



Child Protection Court Process Overview

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Institute to
**Transform
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MN child welfare system contains many complexities

- There are distinct buckets of cases – **abuse v. neglect** – and our laws and policies need to allow for the appropriate response in both types of cases.
- Institutional, systemic, and structural racism perpetuate the over removal of Indigenous, Black, and non-black children of color (**neglect as a proxy for poverty**). Additionally, **unnecessary governmental intrusion into the lives of any family causes trauma and harm.**
- We want a **system based on safety, well-being, trauma reduction, and supportive of families**, versus one based on punishment.
- In previous iterations of this task force there has been a false dichotomy created that pits children against parents which has worked to undermine family preservation and relational stability. **This framework is harmful to children and families and needs to be re-examined.**
- The system is complex, and we **need nuanced and evidence-based strategies and laws, informed by those who are impacted**, to best meet the needs of children and families.

Court Process

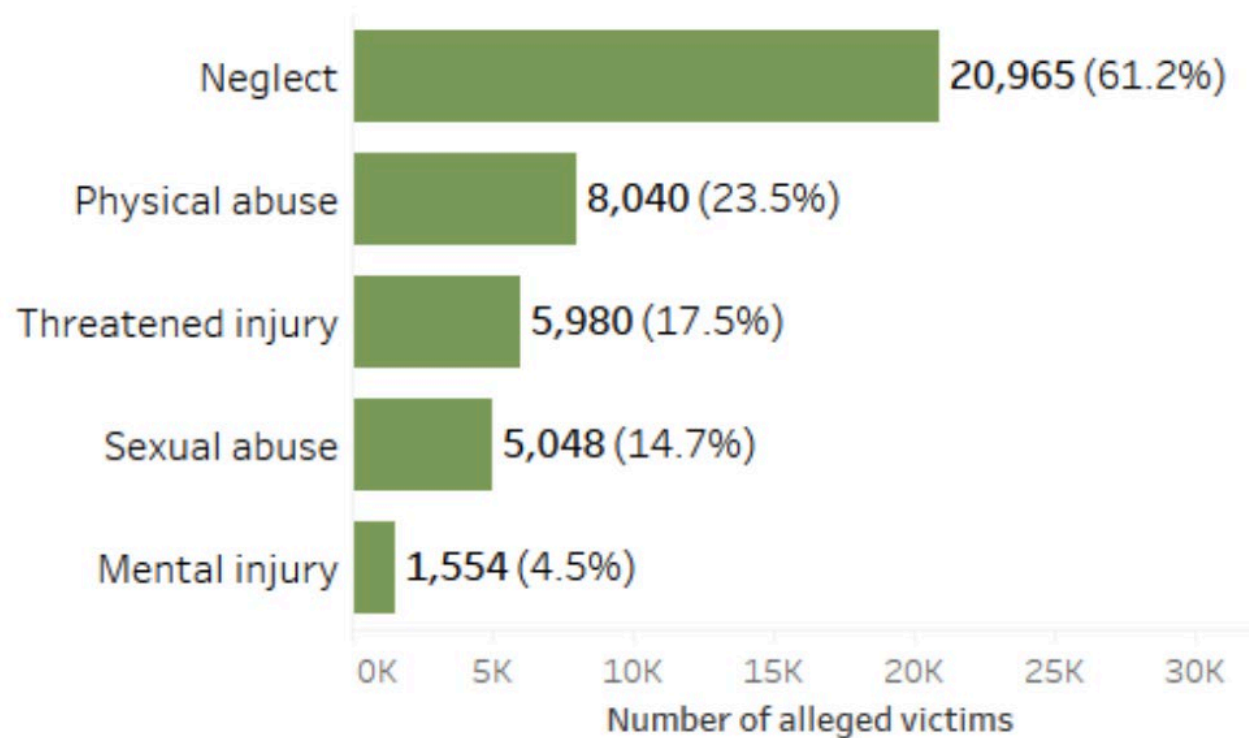
- In most cases, **county attorneys have the discretion to review the allegations in a child maltreatment report and decide whether to file a child in need of protection or services (CHIPS) petition.** However, county attorneys are not given discretion where Minnesota law requires that a petition to terminate parental rights be filed immediately in specific cases.
- When a petition is filed, oversight of the child protection case begins in the district or tribal court. **In Minnesota, juvenile court has original and exclusive jurisdiction over any child who is alleged to be in need of protection or services, or neglected and in foster care.**
- A hearing must be held within 72 hours to determine if the removal of a child from their home is constitutional. The legal standard to continue a child in an out of home placement in Minnesota is whether **the child would be in immediate danger if they remained in their home.** Relatives are preferred placement for foster care.

What constitutes neglect in MN?

"Neglect" means the commission or omission of any of the acts specified under clauses (1) to (8), other than by accidental means:

- (1) **failure to provide necessary food, clothing, shelter, health, medical**, or other care required for the child's physical or mental health
- (2) failure to protect child from conditions that lead to **failure to thrive/growth delay**
- (3) failure to provide for necessary **supervision or childcare** arrangements
- (4) failure to ensure that the child is **educated** as
- (5) **prenatal exposure** to a controlled substance
- (6) **medical neglect**
- (7) **chronic and severe use of alcohol or a controlled substance** by a person responsible for the child's care that **adversely affects the child's basic needs and safety**; or
- (8) **emotional harm** from a pattern of behavior that contributes to impaired emotional functioning of the child

Number and percent of alleged victims by maltreatment type



Parties and Participants

- The child
- The child's attorney, if the child is age 10 or older
- The child's parent(s)
- The child's parent(s)' attorney(s)
- The county social worker
- The county attorney
- The guardian ad litem
- A tribal social worker and/or ICWA advocate of the tribe, if an Indian child
- The judge
- A child's relative(s)

Right to an attorney: Child

- McKenna's Law (Minn. Stat. Section 260C.163, Subd. 3)
 - A court must appoint a public defender or *other counsel at public expense* for every child age 10 or older who desires counsel, but is unable to employ it, in connection with a juvenile court proceeding (except truancy)
- A Guardian ad litem (GAL) is typically appointed to consider the best interests of the child throughout the case – not always aligned with the child's wishes
- New role of social service agency
 - Must fully and effectively inform children of their right to be represented by counsel upon request within 14 days of the filing of a CHIPS petition or at the emergency removal hearing if the child is present, and within 14 days of their 10th birthday when the child is a subject under CHIPS or is under guardianship of the commissioner

Right to an attorney: Parent

- In all child protection proceedings where a child risks removal from the care of the child's parent, guardian, or custodian, the court shall appoint counsel to represent each parent, guardian, or custodian prior to the first hearing on the petition and at all stages of the proceedings.
- Court appointed counsel shall be at county expense.
- **There is a fundamental right to parent under the United States Constitution.**

First part of case: CHIPS timeline

The county is required to complete a case plan jointly with the child's parent(s)—and tribe, if an Indian child, within 30 days of a child being placed in foster care

- This details all of the services—mental health assessments and treatment, chemical dependency assessments and treatment, parenting assessments, etc. that the county is assisting a parent or child in securing so the parent can be reunified with the child
- The case plan is voluntary until after a CHIPS determination at the CHIPS trial

The county is required to provide reasonable efforts / active efforts throughout the duration of the child protection case

- Regular review hearings to assess progress – and whether those efforts are successful and helping family safely reunify.

A trial on the issue of whether a child is in need of protection or services should occur within 60 days

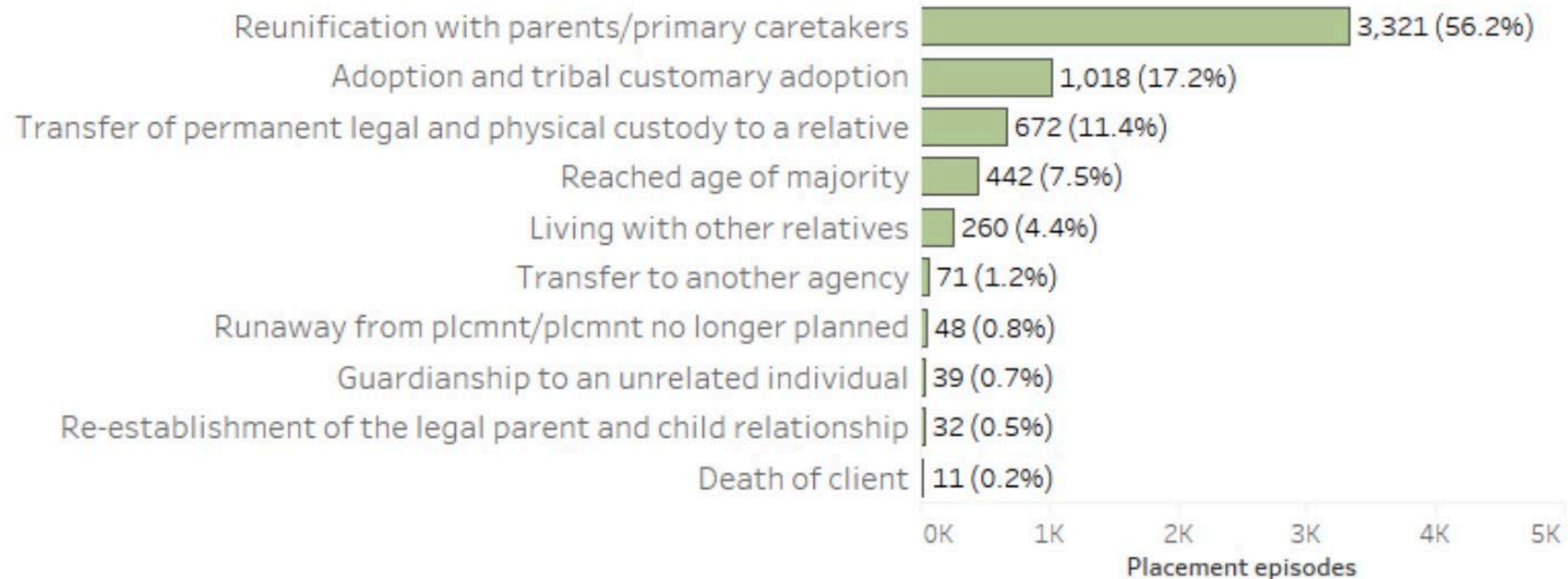
Second part of case: Permanency timeline

- Reunification is the preferred permanency outcome under Minnesota statute
- When a child has been in foster care for **11 months** and reunification with the parent is not recommended by the county, the county is required to file a permanency petition for one of the emboldened legal custody types below:
 - A **termination of parental rights** of the child's birth parents, making the child legally available for adoption
 - **Guardianship to the commissioner of human services** through a parent's consent to adopt
 - **Transfer of permanent legal and physical custody**
- When a child cannot be reunified with the child's parent, Minnesota law states an explicit preference for permanent placement with a relative before considering options with a non-relative
- The county attorney must file a termination of parental rights petition or transfer custody to a relative for all children who have been in out-of-home care for 15 of the most recent 22 months, however, this requirement does not apply if there are compelling reasons that this would not be in the best interests of the child

After termination of parental rights, case not over for child

- Important to acknowledge the process doesn't end for the child or family when a permanency determination is made.
- When a parent's legal rights are terminated, the child(ren) become state wards until they are adopted or age out of foster care.
- Counties and tribal social service agencies are responsible for the safety, placement, and well-being of children including facilitating the adoption process.
- This process can be lengthy and children may remain under state guardianship for months, years, or until they age out.

Discharge reasons for children who exited out-of-home placement in 2020



Thank you!

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