



# STATE OF MINNESOTA

## 1991 Report on Alternative Dispositions

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*Minnesota Department of Human Services  
Family and Children's Division  
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Pursuant to 1990 Laws, Chapter 542

Section 39

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## EXECUTIVE SUMMARY

This report is in response to Minnesota Session Laws, 1990, Chapter 542, Section 39, in which the Department of Human Services was directed to study and make recommendations to the Legislature regarding the use of alternative dispositions for children who are placed in out-of-home care, cannot be returned to their families and for whom termination of parental rights is not in the child's best interests.

To study the issue of alternative dispositions, the Department convened a multidisciplinary advisory committee comprised of representatives from the Legislature, the judiciary, public and private social service agencies, guardians ad-litem, attorneys representing all parties in juvenile court proceedings, the Council on Black Minnesotans, the Minnesota Indian Affairs Council, the Council on Asian Pacific Minnesotans, the Spanish Speaking Affairs Council, and other advocates representing children and families.

The committee recommends that four primary alternatives be available for children who cannot be returned to their home and for whom termination of parental rights and adoption is not in their best interests:

1. Transfer of custody to a previously non-custodial parent;
2. Relative/kinship placement;
3. Transfer of custody to an individual vs. an agency;
4. Long term foster care.

The standard for use of alternative dispositions should not be less than the standard required for termination of parental rights. For example, the county social service agency should be required to prove to the court that the grounds for termination of parental rights have been met but that termination is not in the child's best interests. The juvenile court would then have the option of terminating rights as it has been done traditionally, or the court could order an alternative disposition for the child.

Some of the recommendations of the advisory committee also deal with earlier stages of a juvenile court proceeding. It is necessary to ensure that the case is handled appropriately at the onset in order to have any disposition be truly in the child's best interests.



## INTRODUCTION

This report is in response to Minnesota Session Laws, 1990, Chapter 542, section 39, in which the Department of Human Services was directed to study and make recommendations to the Legislature regarding the use of alternative dispositions for children who are placed in out-of-home care, cannot be returned to their families and for whom termination of parental rights is not in the child's best interests.

## HISTORY

The need to study the issue of alternative dispositions arose, in part, due to 1988 legislation on termination of parental rights laws and 1989 legislation on reasonable efforts requirements. The termination of parental rights laws were strengthened in 1988 in hopes of providing permanency to children at the earliest possible time in situations where there was little likelihood that parents would be able to resume care for their children in the reasonably foreseeable future. The reasonable efforts legislation was directed at social service agencies and courts, and specified the reasonable efforts required to prevent placements and to reunify families.

While these laws were supported, they also generated much discussion and concern among public and private social service providers, children and family advocates, attorneys, and Minnesota's communities of color. Of particular concern was the limited number of options available for children who cannot be returned to their family of origin, and for whom termination of parental rights and subsequent adoption is not appropriate nor in their best interests. Another significant concern frequently expressed was that the present child welfare system lacks appropriate services and options for families and children of color, and fails to use relative placements and available community resources. As such, children of color are removed from their families and culture at a rate much greater than are Caucasian children. In Minnesota, this disparity is illustrated by the fact that minority children comprise approximately 9.8 percent of the total child population while at the same time, 33 percent of the children in substitute care are children of color. The total severance from family and kinship ties is frequently unnecessary and destructive to the child. Many people expressed the view that the lack of appropriate services skewed the dispositional outcomes, and that transferring custody to foster parents would not be in the child's best interests in those circumstances.



## **ADVISORY COMMITTEE**

To study the issue of alternative dispositions, the Department convened a multidisciplinary advisory committee comprised of representatives from the Legislature, the judiciary, public and private social service agencies, guardians ad-litem, attorneys representing all parties in juvenile court proceedings, the Council on Black Minnesotans, the Minnesota Indian Affairs Council, the Council on Asian Pacific Minnesotans, the Spanish Speaking Affairs Council, and other advocates representing children and families. (A list of advisory committee members is found in Appendix A.) In addition, department staff representing the broad field of child welfare formed a work group and convened a subgroup of American Indian representatives to provide input to the larger advisory committee.

In January 1991, the Department reported to the Legislature that due to the multitude of complex social and legal issues regarding alternative dispositions related to the present foster care system, that the advisory committee recommended that a thorough study be done before reporting final recommendations to the Legislature in January 1992.

## **THE STUDY**

In examining the issues related to alternative dispositions, the Department and the advisory committee recognize the following premises upon which Minnesota's child welfare system must be based:

- Consistent with federal and state laws and policy, the primary emphasis and priority must be on family preservation.
- Except in emergencies, reasonable efforts, and in the case of Indian children, active efforts, must be made to prevent placement and to reunify families.
- The child's race and ethnicity must be determined at the outset of the case.
- Emphasis must be placed on redirecting existing resources toward child maltreatment prevention and early intervention rather than placement.

- When placement is necessary, placement preference requirements should be required for all children and reasonable efforts, and in the case of Indian children, diligent efforts must be made to locate a child's relatives and/or kinship ties.

Following the recognition of these premises, the advisory committee initially developed a list of possible alternatives for children and determined which groups of children these alternatives might be applicable to. The committee started with the following list of alternatives and later prioritized and pared the list to those alternatives most practicable and likely to be in the best interests of children.

#### **Initial List of Possible Alternative Dispositions**

- |   |                                   |
|---|-----------------------------------|
| 1. Guardianship                           | 7. Open adoptions                 |
| 2. Relative placement                     | 8. Emancipation                   |
| 3. Non-blood kinship placement            | 9. In-home caretakers             |
| 4. Non-custodial parent                   | 10. Specialized group homes       |
| 5. Long term foster care                  | 11. Suspension of parental rights |
| 6. Custody to an individual vs. an agency |                                   |

#### **Children Who May Be in Need of Alternative Dispositions**

1. Refugee unaccompanied minors
2. Homeless children
3. Runaway children
4. Teen mothers
5. Sibling groups
6. Older children
7. Children whose parent's disabilities prevent them from parenting, but it is not in the child's best interest to sever family ties
8. Extremely disabled/medically fragile children in foster care
9. Other children for whom termination and subsequent adoption is not in the child's best interest



With respect to each alternative explored, the following issues were addressed: the child population affected; existing statutory authority; funding; access to resources; barriers; practice issues; training; assessment tools; and rights of parents.

## RECOMMENDATIONS

The alternative dispositions recommended by the advisory committee and summary of the discussion surrounding each are found below and are listed in priority order. As discussed below, some of these recommendations will apply during the early stages of a case as well as during later stages after it has been determined that a child cannot be returned to their home and it would not be in their best interests to terminate parental rights. In bringing these recommendations the committee also recommends that the standard for alternative dispositions not be any less than the standard required for termination of parental rights. For example, the county social service agency should be required to prove to the court that the grounds for termination of parental rights have been met but that termination is not in the child's best interest. The juvenile court then would have the option of terminating rights as it has done traditionally, or the court could order an alternative disposition for the child. In ordering an alternative disposition, the court should also specify provisions for continued contact between the child and the child's family when it is in the child's best interest.

### 1. Transfer of Custody to a Previously Non-custodial Parent.

*The advisory committee recommends that there should be a presumption that the non-custodial parent has the right to parent their child when the custodial parent is unable to do so unless factual reasons are present which would rebut the presumption. The burden should be on the agency to prove why the non-custodial parent is not appropriate.*

In cases where the custodial parent expresses concerns about the suitability of the non-custodial parent or where the agency has independent knowledge of concerns about the non-custodial parent, there should be a prompt home study of the suitability of the non-custodial parent to provide care. For American Indian children, the child must be placed with the non-custodial parent immediately unless the agency and court have fully complied with the Indian Child Welfare Act as to that parent.



In cases where the parents are not married and paternity has not been established, the putative father should be encouraged to establish parental rights through court proceedings. Because the legal costs involved may prohibit the individual from coming forward to assert his rights, it is also recommended that a simplified process or a self-help packet to establish paternity be developed, as representation in these matters is generally not provided by either the county attorney or public defender offices.

*It is further recommended that the juvenile court be granted jurisdiction to establish paternity and furthermore to be given jurisdiction to transfer custody from one parent to another when the child is before the court in a CHIPS (child in need of protection or services) proceeding.*

*When placement is transferred to a previously non-custodial parent through a CHIPS proceeding, placements should be initially temporary and efforts should still be made to provide services to reunify the child with the original custodial parent. It is only when efforts fail that consideration ought to be given to permanent placement with the previously non-custodial parent. When review of the case is conducted, the judge should have three options: 1.) Close the case due to reunification; 2.) Review the case in 6 months; or 3.) Transfer custody permanently.*

In reviewing these cases, the best interests of the child could be determined consistent with best interests as defined by the family court pursuant to Minnesota Statutes, section 518.18. In most cases, the non-custodial parent should be offered rehabilitative services that may be necessary for him or her to assume custody.

Note, however, that this option may not be practicable, for example, where the non-custodial parent resides in another state and the distance would prohibit the provision of services to reunify the child with the original custodial parent.

## **2. Relative/kinship placement.**

*The second priority for all children for initial placement, and permanent placement, should be a relative or member of the child's kinship family. As such, the definition of relative should in all instances be expanded to include non-blood members of the child's family as defined in the federal Indian Child Welfare Act and Minnesota Statutes, Section 260.181, subd. 3; Section 260.015, subd. 13; and Section 257.071, subd. 1A. Recognition should also be given to the Hispanic concept of Compadrazgo as defined in Minnesota Statutes, Section 257.076, subd. 4.*



Due to confusion as to whether this broader definition of kinship applies to emergency and initial court placements, as well as to voluntary placements and dispositions, it is recommended that technical amendments be made to Chapter 260 to clarify that this concept should be applied at the onset of placement.

It should be mentioned, however, that licensing and funding requirements for these placements will vary depending on the degree of relative or kinship involved. Federal and state laws require that relatives be offered foster care payments, which are higher than AFDC rates, for children who are placed by the court following a CHIPS determination or by a voluntary placement agreement for up to six months and who meet licensing standards, although relative homes are not per se licensed as foster homes. Other kinship persons; i.e., non-blood relatives, may apply for foster home licensure and, if granted, will also be eligible for foster care payment rates. (If there is not a court proceeding or if a relative does not meet licensing standards, the relative can apply for AFDC relative payment for providing care to a child who is a relative as defined by AFDC regulations.)

Situations in which foster care payments are made require case management, a case plan and periodic reviews. In cases where relative/kinship placements are made permanent alternatives for children who cannot return to their parents, these activities must occur for foster care payment to continue. However, if agency involvement is no longer desired or warranted by the family, the relative/kin does have the option of assuming financial responsibility for the child. Another option, although perhaps not feasible, would be for either the state or the county to subsidize the placement.

*In order for this alternative to be successful and for a placement which is, in fact, in the best interest of the child, a thorough relative/kinship search must be conducted by the agency, and reviewed by the court, at the onset of placement as well as at periodic intervals thereafter.*

### 3. Transfer of Custody to an Individual vs. an Agency.

Currently Minnesota Statutes limit transfer of custody in CHIPS cases to the local welfare board or a licensed child placing agency. The advisory committee recommends *that for purposes of alternative dispositions for children who cannot be returned to their families and for whom termination of parental rights is not appropriate, that the juvenile court also be given authority to transfer custody to an individual.*



In such cases, preference should be given to relative/kinship persons and, secondly, to non-kinship individuals. For Indian children the preferences of the Indian Child Welfare Act must be strictly followed. Unrelated foster parents who did not know the child prior to placement should not be considered "kin" and should not be entitled to first preference placement.

*In cases where transfer of custody to a non-relative/kinship person is considered, the court should require a long term relationship between the child and the individual and that this option be considered only when other options have been exhausted. A thorough assessment of the individual and a home study should be completed and should include evaluation by culturally appropriate experts. As in other instances, the best interests of the child should be the paramount consideration when contemplating this alternative.*

If this option is utilized, the child and family should have the ability to receive services from the agency, if desired, for purposes of financial or social service support, although services would not be needed nor should they be required in all cases. A thorough assessment of the placement and needs of the child should be conducted by the agency and reported to the court prior to this option being utilized.

In cases where custody is transferred to an individual, the court should have the option of closing the court case or keeping it open to review in six months. When the court case is closed, no further review would be necessary unless the child's custodian petitions the court to terminate custody or the child is brought before the court on either a CHIPS or delinquency petition.

Available funding for this option may also be an issue to be considered. If the caretaker is willing and able to assume financial responsibility, funding may not be an issue. However, in other cases the caretaker may be eligible for AFDC caretaker payments or if not eligible, may be of need in other financial assistance to subsidize the cost of care.

In discussing this option, several task force members expressed the belief that every child ought to have the right to live within their own community. The suggestion was also made to require that the decision making process be a collaborative effort and partnership between the ethnic community and social service providers to assure that the child's needs are appropriately met and the child is not unnecessarily removed from their ethnic community. One way of achieving this would be to expand the Family Preservation Planning Committee (previously termed permanency planning team), to include community representatives. In seeking community input, data practices requirements and confidentiality need to be respected as well.



4. Guardianship.

The advisory committee discussed the concept of guardianship and concluded that there was no distinct advantage to guardianship vs. transfer of custody to an individual and therefore recommends that the latter be the preferred alternative.

5. Emancipation.

*The advisory committee recommends support for emancipation in limited circumstances. This alternative should be initiated by the child and should only be used in those situations where adequate independent living skills training and financial support, if needed, are provided to the youth to prepare for independence and adulthood.*

6. Long term foster care.

*Long term foster care should be a recognized option available in some instances including, for example, refugee unaccompanied minors, some developmentally disabled children whose parents are unable to care for them but for whom continued contact is in their best interests, and other children who have resided in foster care for whom adoption is not appropriate and continued contact with their family is in their best interests. The committee also recommends that this alternative be available only when the child is placed with a relative or in a home of the same race or cultural heritage. Long term foster care should be considered very carefully and should not be used to avoid either reunification or termination of parental rights.*

When long term foster care is considered, as in other instances, the foster parents must be able to express to the court their willingness to provide continued care and a long term commitment to the child. To facilitate this commitment, a permanent placement agreement could be entered into between the child, the foster parents and the agency.

## **RELATED RECOMMENDATIONS**

The following are recommendations made by committee members during the course of discussions on alternative dispositions.

- Guardians ad-litem should be of the same race or cultural heritage as the child, and in all cases assure that guardians ad-litem are culturally sensitive.
- A diligent examination of placement preference requirements should be made throughout the life of the case and at each placement review.
- Sanctions should be applied to counties and/or workers who fail to comply with the laws respecting cultural heritage and placement preference requirements.
- Family preservation services necessary to prevent placement, including respite care services, should be utilized when the child can remain at home with services provided.

## **FUNDING ISSUES**

The advisory committee conducted its study in recognition of the fact that there continues to be many fiscal barriers to the provision of appropriate services to children and families. In doing so, the committee examined those alternatives that could be formalized given present fiscal resources and limited recommendations to those that are most reasonable given present resources.

It should be noted however that the enormous amount of money spent on out-of-home placements is money that could be used for more cost-effective preventive strategies. More dollars spent early on may well reduce future placement costs.

Funding issues which arose but were not dealt with at length by the committee include: present AFDC rates; lack of resources for prevention and early intervention, including placement prevention; disparate payment rates between foster care and other potential caretakers; training resources; and resource limitations of social service agencies, the courts, law enforcement agencies, and county attorney offices for services to children and families in need.



## **APPENDIX**

## **ALTERNATIVE DISPOSITION TASK FORCE**

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