they require development of a specific set of skills. No child may be placed in such a facility without a court order.

Child care institutions in Minnesota must be licensed either by the Department of Human Services or the Department of Corrections. The latter specifically provides residential services to youth involved in the juvenile justice system while Human Services serves a wide variety of care for youth including shelters, group foster care, transitional living programs, and in-patient chemical and mental health treatment.

Minnesota has adopted "Umbrella Licensing Rules" to provide consistent licensing standards for children's residential programs licensed by the Departments of Human Services and Corrections. Licensing requirements may be different however based on the services provided (i.e. secure versus non-secure settings; shelter care versus chemical treatment). The licensing rules dictate staffing ratios, training requirements, safety and security procedures, treatment and transition planning, and the provision of basic needs consistent with the UN Rights of the Child recommendations. All Minnesota youth facilities and licensed placements, regardless of purpose, are to acknowledge a list of resident's rights (see sidebar on page 22). The Rights of Residents are consistent with the requirements of the *UN Rights of the Child* in that

Select 'Resident Rights and Basic Services" (2960.005)

- right to reasonable observance of cultural and ethnic practice and religion;
- right to a reasonable degree of privacy;
- right to participate in development of the resident's treatment and case plan;
- right to positive and proactive adult guidance, support, and supervision;
- right to be free from abuse, neglect, inhumane treatment, and sexual exploitation;
- right to adequate medical care;
- right to nutritious and sufficient meals and sufficient clothing and housing;
- right to live in clean, safe surroundings;
- right to receive a public education;
- right to reasonable communication and visitation with adults outside the facility…
- right to daily bathing or showering and reasonable use of (hygiene) materials…
- right of access to protection and advocacy services…
- right to courteous and respectful treatment;
- right to be free from bias and harassment regarding race, gender, age, disability, spirituality, and sexual orientation;
- right to be informed of and to use a grievance procedure; and
- right to be free from restraint or seclusion… other than to protect the resident from imminent danger to self or others…

they codify the state's responsibility to meet children's basic needs while under their care, and they keep youth free from discriminatory practices.

In addition, staff at Minnesota's residential placements is prohibited from disciplining children with corporal punishment; verbal abuse including frightening or humiliating them; withholding any basic needs; assigning dangerous work; requirements to assume uncomfortable or fixed positions; or restricting communications. Some programs are specially licensed to use physical restraint techniques to protect the safety of the residents, staff and property, but not as a disciplinary tool in and of themselves. The prohibition against physical and emotionally degrading punishment is another way in which youth in out-of-home placements are treated with the human dignity required for youth under the *UN Rights of the Child*.

In the event a youth, their family, or the public wishes to grieve treatment received in a correctional facility, they may contact the Ombudsperson for Families. The mission of the office of the Ombudsperson is "to ensure that children and families are protected by law in all child placement proceedings conducted by public and private agencies." The Ombudsperson receives reviews and investigates, if necessary, complaints from any source concerning an action of an agency, facility, or program.

Voluntary Foster Care: At times, the physical and developmental needs of a child require more care than parents are able or qualified to provide. In these cases, youth can be voluntarily placed in foster care by their parents. Minnesota Statutes chapter 260D governs Children in Voluntary Foster Care for Treatment which applies to youth who are placed out of the home to receive necessary treatment for a developmental disability, emotional disturbance or related condition. Under this chapter, the parent-child relationship is supported by maintaining the parent's legal authority and responsibility for ongoing planning of the child in medical, dental, educational and treatment needs.

The goal of these placements is to ensure that "a child with a disability is provided the services necessary to treat or ameliorate the symptoms of the child's disability" and "to preserve and strengthen the child's family ties whenever possible."

Voluntary foster care is one way that the state provides support for families while acknowledging the primacy of their parenting rights when the care and expertise needed for their children exceeds their abilities, consistent with the UN Rights of the Child.

Placement Considerations: In determining the appropriate placement for a child, Minnesota Child Protection statutes state it is "the policy of the state is to ensure that the best interests of children in foster or residential care are met by requiring individualized determinations of the needs of the child and of how the selected placement will serve the needs of the child in foster care placements."

Individualized placement considerations are listed in the side bar at right and also include a preference for placing siblings together whenever possible.

The Rules of Delinquency Procedure that govern youth in the juvenile justice system also emphasize the best interest of the child. Children who are placed out of the home for delinquency reasons must have stipulated in the court order why the outcome is in the best interest of the child, as well as an explanation of what alternative dispositions were considered and determined not appropriate.

Limit on Multiple Placements: Minnesota statute states that once a child has been placed in a residential facility that the placement may not be changed unless the social service agency can document that the current placement is unsuitable or that another placement is in the best interest

of the child. This does not apply to children who are transitioning to an adoptive home or other permanent placement. In this manner, Minnesota acknowledges that frequent or unnecessary moves of children between placements are detrimental, consistent with the *UN Rights of the Child*.

Cultural Competency in Child Placement: Part of the best interest of the child determination at the time of placement includes a child's religious and cultural needs. In 1983, the Minnesota Legislature became the first legislative body in the country to adopt specific statutory language to clarify adoption and foster care policy on the placement of minority children. Commonly referred to as the *Minority Child Heritage Protection Act* or the *Minority Child Heritage Preservation Act*, the law established an order of preference for placement of minority children. Relatives were given priority, followed by adults who shared the same racial or ethnic heritage as the child.

Following a contentious Minnesota court case related to a child's custody in the early 1990s, the Act was amended such that racial or ethnic heritage was no longer the sole consideration in the placement of children, and time limitations for compliance with placement preferences were established. By 1997, Minnesota amendments replaced the "heritage" or "background" considerations for child placement decisions with "the child's best interests."

Nevertheless, Minnesota laws still require family preservation services to be culturally competent. Minnesota Statute 260.012, requires the juvenile court to "ensure that reasonable efforts including culturally appropriate services by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time, consistent with the best interests, safety, and protection of the child." Part of the "reasonable efforts" criteria is whether services to a child and family are culturally appropriate. Furthermore, each child-placing agency is obligated by statute to "provide for diligent recruitment of potential foster families that reflect the ethnic and racial diversity of the children in the state for whom foster homes are needed."

As it relates to religion, if the child's birth parent/s expresses a preference for placing the child in a foster

Placement Decisions based on the best interest of the child (260C.212, subd. 2)

The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order:

1) with an individual who is related to the child by blood, marriage, or adoption; or

2) with an individual who is an important friend with whom the child has resided or had significant contact.

(b) Among the factors the agency shall consider in determining the needs of the child are the following:

(1) the child's current functioning and behaviors;

(2) the medical, educational, and developmental needs of the child;

(3) the child's history and past experience;

(4) the child's religious and cultural needs;

(5) the child's connection with a community, school, and faith community;

(6) the child's interests and talents;

(7) the child's relationship to current caretakers, parents, siblings, and relatives; and

(8) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

or adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

The Indian Child Welfare Act: The federal Indian Child Welfare Act (ICWA) of 1978 was passed to remedy the problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized "there is no resource more vital to the continued existence and integrity of the Indian Tribe than their children" and that there has been a failure by non-Indian organizations "to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families."

Minnesota adopted the ICWA policy as the Minnesota Indian Family Preservation Act (MIFPA) in 1985. Under ICWA, tribes have exclusive jurisdiction over out-of-home placement proceedings if the youth is a resident of the reservation or a ward of the tribe. There is concurrent jurisdiction between tribal and state courts when there is an Indian youth who lives off the reservation and requires foster care. The Act applies to youth who are enrolled tribal members or who are eligible for enrollment.

Minnesota Statutes also requires notice to the Indian child's tribe whenever the agency's involvement with the Indian child could lead to out-of-home placement and requires agency involvement longer than thirty days. ICWA law takes precedence over all state laws and all other federal laws regarding Indian child welfare cases, unless the state law or other federal law provides a higher standard of protection for the rights of the parents(s) or Indian custodians.

The Indian Child welfare Act does not apply, however, if the reason for potential out of home placement is an act by the child that would have been a criminal offense if committed by an adult.

Non-Discrimination: All health and human services organizations must comply with Title VI of the Civil Rights Acts of 1964, which mandates accessibility to programs and facilities where services are dispensed. Title VI provides that "no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

It is illegal in Minnesota to have placement delayed or denied based on race, color, or national origin of the foster parent or the child.

Ombudsperson for Families: The Office of Ombudsperson for Families was created in Minnesota in 1991 in response to requests from families who had been negatively impacted by the intervention of social services agencies. The high rate of removal of children of color from their families, the lack of Guardian Ad Litems of color in the juvenile court system, the lack of availability of interpreters in court, the lack of compliance with the Indian Welfare Act, Minnesota Indian Family Preservation, Family Preservation, Children's Mental Health, and Heritage Preservation Acts, and many other violations of legislation moved the communities of color to advocate at the Legislature for the creation of the Office of Ombudsperson for Families.

The main goal of the Office of Ombudsperson for Families is to ensure that all laws governing the protection of children and their families are implemented in a culturally competent manner.

In 2009, The Ombudsperson for Families received 43 complaints including concerns about social workers; Guardians Ad Litem; custody issues; and improper placement procedure. Of these complaints, five were investigated. The Ombudspersons also assists by observing/monitoring juvenile

court proceedings, ensuring interpreter services are provided when needed, and helping families communicate effectively with social service providers.

Family Reunification and Permanency Planning: In Minnesota, social services agencies must make "reasonable efforts" to prevent placement and to reunite the child with their family at the earliest possible time. In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern. Social Services agencies have the burden of demonstrating that reasonable efforts have been made to prevent placement and/or finalize permanent placement for children.

According to the Minnesota Department of Human Services, family reunification is the primary goal for Minnesota children experiencing foster care or other out-of-home placement in that "preserving relationships with family members is crucial to a child's sense of safety and well being." In the event the child's biological parents cannot or will not be able to provide care, relatives or other kinship arrangements are preferred. Most often foster care is temporary and children are reunited with their parents within a short time.

In 1994, it became the public policy of Minnesota to "assure that all children live in families that offer a safe, permanent relationship with nurturing parents and caretakers." This and a series of statutes that heavily emphasized family restoration were named the Minnesota Family Preservation Act. In 2003, this series of statutes was repealed reportedly because some children were placed in foster care for extended periods while efforts were made to aid parents and families in creating a suitable environment for the child or to ensure placement in a culturally representative foster home.

As such, a policy and practice transition occurred to "Permanency Planning" and "Concurrent Permanency Planning" (CPP). While family reunification remains the goal, social services agencies may also be, at the same time, making arrangements for children to be placed in another permanent home environment, be it with relatives, foster care or through adoption. By moving concurrently, rather than sequentially, temporary foster care placements can be shortened, moves can be minimized, and children can thrive in safe, stable, permanent families.

If a *Child in Need of Protection or Services* has been in placement for 12 of the last 22 months, social services are to begin permanency planning proceedings. For youth ages 8 and under, permanency planning proceedings are to begin at 6 months (42.03). Following these proceedings a child may return home; physical/legal custody may be transferred to a relative; the parent's parental rights may be terminated; or a child may be ordered to Long Term foster care.

Youth Homelessness: While the state has laws requiring that youth be cared for both by parents and by the state, there are youth who experience homelessness due to a multitude of factors. Homeless youth, are defined in Minnesota as a people 21 years of age or younger who are unaccompanied by a parent or guardian and are without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care, or who lacks a fixed, regular, and adequate nighttime residence. The main reasons youth experience homelessness are family conflict and violence, child abuse and neglect, inadequate interventions from child welfare and juvenile justice systems, youth emancipating from the foster care system, poverty, issues of chemical dependency or mental health of the parents or the child, and parents disapproval over their child's sexual orientation or gender identity.

Homelessness among children has risen in the past three years. Studies in Minnesota have found that an estimated 605 to 715 youth under age 18 and an estimated 1,099 to 2,591 young adults (age 18-21) are homeless and on their own on any given night. Over the course of one year in Minnesota between

12,300 and 22,000 youth under the age of 18, and between 4,900 and 8,000 youth between the ages of 18 and 21 experience at least one episode of homelessness.

In Minnesota there are 78 emergency shelter beds, two host homes (4-10 youth each), and 499 units of transitional/supportive housing for the 1,250 to 2,300 youth who are homeless every night. Minnesota shelter providers widely report having to turn youth away who are seeking shelter due to lack of space. Waiting lists to get into transitional living programs and youth supportive housing typically range from one to seven months long.

When a youth in foster care turns 18 (or in some cases 19 or 20) the payments that were made to their foster home ends and the youth ends up entering into society on their own. This process is often referred to as "aging out" of foster care. In 2009, 555 youth reached the age or majority or were emancipated from foster care. In addition, roughly 600 youth ran away while living in foster care resulting in either a change of placement or, at times, their social service cases are closed before they are located. These teens "disappear" into the general population and go on to have high rates of homelessness, substance abuse, mental health problems, school failure and unemployment.

Article 25: Child's Right to Periodic Review

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

States implementing article 25 are asked to ensure that there are legal and/or formal administrative reviews of each child who is placed for care and protection including foster care, adoption, child care institutions and detention centers; also review of youth placed in hospitals, mental health or psychiatric wards. These reviews are to consider the treatment of the child (care), the necessity of the placement, and the views of the child.

Review of Children in Child Welfare and Corrections Placements: Minnesota has, in Statutes and Rules of Procedure, specific guidelines regarding the review of children in placement. When a child is detained for an illegal act, their placement must be reviewed within the first 36 hours of detention by a judge and every 8 days thereafter during their court proceedings. When the youth placed out of the home for a safety or child welfare issue must have their detention reviewed within the first 72 hours of their detention by a judge and every 8 days thereafter while a child remains in Emergency Protective Care. In this manner, Minnesota ensures that children have due process rights regarding their detention in an expedient manner and that the state has good cause for the detention.

If the Child is adjudicated as a C*hild in Need of Protection or Services* and is placed out of the home in a foster care setting, the court must conduct a review at least every 90 days to assess if foster care remains necessary or if the child can be returned to the home of their parent or guardian. When a child has been court ordered to Long Term Foster Care, the child's placement must be reviewed annually.

If a child is adjudicated delinquent for a criminal act, the Rules of Juvenile Delinquency Procedure state that a disposition that transfers legal custody of a youth to a social services agency, county home school or the commissioner of corrections must be for time limited duration. The length of time in placement cannot be extended without a court ordered modification process and the court shall informally review all disposition orders at least every 6 months.

Review of Children in Residential Treatment/Hospitalization: In the event a youth is under the influence of drugs or alcohol, or is experiencing a mental health episode which makes them a danger to self or others, the police or a health officer may take a youth into custody and transport them to a treatment facility. If a child has been involuntarily admitted to a detoxification facility, chemical treatment or mental health facility by the police or a health worker, the placement must be reviewed within 72 hours, just as are all other health and welfare holds.

Minnesota has a civil commitment process for persons who are mentally ill, developmentally disabled, or chemically dependent. This is a judicial process through which "clear and convincing evidence" demonstrates that there is no suitable alternative to judicial commitment. The court shall then commit the patient to the least restrictive treatment program or alternative programs which can meet the patient's treatment needs. For persons committed as mentally ill, developmentally disabled, or chemically dependent the initial commitment is not to exceed six months.

If the committed patient is not discharged within the first 60 days, the head of the facility must prepare a detailed report for the court, county attorney, patient and patient's counsel. If at the conclusion of a review hearing the court finds that the person continues to be mentally ill or chemically dependent and in need of treatment or supervision, the court shall determine the length of continued commitment, not to exceed 12 months. Those committed for developmental disability may have indeterminate length placements but the patient may seek judicial review.

Minnesota's process of placement review helps to ensure that children are not placed for extended periods out of the home without reassessing the appropriateness of the placement, or assessing if other arrangements are in the child's best interest. While youth found guilty of criminal acts have their placements reviewed less frequently, they too cannot be "open-ended" in nature and cannot be extended without judicial process.

Conclusion

As is relates to development, the *UN Convention on the Rights of the Child* expressly states that nations have an obligation to ensure children's right to know and be raised by their parents unless it is contrary to their best interests; for adults to acknowledge youth's developing capacities; the right of children to maintain contact with both parents; the right to family unification; and the right to special protections for youth with disabilities as well as special protections for youth living in foster care, institutions, or experiencing homelessness.

It is important to reiterate that the United States has not ratified the *UN Convention on the Rights of the Child* and is therefore not accountable to the international community when it comes to upholding these rights. Despite this, both federal law and Minnesota Statutes recognize that children are in need of unique protections. While we cannot compare how well Minnesota is working to address the rights outlined in the Convention to other states, this Snapshot reveals that the State does indeed strive to ensure that the rights of children are protected when not in their parents care and, when needed, that their rights are met through state intervention.

A review of statutes, rules and data illustrates that Minnesota largely has codified and implemented laws and practices that are consistent with the *UN Rights of the Child* as it relates to this series of development articles Development articles.

Minnesota's Strengths:

- In Minnesota there is a presumption that children will be raised by their parents; that parents have both rights and obligations as it relates to their children's upbringing and safety; and that children's best interests are served when they remain with their families and have contact with their parents and important caregivers.
- Minnesota has formal laws related to the limited circumstances in which children can be temporarily or permanently removed from a parent's home. Juvenile and Family Courts oversee family separation and child placement matters, and both children and their parents have the right to be present and participate in judicial proceedings.
- The Criminal Justice System protects children from abuse and neglect by parents and caregivers by holding adults accountable for dangerous and harmful behaviors affecting children.
- Family reunification is the primary goal when children are placed in foster care. Foster care is preferably provided by a relative or important friend to the child in order to preserve family relationships and stability. When considering foster care, a child's cultural and ethnic needs are to be taken into account and all placement decisions are to be made in the best interest of the child, with their safety being paramount.
- Licensing rules govern all foster care and children's residential facilities in Minnesota. Under these rules, all basic needs of children must be met related to their health, hygiene and nutrition. Facilities must be adequately staffed and all persons caring for youth must be trained and receive back-ground checks. Facilities are prohibited from using corporal or degrading discipline on youth. In addition, all youth facilities must allow for children and their parents to visit and maintain reasonable contact with one another through calls and letters.
- In Minnesota, children cannot be placed out of the home indefinitely. Youth who are court ordered to foster care or correctional facilities are entitled to periodic review of their case and their placement. Youth, families and legal counsel are allowed to participate in the review process and advocate for a placement that is least restrictive and best meets the child's needs.
- The state offers many programs and services, typically through the Departments of Education, Health and Human Services to help parents. Programs teach parents about effective child-rearing, help parents to understand developmental stages; and provide monetary support for families needing assistance with child care and supplies.

Minnesota's Limitations:

- Minnesota statutes contain age provisions for a wide variety of youth behaviors. While there is presumably a developmental capacity rationale present in some of these laws, others appear to be arbitrary ages or ones that are influenced by Minnesota historical are cultural expectations. When age provisions across statutes are viewed side-by-side the incongruence as to why some behaviors are legal at certain ages and others are not is evident. Minnesota could evaluate age specific statutes that govern youth behavior and rights and establish a clear rationale based on youth's developing capacities.
- The *UN Rights of the Child* places an emphasis on the state's role in assisting families. The state is to support families by ensuring the presence of good quality child care for working parents and support

"to those who are eligible" for financial, housing, day care/respite care, child care equipment, advice and counseling for parents. In Minnesota, child care is not a right for parents and is typically a significant out-of-pocket expenditure. Eligibility criteria in Minnesota for support are needs based related to a parents income level. Access to quality child care at a reasonable expense can be challenging for families.

- The *UN Rights of the Child* supports that children have a right to information about their biological parentage and the circumstances of their parentage including adoption and artificial conception. In many ways, it is left to families to determine how much information children receive about their lineage or conception. While statute does allow for children to be a party to a judicial proceeding to identify their parentage, information about parentage and adoption can be withheld should the courts determine it is prudent to do so.
- The *UN Rights of the Child* states that States should have a flexible definition of family and one that allows for relatives, kinship, and non-traditional family arrangements and caregivers. Minnesota has no standard definition of a family that is in use across state agencies. As such, the rights and protections afforded families may vary depending on the system from which one is receiving services. A broad, inclusive definition of a family or family system by the state could help to validate parent's and children's rights in "nontraditional" family arrangements.
- Homeless youth as well as those aging out of the child protection and juvenile justice systems are a population particularly at-risk. Youth who may have had comprehensive services and case planning must transition to independence. Also, Minnesota does not have the emergency shelter capacity to currently meet the basic needs of runaway and throwaway youth in the state. These youth are particularly vulnerable to abuse, exploitation and addiction.

Furthermore, the presence of programs and protections in Minnesota does not mean that they are equitably distributed or applied across the state. Disparities attributable to income level, race and ethnicity, geographical location, and citizenship status exist in state level data.

Minnesota must continue to work to ensure that all youth have equitable development opportunities in order to act within the spirit (and by the letter) of the *UN Rights of the Child*.

In Our Next Issue

In the next *Snapshots* on Minnesota Youth issue, articles of the *UN Convention on the Rights of the Child* will continue on the topic of development. Rights in this series include: The right to an education; the right to play, rest and leisure; and the right of minority cultures to practice their language, religion and culture. Please watch for the next Snapshot publication in the spring of 2011.

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