

# **WATCH'S MONITORING OF OPEN CHIPS CASES IN HENNEPIN COUNTY JUVENILE COURT**

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## Executive Summary

Children in need of protection or services (CHIPS) cases in juvenile court were opened to the public in 12 Minnesota counties, including Hennepin County, for a three-year pilot project on June 22, 1998. WATCH volunteers and staff began monitoring CHIPS abuse or neglect cases and termination of parental rights (TPR) cases on a limited basis at that time. In November 1999, volunteers and staff randomly selected 45 CHIPS and TPR cases from emergency protective care calendars before different judges and began tracking them from start to finish.

A three-page CHIPS monitoring form was developed using the National Council of Juvenile and Family Court Judges' 1995 *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (Resource Guidelines)*, suggestions from child protection system personnel, and WATCH's prior monitoring experience in the adult and family courts. The form asked a series of questions pertaining to the efficiency of the court, safety/welfare of the child, judicial demeanor/courtroom decorum, application of the law, and other court involvement.

In addition to monitoring appearances in juvenile court, WATCH staff and several volunteers read corresponding case files and, when applicable, monitored appearances in adult criminal court. Since June 1998, over 20 volunteers have participated in the juvenile court monitoring project, contributing 781 hours. Volunteers and staff have monitored 602 appearances.

### The Role of the Judge

Judges play the most critical role of any child protection system player in CHIPS cases. WATCH monitors focused on judicial demeanor/courtroom decorum, the clarity of judicial decisions and explanations, and judicial oversight and case management. They monitored cases in 10 juvenile court judges' courtrooms.

Judges on the whole preside over orderly courtrooms in Hennepin County Juvenile Court. WATCH volunteers and staff felt that a problem-solving as opposed to an adversarial atmosphere prevailed in hearings leading up to and after trials. They also felt that judges tended to appropriately compliment and encourage parents working their case plans and to display compassion at emotionally difficult hearings. Almost without exception, judges were found to be respectful of all parties; only infrequently did WATCH volunteers and staff see judges display annoyance or impatience.

When WATCH volunteers and staff first started monitoring CHIPS hearings, the exact nature of the various proceedings was unclear as were the roles of the players. WATCH's initial experiences likely mimic those of the parents and children involved. WATCH found that judges rarely explain the proceeding at the outset and that no informational brochures describing the CHIPS process are available.

### *Recommendations:*

- *Judges should briefly explain the proceeding to those attending at the outset.*

- *The juvenile court should create a brochure for parents, children, and general members of the public explaining the CHIPS process.*

Of the hundreds of CHIPS hearings WATCH volunteers and staff monitored, not once did the judge explain that he or she is an impartial decision maker not affiliated or aligned with any party to the proceeding. Parents and children, who may be confused, anxious, and intimidated, need to know that judges are hearing the case with an open mind and are not unduly influenced or aligned with any one party.

*Recommendation:*

- *When parents and children first appear before them, judges should explain that they are impartial decision makers not aligned with any party to the proceeding.*

Most but not all judges make clear decisions at the end of the hearing. A significant number of volunteers, however, felt that judges did not adequately explain their orders. Written findings and orders, which could enhance clarification, were not given immediately to parties after the hearing.

*Recommendations:*

- *Judges should make a clear decision at the end of the hearing and explain it.*
- *Judges should immediately issue written orders and findings to parties and explain them.*

Judges have the difficult task of balancing the family's needs for treatment, rehabilitation, and reunification with the children's need for permanency. This necessitates a sound familiarity with all relevant laws pertaining to CHIPS cases and timelines and the availability and accessibility of social services and placement options in the community. The learning curve is steep and a newly-assigned judge may require several months to become as effective as possible. When combined with the "one family-one judge" policy the juvenile court adopted in 1997 to maximize continuity, consistency, and accountability, longer-term judicial assignments to juvenile court should be encouraged, and a minimum of two years required.

*Recommendations:*

- *Require judges assigned to juvenile court to serve a minimum of two years and encourage them to serve longer.*
- *Devise and implement a method of phasing judges out of juvenile court such that the "one family-one judge" policy is upheld.*

Judicial leadership is essential for proper case management. One of the most important changes reflected in the new Minnesota Juvenile Protection Rules is making judges more responsible for the progress of cases through the system. Their responsibility is to hold all players accountable for their actions, to ask probing questions to ensure that reasonable efforts at reunification are being made, and to impose necessary sanctions. To do this effectively, judges must study court files, understand the issues presented, and come prepared to hearings. WATCH volunteers and staff observed that while some judges exercise their oversight role with great effectiveness, others do not appear to be as comfortable "second-guessing" other players. Some child

protection system personnel also were concerned that some judges may not be reading all the relevant case documents.

*Recommendations:*

- *Judges must be willing to exercise judicial oversight with child protection system players.*
- *Judges should read all relevant case documents and come prepared to court hearings.*
- *To make the best rulings possible in CHIPS cases, judges should receive training on issues such as child development and attachment, family systems, mental health, chemical dependency, and domestic abuse, preferably before beginning an assignment in juvenile court.*

### **Efficiency of the Court**

Hennepin County Juvenile Court has the largest caseload of any juvenile court in Minnesota. On any given business day, over 500 people come to juvenile court to participate in over 100 cases before eight judges and three referees. A juvenile court administrator oversees a staff of 28 responsible for the court's day-to-day operations. Court personnel, including judicial and law clerks, use the "total court information system" (TCIS), which has a number of deficiencies, to track cases and manage the calendar.

Within this environment, WATCH set out to monitor for court efficiency, looking at the scheduling and timeliness of trials and hearings, continuances, issues of public access, the court's user friendliness, notification of parties, issues of representation, compliance with governing statutes, and the impact of other court involvement.

The scheduling and timeliness of trials and hearings emerged as major problem areas in Hennepin County Juvenile Court. Given the number of players involved in CHIPS proceedings, it is often difficult to schedule two to three consecutive days for a trial. WATCH observed that trials rarely occurred in a timely manner. Once suitable dates are found, it is not unusual for a hiatus of several weeks to ensue before the trial's culmination. Meanwhile, parents and children are left hanging.

Hearings rarely start at their scheduled times. On average, WATCH volunteers and staff waited 50 minutes from the scheduled to the actual start time for hearings. Rarely is an explanation for the delay provided by the court or the responsible party, despite the fact that many people's lives and livelihoods are impacted.

Several factors appear to contribute to hearing delays. Two or more hearings may be scheduled for the same time before one judge. With the emergency protective care calendar, all hearings are scheduled for 1:30 p.m. Players, most often attorneys, often show up late for hearings. This relates to the practice of "stacking" hearings, which occurs partly because attorneys are responsible for too many cases and partly because they appear to find it convenient. Even when all parties show up on time for hearings, discussions typically occur before the actual start of the hearing, public defenders use this time to meet with their clients, and players disseminate and review case documents, exacerbating delays.

*Recommendations:*

- *Trials should be scheduled on consecutive days, and no appearances for other cases should be scheduled during trials.*
- *Judges should take the lead in enforcing scheduled start times for hearings.*
- *Hearings in a specific courtroom should be appropriately spaced, not scheduled for the same time.*
- *Each emergency protective care hearing should be scheduled at a specific time or during a specific block of time instead of scheduling these hearings all at once.*
- *Preliminary discussions should be held before the scheduled start time for the case.*
- *Public defenders should meet with their clients prior to the scheduled start time for the case, preferably outside of the courthouse.*
- *Case documents should be disseminated to the players before they arrive at the courthouse for the hearing.*
- *More assistant county attorneys, and especially public defenders, should be hired to reduce individual caseloads.*
- *Attorneys should not be allowed to “stack” their hearings before different judges for the same time.*
- *If a hearing is delayed, court personnel should inform those waiting inside and outside the courtroom and indicate the new start time.*
- *The judge or the person responsible for the delay should provide an explanation to all those waiting for a delayed hearing at its outset.*

Although hearings usually occurred on the day scheduled, they were occasionally continued. When they were continued, WATCH volunteers and staff were concerned about the missed opportunities to thoroughly review the status of the case and children. They were also frustrated that no announcements or postings were made regarding continuances nor were the reasons for continuances routinely recorded in court files.

#### *Recommendations:*

- *Parties should be notified about a continuance before they arrive at the courthouse.*
- *Court personnel should inform those waiting inside and outside the courtroom when a hearing has been continued and why.*
- *The court should specifically assign an individual to notify all parties involved in the case about a continuance.*
- *Continuances should not be granted when all the parties have been notified about the hearing and are present.*
- *When a continuance is granted, the hearing should be rescheduled as soon as possible, not months in the future.*
- *The reason for any continuance should be included in the court record and communicated in open court to all interested parties and members of the public.*

The juvenile court has become more user friendly since WATCH first started monitoring. The court can still improve matters of public access, however, in several areas. Hearings occasionally are moved to a different courtroom without posting the change. Those planning to attend are entitled to notification of changes in location. Judges' clerks sometimes fail to relay current information about scheduled hearings to court reception personnel. Callers requesting this information may thus be misled. Callers to the court reception area are also asked to identify

the case by the child's name. If they do not know the child's name, it is possible to look up the case on TCIS using a parent's name instead, but the offer to do so is not always forthcoming.

*Recommendations:*

- *If a hearing has been moved to another courtroom, the change should be posted.*
- *Judicial clerks should relay updated information about scheduled hearings to court reception personnel.*
- *Court reception personnel should offer to look up case information in response to all public inquiries.*

For the juvenile court to work effectively, parties to and participants in hearings need to be informed of upcoming hearings in a timely manner. WATCH volunteers and staff were quite disturbed at how many fathers, whether adjudicated, alleged, or presumed, did not attend hearings. It was unclear how much effort was spent attempting to locate and notify such parties or participants about the proceedings. WATCH observed that attendance was sometimes jeopardized for those parties and participants who were incarcerated because the proper arrangements had not been made to transport them to juvenile court.

*Recommendations:*

- *Every effort should be made at the outset of a case to locate and notify all parties and participants about upcoming hearings.*
- *Public defenders and private defense attorneys whose clients are incarcerated should make the proper arrangements to have clients transported to the courthouse for hearings and should double check before the hearing to ensure that others have followed their instructions.*

According to law, an indigent parent or legal custodian and children over the age of 10 have the right to a public defender in CHIPS and TPR cases. The court seemed to be very efficient in appointing individual representation for eligible parents. Delays in appointment were sometimes recorded for eligible children, possibly because they were not always present at court hearings. Unlike with parents, the standard practice was to appoint one attorney to represent all eligible children.

*Recommendations:*

- *Public defenders should be appointed for eligible children even if the children do not appear in court.*
- *Arrangements should be made so that all children who want to attend court hearings are transported to the courthouse.*
- *If it is their desire, eligible children should be given individual representation.*

The federal Indian Child Welfare Act of 1978 (ICWA) governs CHIPS cases involving Indian children. All ICWA cases in Hennepin County are heard before one of two judges well-versed in the statute. WATCH was not aware of any ICWA violations in the five ICWA cases in its sample. In general, Hennepin County has few violations with the most common being failure to notify tribal members of hearings; failure to obtain expert testimony when a child has been placed out-of-home; and attorney no-shows for hearings, which translates to lack of legal representation.

According to law, the Hennepin County Department of Children and Family Services (DCFS) must make “reasonable efforts” to provide parents with appropriate services to keep families together. WATCH found that services for parents were widely available in Hennepin County, although monitoring for the timeliness and quality of the services was beyond the scope of the report. Services WATCH found lacking included access to supervised visitation at visitation centers and full-family foster homes.

*Recommendations:*

- *Hennepin County should establish more visitation centers.*
- *Hennepin County should establish more full-family foster homes.*

Permanency laws require that a permanent situation be determined for children under eight if they have been in out-of-home placement for six months. The time limit is one year for children eight and over. In 23 of the 45 cases in WATCH’s sample, a permanent situation for the children was not achieved before the out-of-home time limit had been exceeded. It would appear from WATCH’s monitoring that even if the letter of the law is followed when filing permanency petitions, the resolution of the case typically takes months as trials are repeatedly delayed. Many children are thus effectively denied their right to permanency within the legislated timeframe.

*Recommendations:*

- *Permanency timelines should be strictly followed to ensure permanency for children.*
- *Termination of parental rights trials should be held without delays.*

WATCH monitors were asked to note the impact of other court cases on CHIPS proceedings. When a case had a serious accompanying criminal case, the policy appeared to be to put the CHIPS case on hold until the criminal case had been resolved. This can be detrimental to the children’s need for resolution. WATCH also noted some lack of coordination among the courts in several instances. An innovation WATCH observed was to consolidate cases from different courts before one juvenile court judge.

*Recommendations:*

- *CHIPS hearings should be scheduled in accordance with the Minnesota Juvenile Protection Rules rather than awaiting resolution of any related criminal cases.*
- *The processing of criminal cases with corresponding CHIPS cases should be expedited by appointing adult criminal court judges who have recently served in juvenile court and are thus familiar with the nuances and complexities involved to hear such cases.*
- *Communication and coordination between the juvenile and family and criminal courts should be improved, especially when the children’s safety and welfare are at stake.*
- *Barriers among different courts should be removed and cases involving the same family consolidated.*
- *Every effort should be made to comply with the Minnesota Juvenile Protection Rules’ timelines for appeals in TPR cases.*

## **Safety and Welfare of the Children**

WATCH volunteers and staff targeted a host of issues in their monitoring of CHIPS cases, but none so important as the safety and welfare of the children. In terms of safety, WATCH was interested in how quickly the courts became involved after the allegation of abuse and/or neglect described in the petition and what safeguards were put into place to protect children in the home, during visitation, and after a transfer of legal custody or adoption. To monitor the welfare of the children, WATCH focused on the availability and quality of foster care, whether the children's status was mentioned in court hearings and documents, if professionals were working on behalf of the children, and what services were being delivered to them.

WATCH found that most emergency or preliminary protective care hearings occurred soon after the incident described in the petition, although several petitions contained reports of past abuse and/or neglect that had not resulted in court intervention. If children had been removed from the home, the legal requirement that a hearing take place within 72 hours was upheld in virtually every case WATCH monitored. The practice of removing children only after a hearing, which the *Resource Guidelines* recommend, however, was rarely followed; instead, most removals occurred before the hearing, triggered by emergencies in which the children were deemed to be in imminent danger if they remained in the home. The time dedicated to these hearings was on average 18.5 minutes—far short of the 60 minutes recommended by the *Resource Guidelines*.

*Recommendations:*

- *The DCFS should make “reasonable efforts” to families to prevent removing children from their homes.*
- *A preliminary protective care hearing should be scheduled before removal if possible.*
- *A thorough investigation into the incident of alleged abuse or neglect should take place before removing children from the home.*
- *The time allotted for the emergency or preliminary protective care hearing should be increased to allow a more substantive airing of the issues as recommended by the Resource Guidelines.*

WATCH volunteers and staff were especially concerned that safeguards be established if children remained in or were returned to the home. Almost without exception, the judge required the DCFS to provide “protective supervision” in such cases. While the children's safety thus appeared to be a priority, WATCH infrequently observed instances where children were returned to or placed in questionable situations. The frequency of home visits by DCFS employees, a critical safeguard, was not discussed at hearings nor was such information typically included in court files.

*Recommendations:*

- *Children should not be temporarily placed with parties who have a history of assaulting other children.*
- *Extreme caution should be exercised in returning children to parents with a history of assaultive behavior.*
- *Information about the frequency and results of DCFS employees' home visits should be discussed at hearings and included in court files.*



If the children were placed out of home, visitation was frequently discussed at CHIPS hearings. It appeared to WATCH volunteers and staff that the court usually tried to balance the interests of the parents' visitation with the children's welfare and safety. Still, some decisions granting visitation when it appeared not to be in the children's best interests were perplexing as was the fact that the children's wishes regarding visitation were seldom elicited. Arranging for weekend visitation for parents and children was also problematic.

*Recommendations:*

- *The children's best interests should take precedence in any visitation decisions.*
- *The children's wishes regarding visitation should be elicited before any visitation decisions are made.*
- *The DCFS should facilitate weekend visits for parents and children.*

After a transfer of legal custody (TLC) or adoption, the jurisdiction of the juvenile court is dismissed. The DCFS also closes its case. While this may promote efficiency, it may not always be in the best interests of the children. Some states keep such cases open for a probationary period to ensure that children who have already been subjected to abuse and/or neglect are truly safe and secure in their new homes.

*Recommendation:*

- *After a TLC or adoption, cases should be kept open for a probationary period to ensure the safety and welfare of the children.*

In light of the recent death of a 7-month-old child at the hands of his father, the Hennepin County Board of Commissioners drafted and approved a resolution directing administrative and child protection officials to determine ways to track children born to abusive or negligent parents. State legislators are also discussing legislation and funding to establish a system to track children born to parents whose parental rights to other children have been terminated. While this would be a step in the right direction, cases such as the 7-month-old child's would not be flagged as his mother's rights to his siblings were never terminated.

*Recommendations:*

- *Legislation should be introduced to require child protection agencies throughout the state to investigate when children are born to parents with prior child protection involvement who no longer have legal custody of older children.*
- *Legislation should be introduced to fund the technologies necessary to establish such a statewide tracking system.*

The overwhelming majority of the cases in WATCH's sample had children who at some point ended up in foster care. Such placements were routinely mentioned at hearings, but it was often difficult to know whether the children remained in the same foster home or had been moved to another. It was also not always clear how many siblings were placed together and how frequently visitation was set up among them if they were not. In setting up placements, the DCFS first attempts to locate relatives and then those of the same cultural group as the children. It was apparent to WATCH that in ICWA cases, difficulties were encountered in finding both relative and non-relative Indian foster placements. WATCH learned that the DCFS does not

assign kinship workers to ICWA cases as it does non-ICWA cases, but expects tribal social service agencies to conduct the searches.

*Recommendations:*

- *Placements and any changes to them should be regularly discussed at hearings.*
- *Placement histories should be included in court files.*
- *Whether siblings are placed together and, if not, how often they are allowed to visit each other should be discussed at hearings and such information should be included in court files.*
- *Placement decisions should prioritize the best interests of the children, which includes maintaining the continuity of significant relationships.*
- *The DCFS should consider assigning kinship workers to ICWA cases as it does non-ICWA cases.*

WATCH volunteers and staff were troubled that the ongoing status of the children was not routinely mentioned in court hearings unless a guardian ad litem (GAL) or public defender had been appointed. Court files often revealed little information about the children. When a judge did ask about the children, the response was often a perfunctory one, such as “fine.”

*Recommendations:*

- *The judge should ensure that the status of the children is discussed at every hearing.*
- *Court files should include updates on the status of the children, including written reports of both GALs and DCFS employees.*

Parents are typically provided with a legion of professionals to help them meet the goals of their case plans. Children, however, may or may not be appointed professionals to help them look out for their welfare and best interests. According to law, all children in CHIPS and TPR cases must be appointed a GAL. Because of a shortage of GALs, however, this right is often overlooked. Hennepin County may be the only place in the country employing child services workers, who work directly with the children. Child services workers, however, are appointed only if the children are in foster care.

*Recommendations:*

- *A GAL should be appointed for the children at the outset of every CHIPS and TPR case.*
- *The DCFS should consider appointing child services workers for all children who are the subjects of CHIPS proceedings to ensure that they receive necessary and appropriate services.*

According to Minnesota law, the DCFS is required in most instances to provide “reasonable efforts” to parents and children to move the family toward reunification. On average, parents in the CHIPS cases WATCH monitored received a wide range of services. WATCH volunteers and staff felt that the children’s needs for services, however, were not routinely taken into account in many courtrooms.

*Recommendations:*

- *The judge should inquire at the initial hearing about what services the children need, how and when they will be provided, and make follow-up inquiries to ensure that the services are being delivered as the case progresses.*

- *Reports of the services being provided to children should be made in court and included in case files.*

Children whose parents have had their parental rights terminated become "wards of the state." The status of these children is reviewed every 90 days at a hearing during the state ward calendar. WATCH learned at an educational program with a public defender and dispositional advisor that the state wards receive the least amount of services of any children in the system. Only within the last four years were state wards given the right to representation. Children in this calendar are also at risk of being shuffled from placement to placement.

*Recommendation:*

- *The DCFS should provide necessary and appropriate services to state wards.*

### **Family Safety in CHIPS Cases With Domestic Violence**

Domestic violence is often one of the primary reasons children have been removed or are in the home under "protective supervision." In WATCH's sample of 45 cases, 25 referenced domestic violence in the household. From reviewing petitions, it would appear that many of the children witnessed the domestic violence in their homes. Some of the children caught in the crossfire were assaulted and injured.

Because of the pervasiveness of domestic violence in CHIPS cases, there is a need for all those within the system to be continually trained and to educate themselves on its dynamics. Decision makers need to understand how batterers exercise "power and control" over their victims, often isolating and intimidating them so that leaving becomes impossible. Without obtaining and applying such knowledge, system responses may be inappropriate, unfair, and even dangerous.

*Recommendation:*

- *All players involved in the child protection system should receive ongoing training about the dynamics of domestic abuse as it relates to child maltreatment and apply this knowledge in their work.*

WATCH has monitored thousands of cases of domestic violence, both criminal and civil, in the adult and family courts. All too often at court appearances, the actual violence that spurred the case is glossed over or completely ignored. The impact on the children who may have witnessed or fallen prey to the violence is also rarely discussed. This, too, appears to be the situation in juvenile court. WATCH believes that the actual violence needs to be confronted and its impact discussed at court hearings; otherwise, perpetrators may be given the impression that "it doesn't really matter."

*Recommendation:*

- *In CHIPS cases involving domestic violence, the actual violence needs to be confronted and its impact, especially on children, discussed at court hearings.*

The prevailing societal attitude about domestic abuse more often questions why a victim remains in an abusive relationship and focuses on her actions instead of asking why the batterer batters.

This attitude, which shifts responsibility for the abusive relationship to the victim, can also be present in the justice system. Minnesota's child abuse statutes consider victims and perpetrators equally responsible for "exposing children to domestic violence." Victims also are often held responsible for changing the conditions, namely their abuser's behavior, that led to court intervention.

*Recommendations:*

- *Holding the victim responsible for the abuse in cases of domestic violence should be avoided in both policy and practice.*
- *Domestic violence victims should not be held responsible in court for changing their abusers' behavior.*

WATCH was interested in whether perpetrators of domestic violence were held accountable for the abuse. Petitions often included information about previous incidents of domestic violence, although it would appear that in many cases no accompanying criminal charges were filed. Even if they were filed, a recent report revealed that in 1998, about 65% of misdemeanor domestic assault and violation of protection order cases in Hennepin County were eventually dismissed. Records on how many victims in the cases WATCH monitored had obtained OFPs against their abusers were not accessible, but from its monitoring in the adult and family courts, WATCH is aware that OFPs are frequently violated with few consequences. Although the child protection system has little control over what happens in the adult and family courts, it could take steps on its own to hold perpetrators of domestic violence accountable.

*Recommendations:*

- *Judges, police, and probation officers should ensure that there are consequences for those who violate OFPs.*
- *In adult court, the County Attorney's Office should continue its efforts to prosecute domestic assault cases even if the victim is unable or unwilling to cooperate.*
- *The County Attorney's Office should explore filing civil petitions under Minn. Stat. 260C.335 and criminal complaints under Minn. Stat. 260C.425 against domestic abusers who contribute to the need for protection or services of a child.*
- *Steps should be taken to remove the alleged domestic abuser from the home instead of removing the children from the home.*
- *Minnesota should adopt the National Council of Juvenile and Family Court Judges Model Code on Domestic and Family Violence section 409 provision that says courts can remove the alleged perpetrator to prevent abuse or neglect of a child.*

WATCH has observed situations in juvenile court that raise red flags about the safety of victims of domestic violence. Judges and all court personnel need to be vigilant and ensure that the necessary precautions are taken to protect victims and those who are keeping them from further harm, especially when in the courtroom, arranging visitation, requiring OFPs for case plans, and assigning cases to family group conferencing.

*Recommendations:*

- *Addresses where victims of domestic abuse reside should be kept confidential in court records.*

- *The juvenile court should consider seating victims and perpetrators of domestic violence at separate tables in the courtroom if the victim feels unsafe or intimidated in the presence of the abuser.*
- *Judges should be vigilant to ensure that perpetrators are neither verbally nor nonverbally intimidating victims in the courtroom.*
- *Judges should issue clear orders that safeguard victims when dropping off children for visitation or picking them up.*
- *Domestic abuse advocates should not be asked to disclose their names in court.*
- *The child protection system should use caution when requiring domestic abuse victims to take legal responsibility for removing the abuser from their homes and lives.*
- *The wishes of domestic abuse victims should be respected when considering the use of family group conferencing.*

In most of the CHIPS cases with domestic violence WATCH monitored, the victim and abuser were given some kind of service through a domestic abuse program. It was not always clear to WATCH volunteers and staff whether children involved in these cases received services to help them deal with the violence. In Hawaii, an innovative program assigns domestic abuse advocates as GALs for child protection cases involving domestic violence. Feedback has been positive as judges have found the GALs' expertise valuable in helping them to make the best decisions for the children as well as the abused parent.

*Recommendations:*

- *In CHIPS cases with domestic violence, appropriate services addressing the abuse should be provided to all family members.*
- *The juvenile court should explore appointing domestic abuse advocates as GALs in cases with both domestic abuse and child maltreatment.*

The National Council of Juvenile and Family Court Judges developed and published guidelines for practice and policy in cases where domestic violence and child maltreatment overlap. One recommendation is to design differential responses to the diverse range of families experiencing domestic violence and child maltreatment, including the possibility of obtaining help with or without opening a CHIPS case.

*Recommendation:*

- *Cases with both domestic violence and child maltreatment should be assessed for risk and alternative responses to court involvement employed where appropriate.*

### **Breaking the Cycle of Child Abuse and Neglect**

Of the 45 CHIPS cases in WATCH's monitoring sample, 13 are still active, 14 resulted in termination of parental rights, either involuntarily or voluntarily, 10 were dismissed after parents substantially complied with case plans or, in one case, the child was old enough to live elsewhere, 11 resulted in a transfer of legal custody to either a family member or close friend, and two resulted in long-term foster care for the children.<sup>1</sup>

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<sup>1</sup> Five of the cases had different outcomes for different children and so have been double counted.

WATCH observed several success stories where parents were reunited with their children after battling such things as chemical dependency and domestic violence, but optimism about the future of these families was somewhat tempered by the fact that 28 of the 45 families in WATCH's sample had prior child protection involvement. Some cases had intergenerational child protection histories. Given such statistics, WATCH is concerned that the child protection system and community are not doing enough to address the problems of families with recurring child protection involvement and to prevent the intergenerational cycle of child abuse and neglect. Initiatives that focus on children at risk of perpetuating the cycle seem to be the most sensible.

*Recommendations:*

- *Target prevention programs at children who are the subjects of CHIPS petitions.*
- *Initiate mentoring programs for all children who are the subjects of CHIPS petitions.*
- *Follow the recommendations of the Breaking the Cycle of Intergenerational Child Abuse Subcommittee of the Initiative for Violence-Free Families to reduce child maltreatment in Hennepin County.*

The consensus across the country is that communities must do more to ensure that children are protected from abuse and neglect. The U.S. Advisory Board on Child Abuse and Neglect called for reform of the existing child protection system in 1990. Some of the subsequent recommendations included building neighborhood-based services for families, early intervention, more partnerships and collaboration among public and private agencies, and greater community involvement.

*Recommendation:*

- *The DCFS should expand its network of community partners and support and use community-based services that strengthen families and keep children safe from abuse and neglect.*

WATCH's impression is that those working within the child protection system are trying their best to deal with difficult and taxing situations on a daily basis. The juvenile court's leadership is strong and bent on innovation and change. WATCH hopes that CHIPS cases remain open to the public so that court improvements as well as the safety and welfare of abused or neglected children in Hennepin County and across the state can continue to be monitored.

## Section 1: Introduction

WATCH is a volunteer based nonprofit court monitoring and research organization in Hennepin County. Its mission is to make the justice system more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public. WATCH's 100 volunteers monitor and gather data on cases involving domestic assault, criminal sexual conduct, and child abuse and neglect.

On June 22, 1998, children in need of protection or services (CHIPS) cases in juvenile court were opened to the public in 12 Minnesota counties for a three-year pilot project.<sup>2</sup> WATCH had previously called for CHIPS hearings to be open after the tragic murder of 3-year-old Desi Irving and her mother's subsequent criminal trial in Hennepin County in 1997. During the trial, it came to WATCH's attention that the Hennepin County Department of Children and Family Services (DCFS) had been involved with this family and that Desi had been repeatedly returned to her abusive mother. However, the extent and scope of the DCFS's involvement were impossible to glean since the records were sealed to the public.

Crediting WATCH, House Judiciary Committee Chair Representative Wes Skogland held public hearings at the Minnesota legislature to study the issue in September 1997. Before legislation was ever passed, the Minnesota Supreme Court, at the recommendation of the Supreme Court Foster Care and Adoption Task Force, the Open CHIPS Subcommittee of the Conference of Chief Judges, the Conference of Chief Judges Administration Committee, and the full Conference of Chief Judges, ordered the pilot project in January 1998.

WATCH received grants from the McKnight Foundation, the Hennepin County Bar Foundation, the Cowles Media/Star Tribune Foundation, and the Smikis Foundation to establish a court monitoring project in Hennepin County Juvenile Court. Initially, WATCH sent volunteers into court to monitor appearances for several different CHIPS abuse or neglect cases for a morning or afternoon as it does with adult criminal cases.<sup>3</sup> A handful of experienced volunteers monitored in this way from June 1998 to October 1999.

Based on feedback from volunteers and staff, a new system was implemented in November 1999. Additional volunteers were recruited to monitor from start to finish several cases each from the afternoon emergency protective care (formerly "hold") calendars. Volunteers and staff also began to follow several cases where accompanying criminal charges were filed. This sample includes a total of 45 cases before 10 juvenile court judges serving from November 1999 to the present.

Staff began conducting interviews with system personnel in November 1999 to establish the criteria and procedures for monitoring and to better understand the overall system. A three-page CHIPS monitoring form was developed using the National Council of Juvenile and Family Court

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<sup>2</sup> These counties are Chisago, Clay, Goodhue, Hennepin, Houston, Le Sueur, Marshall, Pennington, Red Lake, Stevens, Virginia-St. Louis, and Watonwan.

<sup>3</sup> CHIPS cases also include educational neglect, truancy, and runaway cases, none of which WATCH monitored.

Judges' 1995 *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (Resource Guidelines)*. Hennepin County Juvenile Court began to implement reforms based on the *Resource Guidelines* in January 1997. WATCH felt it could make a contribution by monitoring for many of these "best practices." The form, replicated in Appendix A, targets such areas as the efficiency of the court, safety/welfare of the child, judicial demeanor/court decorum, application of the law, and other court involvement.

In addition to monitoring appearances in juvenile court, WATCH staff and several volunteers read corresponding case files and, when applicable, monitored appearances in adult criminal court.

This report describes WATCH's observations and recommendations based on three years of observing CHIPS proceedings and over one year of systematically monitoring 45 CHIPS and termination of parental rights (TPR) cases in Hennepin County Juvenile Court. Its intended audience is system personnel involved in CHIPS cases as well as members of the public. For the benefit of the latter, general information about the workings of the overall child protection system is included.

### **A. WATCH Volunteers**

WATCH volunteers are civic-minded people who come from a wide variety of backgrounds. While some are college or law students, homemakers, or retirees with flexible schedules, others are working men and women who take time off to volunteer. Without its valuable volunteers, WATCH would be unable to fulfill its mission.

Over 20 volunteers, motivated by their concern for the safety and welfare of abused and neglected children in our community, have monitored CHIPS cases in Hennepin County Juvenile Court since hearings were opened. Many are professionals involved with children in some capacity, be it teaching, tutoring, assessing special needs, or counseling. Sixteen volunteers were recruited to monitor two or three ongoing cases each after WATCH revamped its monitoring system in November 1999. Several volunteers have subsequently retired from the juvenile court monitoring project, citing personal and work constraints exacerbated by court delays and hearing continuances. Most have watched and/or continue to watch their cases to completion.

Volunteers received both individual and group training to prepare them for CHIPS monitoring. Staff accompanied volunteers their first few times in juvenile court until they felt comfortable monitoring on their own. Volunteers were given an overall orientation to juvenile court from the DCFS and specific training from WATCH staff on monitoring guidelines and completing the CHIPS monitoring form. Other child-focused group trainings included the following:

- a tour of the Minneapolis Crisis Nursery,
- foster care licensing procedures and state regulatory laws,
- an overview of the CHIPS case process and statutes,
- an orientation to Corner House,
- the role of public defenders and dispositional advisors in CHIPS cases, and



- CHIPS cases governed by the Indian Child Welfare Act.

Since June 1998, WATCH volunteers have contributed 781 hours to the CHIPS project. Volunteers and staff have monitored 602 appearances. Volunteers tracked time spent in court waiting for and monitoring appearances as well as time spent contacting court personnel to obtain information related to continued or missed hearings and time spent writing up reports. According to Independent Sector, the dollar value for volunteer service used throughout the nation is \$14.83 per hour. This reflects the average wage plus a 12 percent benefits estimate. Thus, in monetary terms, WATCH volunteers have given at least \$11,582.23 to ensure that the best interests of the children are being served and to promote greater system accountability in CHIPS cases.

## **B. Goals of Open Juvenile Court Hearings**

Throughout the United States, closed juvenile court proceedings for child abuse and neglect cases are the norm. This is due to a long-standing belief that it is detrimental to families, especially children, to have their problems and suffering exposed to public scrutiny. This view, however, has been challenged as many see the veil of secrecy surrounding these proceedings as protecting the perpetrators of child abuse and neglect rather than the victims. Private hearings may also lead to the perception that people in the system are “not doing their jobs.” Ultimately, political and financial support for the child protection system can be eroded.

Some states do permit public access to child protection hearings, including Arizona, Arkansas, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Oregon, Texas, and Washington.<sup>4</sup> Minnesota opened CHIPS proceedings to the public in 12 counties on June 22, 1998, for a three-year trial period. No decision has been rendered on whether the proceedings will again be closed in June 2001 or opened throughout the state. To provide a basis for this decision, the Minnesota Supreme Court Office of the State Court Administrator contracted with the National Center for State Courts (NCSC) to review and evaluate the pilot project. The NCSC published an interim progress report in November 1999 and will release a final report in August 2001. It is looking at the impact of open hearings on the welfare of children and families, juvenile protection system professionals, court processes and operations, and public awareness.

According to the NCSC’s interim progress report, the theory behind opening hearings was that the increased public and media attention to the child protection system would increase accountability of system components and participants and increase public interest and awareness of child protection issues and the need for augmented system resources. The overall benefit would be improved performance of the child protection system. The interim progress report concluded, however, that these hypothetical benefits had not been realized because the increased public and media attention from which they were to flow had not occurred.

While emphasizing the need for advocates of open hearings/records to focus on garnering increased public and media attention, the interim progress report did not ask *why* public and

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<sup>4</sup> James Walsh, “Open juvenile court raises concern,” June 21, 1998, *Star Tribune*, p. B1.

media attention had not yet increased to the extent desired. It would appear that, at least in Hennepin County, a comprehensive public access plan to promote meaningful public access to CHIPS hearings was never developed. At least two community forums were convened before hearings were opened, but none that WATCH is aware of subsequently occurred (the Hennepin County Attorney's Office did release a general informational video on the open CHIPS project last year). Almost three years later, some judicial clerks are not aware what information about CHIPS cases can be provided to the public. The level of attention to public access can perhaps be related to the fact that participating counties were not given increased funding to hire additional personnel to handle the burden of meeting public and media requests and to make their courts more user friendly.

WATCH does constitute a public presence in Hennepin County Juvenile Court and has witnessed many extended family members and other interested parties—even those who first reported the abuse/neglect—attending hearings. The media, too, have covered specific cases, particularly those where children have met with death or egregious harm at the hands of their abusers. Thus, while public and media attention could certainly be augmented, it is nonetheless present.

### **C. Scope of the Report**

This report is divided into seven sections. The first six sections focus on broad themes derived from WATCH's monitoring form or from specific concerns previously addressed in *WATCH Post* newsletters, with the last section concluding the report. The main body of the report is followed by three appendixes. Appendix B, which contains summaries of 15 of the 45 CHIPS and TPR cases WATCH monitored, should acquaint readers with the types of child protection cases typically seen in Hennepin County Juvenile Court.

The report's observations and recommendations are based primarily on monitoring court appearances and reviewing case files. All hearings from the initial emergency or preliminary protective care hearing to the 90-day review hearing in the state ward calendar are open to the public. Case files are bifurcated into public and private portions in accordance with the Minnesota Rules of Court (2001) "Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings" adopted on May 28, 1998.

The public portion contains such documents filed on or after June 22, 1998, as petitions other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of a social worker or guardian ad litem. The private portion contains such documents as audio or video tapes of a child alleging or describing physical or sexual abuse or neglect of any child; victim's statements; portions of juvenile court records that identify reporters of abuse or neglect; HIV test results; medical records and chemical dependency evaluations and records; sexual offender treatment program reports; portions of photographs that identify a child; records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault; and records or portions of records that identify the home or institution in which a child is placed pursuant to a foster care placement, pre-adoptive placement, or adoptive placement.

Monitoring the actions and conduct of judges, assistant county attorneys, public defenders, and private attorneys, all of whom attend and speak at court appearances that are recorded in the public portion of the case file, was fairly straightforward.

Monitoring the actions and conduct of DCFS employees, who oversee parents' compliance with case plans, was somewhat more difficult since the assistant county attorney serves as their spokesperson during the hearing. Important documents prepared by child protection social workers, such as petitions, case plans, and progress reports, do appear in the public portion of the case file; however, some files are updated more frequently and are more complete than others. Also, vital information for monitoring the children's welfare, such as how often DCFS employees visit the children, whether siblings are placed together, and the extent to which children move among different foster homes was noticeably absent in most case files reviewed. This information is not necessarily provided in court—for example, at only three hearings WATCH monitored was it explicitly stated how often the child protection social worker would be visiting the home.

The actions and conduct of guardians ad litem (GALs), who provide brief oral reports in court but rarely provide written reports, were also difficult to monitor. Although written reports of GALs can be included in the public portion of court files, there appears to be no law or statute requiring them to submit such reports. Few such written reports were found in the files reviewed. It was difficult to learn how often GALs visited the children as the frequency of visits was seldom discussed in court. At only two hearings WATCH monitored was it explicitly stated how often the GAL would be visiting the child.

#### **D. The CHIPS Process in Hennepin County**

The DCFS receives about 25,000 calls reporting possible child abuse/neglect each year. Screeners take calls 24 hours/day and use a decision tree to determine if the incident/behavior reported rises to the level of the state mandate. If it does, investigative social workers are assigned to investigate the report. Upon investigation, about 2,000 reports are substantiated, and about 650 CHIPS cases are opened each year.

After a substantiated report of child abuse/neglect, a family may initially start working with the DCFS on a voluntary basis. If after 60 days little or no progress has been made on the case plan, the County Attorney's Office files a CHIPS petition and the juvenile court becomes involved. However, a CHIPS petition is immediately filed for children found to be in imminent danger, and police officers are court ordered to remove them from the home. Even without a court order, police officers have the authority in any situation to issue a "police health and welfare hold" to remove children in imminent danger.

Whenever children have been removed, an emergency protective care hearing must occur within 72 hours. When children remain in the home, the initial hearing, which includes an arraignment or admit/deny component and is heard on the emergency protective care calendar, takes place no sooner than five and no later than 20 days after the parties have been served with the CHIPS petition.

Typical “players” at the emergency or preliminary protective care hearing include the judge, the court clerk, the court reporter, the assistant county attorney, the investigative social worker, the child protection social worker, the GAL, parents, the parents’ attorney(s), and children over 10 years old with their attorneys. The judge has read the petition and listens to arguments to decide whether probable cause for a CHIPS matter exists. If probable cause is found, a case will be opened. The judge will also determine the safest environment for the children. This may be at home with the parents, often under protective supervision, or it may be in foster care, preferably with a relative.

Within 30 days, a case plan must be filed with the court. This plan, which is prepared by the child protection worker in consultation with the parents and, if one has been assigned, a dispositional advisor from the Public Defender’s Office, outlines the changes parents need to make to have the case dismissed and/or to be reunified with their children. The DCFS is required to offer services to the parents to help them achieve the goals of the case plan. Compliance with the case plan at this point is voluntary, however. Only after CHIPS has been adjudicated, or decided, are parents bound to comply with the case plan or risk losing their children entirely.

It behooves parents whose children have been placed out of home to immediately begin working on their case plan. To prevent children from becoming “lost” for years in the foster care system after being removed from their parents, Minnesota laws passed in 1993 and 1999 require that a permanent living situation be determined within six months for children under eight and within 12 months for children eight and over. This means that the DCFS, while making “reasonable efforts” to reunify the children with the parents, must also explore other placement alternatives. These include transfer of legal custody to a relative, termination of parental rights, or, if the child is 12 or older, long-term foster care.

When children remain in out-of-home placement, the next court hearing within 10 days of the emergency protective care hearing is the arraignment or admit/deny hearing. The same players from the emergency protective care hearing appear, except for the investigative social worker and possibly the GAL and, depending on the situation, the addition of a kinship worker and a child services worker. At this appearance, the court is informed of the parents’ progress on the voluntary case plan, and parents deny or admit the allegations in the petition. If they deny the allegations, the matter will be set for pretrial and eventually trial. If they admit the allegations, the judge will order a case plan. If parents do not attend the hearing, the allegations in the petition will be found true and a case plan ordered.

A pre-trial conference with more or less the same players is scheduled no later than 10 days before the trial date. The court is informed of the parents’ progress on the voluntary case plan. Parents may decide to admit the allegations in the petition at this or any point up to and including the trial. If they admit the allegations at this hearing, the judge will order a case plan. If parents do not attend the hearing, the allegations in the petition will be found true and a case plan ordered.

A trial occurs within 60 days after the emergency protective care hearing. To prove the allegations in the petition, the assistant county attorney makes arguments and may call witnesses to testify to the court. Likewise, to disprove the allegations in the petition, the defense attorney makes arguments and may call witnesses to testify to the court. Within 15 days after the trial, the judge decides whether at least some of the allegations contained in the petition are true. CHIPS is said to be adjudicated and parents are ordered to comply with a case plan if the judge so decides. However, if the judge decides that none of the allegations in the petition are true, the case is dismissed. The judge usually orders the disposition at the same time as adjudication, but if not, a disposition hearing takes place no later than 10 days from the date of adjudication.

Every 60 to 90 days after CHIPS has been adjudicated and a disposition ordered, review hearings occur. The standard players attend. The judge is informed of the parents' progress with the case plan and may decide at any time to dismiss the case.

If a child under eight has been in out-of-home placement for six months, the County Attorney's Office must file either a transfer of legal custody (TLC) or a TPR petition. For children eight or older in out-of-home placement for one year, a TLC, TPR, or long-term foster care petition must be filed. A TLC petition is typically filed if the parents agree to voluntarily transfer legal custody to a relative. A long-term foster care petition is filed if the parents agree to place their child in long-term foster care. For more contentious cases in which termination of parental rights is sought, the hearings mirror those for the CHIPS petition: admit/deny hearing, pre-trial conference, and trial.

If parental rights are terminated, the case will move from the judge who has heard the case from the beginning to the judge assigned to the state ward calendar. Review hearings occur every 90 days to monitor the well-being and progress toward adoption for those children whose parents' rights were terminated (currently about 400). The state ward calendar meets twice a month. The first calendar, called the "routine" calendar, involves a paper review of those children with no immediate crises. Typical players include the judge, DCFS adoption unit supervisors, and occasionally a GAL. The more difficult cases involving disrupted placements, children in residential treatment centers, contested adoptions, and so on, appear on the second calendar, called the "non-routine calendar." Typical players include the judge, the court clerk, the assistant county attorney, the GAL and his or her attorney, and children over 10 years old and their attorneys. Foster parents, service providers, relatives, and teachers are also occasionally present. When a child has been legally adopted or the child turns 18, the case will be dismissed.

Annual reviews occur for children who have been placed in long-term foster care. When a child in long-term foster care reaches the age of 18, the case will be dismissed.

It should be mentioned that Hennepin County Juvenile Court implemented a strategy in the summer of 1996 to relieve a backlog of adoption cases resulting from new permanency legislation passed in 1993. This was accomplished within one year, and today no backlog exists. Adoption cases are now more streamlined. In 2000, 256 adoptions were finalized taking on average 700 days from termination of parental rights to adoption. This compares with 109 finalized adoptions taking on average 816 days from termination of parental rights to adoption in 1996.

**E. Minnesota Statutes and Rules Governing Child Protection Matters**

Appendix C contains a matrix prepared by the National Council of Juvenile and Family Court Judges in 1997 indicating Minnesota statutes pertaining to child protection matters.

A new set of rules for how Minnesota courts handle juvenile protection cases, which includes scheduling timelines for hearings and trials, took effect March 1, 2000, and is available from the Minnesota Supreme Court. The old rules had not been revised in 17 years and were out of line with state statutes and federal laws and regulations.

## Section 2: The Role of the Judge

At any given time, eight judges sit in Hennepin County Juvenile Court. While judges are encouraged to remain for at least two years, some judges have served longer than two and others only one year. The suggested period of service relates to the complexity of cases heard in juvenile court as well as the difficulty judicial clerks encounter in mastering the “total court information system” (TCIS), an outmoded and unwieldy automated information system. The learning curve can be steep and months may pass before a judge and his or her judicial clerk are as effective as possible.

Since November 1999, WATCH volunteers and staff have monitored children in need of protection or services (CHIPS) cases in 10 juvenile court judges’ courtrooms. It is clear that most judges have a strong interest in and commitment to the work of the court. Overall, they are courteous and respectful to those who enter their courtrooms and display a high degree of professionalism and foresight in deciding cases.

The leadership of the Hennepin County bench recently demonstrated its commitment to prioritizing CHIPS cases. In January, the time equivalent of two-and-a-half judges was shifted to juvenile court for faster processing of CHIPS cases. Six judges now hear primarily CHIPS cases full time; the remaining two judges, as well as three referees, hear delinquency and other types of cases. Additional resources were created by eliminating two civil blocks in adult court and assigning the juvenile detention calendar to rotating judges from adult court.

Judges play the most critical role of any system player in CHIPS cases. From the initial hearing, they set the tone for how the case will proceed. Their leadership is essential for proper case management. One of the most important changes reflected in the new Minnesota Juvenile Protection Rules is making judges more responsible for the progress of cases through the system. Their responsibility is to hold all players accountable for their actions, to ask probing questions to ensure that reasonable efforts at reunification are being made, and to impose necessary sanctions. They ultimately have the authority to approve or disapprove of case plans, order delivery of services and treatment for children and families, specify placements, resolve disputes, and set terms of visitation.

Child abuse and neglect cases are among the most complex confronting the judiciary. An extensive body of knowledge must be mastered and applied in these matters. Judges have the difficult task of steering the case to meet various competing goals, for they must balance treatment, rehabilitation, and reunification with permanency planning. This necessitates not only a sound familiarity with all relevant laws pertaining to CHIPS cases and timelines and the availability and accessibility of social services and placement options in the community, but also an understanding of a number of specialized issues, including but not limited to child development, chemical dependency, and domestic abuse.

TCIS compounds the difficulty of effective case management in Hennepin County. Judicial clerks are forced to spend inordinate amounts of time updating and searching for case information on TCIS. Vital summary information, such as how many children judges have in

their caseload and where the children have been placed, is impossible to access. For the last four years, at least one judge has had his clerk use an entirely different software package to prepare spreadsheets that better display information about his cases.

### **A. Judicial Caseloads**

Hennepin County Juvenile Court adopted a “one family-one judge” policy in 1997 with its commitment to implementing the National Council of Juvenile and Family Court Judges’ *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (Resource Guidelines)*. Judges retain all cases opened during their stint every eighth week on the emergency protective care calendar. This translates to about 120 CHIPS and termination of parental rights (TPR) cases per judge, which is beyond the caseload recommended by the National Council of Juvenile and Family Court Judges. Occasionally, if a disparity in caseloads exists, cases will be assigned to another judge after the initial hearing. An “equalization” or redistribution of cases also occurs every three months.

Since “one family-one judge” means that the judge who presides over the initial hearing will stay with the case throughout the entire process, continuity, consistency, and accountability are maximized. A judge with long-term knowledge of the case can more easily review files before each hearing and make informed decisions. Because he or she has a sense of ownership, more time may be invested in the case. Parents’ accountability to the judge is raised since they are not likely to provide the same excuses for lack of progress. Likewise, parents can expect consistency from the judge. Most importantly from WATCH’s perspective, the *Resource Guidelines* emphasize that “a judge who has remained involved with a family is more likely to make decisions consistent with the best interests of the child” (p. 19).

The WATCH monitoring form included the question “How many different judges have heard this case?.” Overall, in its sample of 45 cases, WATCH volunteers and staff found the “one family-one judge” policy was upheld in just over half the cases. Twenty cases had two judges recorded either because the case was reassigned after the initial emergency protective care hearing or the judge who initially handled the case moved to adult court before the case was completed. Also, when a judge was ill, another judge would occasionally hear the scheduled case. In such instances, the judge filling in was comfortable making routine decisions, but appeared reluctant to make more difficult decisions that might conflict with the intent of the assigned judge.

In only two cases were more than two judges recorded. This was because each case was reassigned to another judge after the emergency protective care hearing and again after that judge moved to adult court.

Of course, the true exceptions to the “one family-one judge” policy are those families with prior CHIPS cases in Hennepin County or other jurisdictions. WATCH’s sample included 22 such families.



*Recommendations:*

- *Require judges assigned to juvenile court to serve a minimum of two years and encourage them to serve longer.*
- *Devise and implement a method of phasing judges out of juvenile court such that the “one family-one judge” policy is upheld.*

**B. Clarity of Explanations and Decisions**

When WATCH volunteers and staff first started to monitor CHIPS hearings, they were confusing. The exact nature of the various proceedings was unclear as were the roles of the players. WATCH’s initial experiences likely mimic those of the parents and children involved. The *Resource Guidelines* suggest that the judge clarify what is about to take place, make a decision at the end of the proceeding, and explain it (pp. 31-32). The *Resource Guidelines* even recommend that written orders and findings be given *immediately* to parties after the hearing (pp. 40-41). It is also suggested that the judge relay that he or she is an impartial decision maker not aligned with any other party to the proceeding (p. 32).

For clarity of judicial explanations and decisions, WATCH’s CHIPS monitoring form specifically asked the following questions:

- Did the judge clearly explain the proceeding to the parent(s)?
- Did the judge explain that s/he is not an arm of the DCFS, but an impartial decision maker?
- Did the judge make a decision at the end of the proceeding?
- If orders were issued, did the judge clearly explain what this means to the respondent(s)?
- Are orders and findings given immediately to parties after the hearing?

In WATCH’s observations, judges rarely explain the proceeding to the parents. The county attorney calls the case, usually (but not always) states the type of hearing, and introduces the various players. No explanation of the type of hearing is offered. One assumes that the parents’ representatives have privately explained what is about to happen. Others attending the hearing, including interested members of the public, however, may be completely in the dark. While WATCH applauds the addition of informational pamphlets describing various court services and programs in the juvenile court reception area, a comprehensive brochure describing the CHIPS process to parents, children, and other interested parties has not been produced. The Minneapolis American Indian Center’s Indian Child Welfare Program has written just such a brochure for its clients, which could be used as a model.

Of the hundreds of CHIPS hearings WATCH volunteers and staff attended, not once did the judge explain that he or she is an impartial decision maker not affiliated or aligned with any party to the proceeding. It would take little effort for judges to reassure parents and children, who are most likely anxious and intimidated and may be feeling that “everyone is against them,” that they are hearing the case with an open mind and are not unduly influenced by any one party.

Most, but not all, judges make clear decisions at the end of the hearing. In one particular judge's courtroom, WATCH volunteers and staff noticed that the outcome was not always obvious. The judge would listen attentively to the various players, but tended not to summarize his decision at the conclusion of the hearing. On more than one occasion, he simply stated that he would "get the order out next week."

Further clarification of judicial orders would also be useful. A significant percentage of volunteers felt that judges did not adequately explain their orders. Perhaps this process could be improved if written orders and findings were given immediately to parties after the hearing. However, WATCH observers did not record this practice in any of the cases monitored. The practice appears to be to get these documents to parties soon after the hearing, usually in a matter of days. WATCH has learned that one juvenile court judge will soon be testing a new order format for immediate distribution to all parties and counsel after each hearing.

*Recommendations:*

- *Judges should briefly explain the proceeding to those attending in accordance with the Resource Guidelines.*
- *When parents and children first appear before them, judges should explain that they are impartial decision makers not aligned with any party to the proceeding.*
- *The juvenile court should create a brochure for parents, children, and members of the public explaining the CHIPS process.*
- *Judges should make a clear decision at the end of the hearing and explain it.*
- *Judges should immediately issue written orders and findings to parties and explain them.*

**C. Judicial Demeanor/Courtroom Decorum**

WATCH volunteers and staff responded to the following questions on WATCH's CHIPS monitoring form pertaining to judicial demeanor/courtroom decorum:

- Did the judge generally keep control of the courtroom?
- Was the atmosphere problem-solving rather than adversarial?
- Was the judge compassionate (especially in cases involving housing issues and/or domestic abuse)?
- Was the judge respectful of all parties?

Judges on the whole preside over orderly courtrooms in Hennepin County Juvenile Court. Not once did WATCH volunteers and staff note that a judge lost control of the courtroom. Disruptions, such as outbursts from parties or participants, did occur on rare occasions and were handled quickly and reasonably. In one case, a father who was not asked to speak at a hearing muttered at its conclusion, "I guess I'll see them [the children] when they're 18" and stormed out of the courtroom. The judge, realizing his error, ran after him, brought him back, and listened to his concerns on the record.

According to the *Resource Guidelines*, successful case outcomes are more readily achieved by establishing a problem-solving rather than an adversarial atmosphere in the courtroom. At least

in hearings leading up to and after a trial, WATCH volunteers and staff felt that a problem-solving atmosphere prevailed. To illustrate, in one case WATCH observed, the mother had worked with the Department of Children and Family Services (DCFS) voluntarily before a petition was filed for lack of progress. At the first court hearing, the mother admitted the allegations in the petition. The judge ordered the DCFS to expedite the process for the mental health evaluation he ordered, stating, “When a parent comes forward like this we need to do all we can to get her started. I don’t want to have her wait 30-60 days for the paperwork.” In another case before a different judge, all parties agreed that a family court visitation mediator should be used if the mother and her sister were unable to work out a visitation schedule after the transfer of legal custody. The judge ordered this as an option and the transfer of legal custody took place.

While attorneys were more likely than other parties to become adversarial during hearings, on one occasion a volunteer noted,

I thought the atmosphere seemed adversarial between the judge and the elderly grandfather and step-grandmother. They were forceful in saying that they are no longer able to keep the child because they are exhausted. The judge really got rather nasty with them in dealing with their unwillingness to take care of her. She finally prevailed upon them to keep the child for another 90 days, in addition to the two months they have already had her.

Overall, judges tended to appropriately compliment and encourage parents working their case plans. A volunteer wrote, “I thought the judge was outstanding with the mother. She was crying and he acknowledged that and told her twice that in spite of her tears she needed to hear how hard she was working to regain her children. He made good eye contact with her and talked to her when appropriate, not her attorneys.” In another case before a different judge, however, a WATCH staff member was troubled when at the second hearing the judge, after commending the parents for working their case plans, told them “he hoped to get the case resolved to everyone’s satisfaction.” The father and mother had domestic abuse issues and the father had a history of sexual assaults on children, including a current allegation involving his 3-year-old daughter. It would seem that the goal should not be to satisfy the adult parties to the proceeding, but to protect the child above all else.

Judges often displayed compassion at emotionally difficult hearings, such as those involving a transfer of legal custody (TLC) or a termination of parental rights (TPR). At one TLC hearing, the judge, while stating that she knew this was no consolation, commended the parents for putting their children’s interests before their own and having the courage to make a difficult choice. At another TLC hearing before a different judge, a volunteer noted,

The judge was quite impressive, as she has been at all the previous hearings. The mother has significant mental health problems and the judge once again listened to her irrelevant ramblings patiently and intently, without interruption. She told the mother she looked good and sounded better than at previous hearings. The judge said that she knew the mother and father loved their son and she sincerely wished good luck to everyone involved.

The WATCH monitoring form singled out the need for compassion, especially in cases involving domestic violence, so a volunteer was dismayed to observe one hearing where a domestic abuse victim with mental health problems was treated with a noticeable lack of sensitivity. According to the volunteer,

The judge appeared dispassionate and rather cold. Her questions directed to the mother's public defender, e.g., "when was the last time she had a residence?"; "when has she ever maintained a residence for these children?"; "why can't she get a job?"; "why did she come to Minnesota?," seemed to mask a very critical attitude toward the mother. I wasn't sure why she asked the last question—it didn't seem relevant, although the answer did give an indication of the kind of power the father held over the mother.

This same judge was the only judge whom volunteers felt was not respectful to parties on at least three other occasions. One volunteer wrote,

I found the judge's tone at times abrupt and insulting, especially when she commented on the need to provide urinalyses three times per week. She said something like "that once a week stuff won't do" in a tone of voice that was sarcastic. I also thought the handling of the mother was not sensitive or respectful.

Another volunteer monitoring a different case with this judge wrote,

This judge was rude to all parties. The mother's attorney seemed totally defeated every time he had to talk to her, and barely made eye contact, looking down much of the time he was talking. The mother asked to say something at the end of the hearing regarding one of the requirements. She was told in a very rude manner, "You can speak to your attorney." It came out that the mother was concerned because the child's psychological evaluation included anxiety about school and separation, and she wanted the psychologist's recommendations for summer programming to be taken into account.

Most judges were highly respectful of all parties. Only infrequently did WATCH volunteers and staff see judges display annoyance or impatience. Factors that appeared to aggravate judges included unprepared parties, orders that had not been followed, or parents openly disagreeing with or challenging their decisions.

WATCH volunteers and staff especially were pleased when children who were parties to the proceeding were given due consideration. At one hearing, a volunteer observed, "The judge is very considerate of the child. He seems very sensitive to this child who seems so bright and able but also on the edge of trouble. He gives him a chance to talk and express himself and is very respectful of everyone."

#### **D. Judicial Oversight**

The importance of judicial oversight has already been discussed. It appears to WATCH that the CHIPS process functions most effectively when judges study court files, understand the issues

presented, and come prepared to hearings. Probing questions by judges of all CHIPS case players are needed to ensure the accuracy of what is being reported and that rights are being upheld, ordered services delivered, and the best interests of the children held paramount. WATCH volunteers and staff observed that while some judges exercise their oversight role with great effectiveness, others do not appear to be as comfortable “second-guessing” other players.

In the latter category, one judge appropriately expressed his concern that the mother’s insurance company would not cover the cost of aftercare after she successfully completed chemical dependency treatment, which he had ordered. He began to suggest alternatives, such as Narcotics Anonymous, Cocaine Anonymous, and Alcoholics Anonymous, but qualified this by stating “he didn’t want to step on the social worker’s toes.” Another judge asked the right questions, but not until the eighth hearing. In seeking to find a permanent situation for the child, he asked the paternal grandmother if she would be willing to have the child placed with her. Despite having participated in family group conferencing, she responded, “You can do that?” The judge turned to the assistant county attorney and asked, “Has the county explored this option?” The response was “No, but it will.”

Another judge did an outstanding job of holding players accountable. To take just one of many examples, a volunteer noted,

the assistant county attorney and the mother’s public defender made reference to the next hearing being for dismissal. The judge said, “I have a number of concerns” and was in large part frustrated with the performance of the DCFS and with the assumptions the players were making about the progress of the case. For example, the judge had ordered both parents to maintain sobriety and submit random urinalyses, yet none had been requested by the DCFS. Since the father was required to pass a random urinalysis before any overnight stay would be permitted, the DCFS’s failure to ask him for it made it impossible for the spirit of the judge’s earlier order to be fulfilled. Moreover, the judge was irritated with the DCFS for referring the father to a program that required him to “go through lots of hoops” in order to have weekly unsupervised time with his daughter. The judge stated that she intended to keep the case open long enough to know whether the child was being properly cared for and both parents involved.

Other judges also displayed their willingness to ask tough questions to hold players accountable. The following excerpts from volunteer notes pertaining to the same judge but different cases illustrate the need for oversight and how adversely children and parents can be affected when various players fail to do their jobs properly.

The judge was plainly unhappy with the county for coming to the hearing unprepared, especially when an admission was to be made. Some paperwork regarding the mother’s progress in the treatment program had not been passed along to the newly-assigned social worker. The judge clearly explained that her instructions today were to be followed completely. The children were not allowed to return to the mother’s home for visitation since no evidence had been presented to support a change in the mother’s lifestyle or living conditions.

The child had been placed with the mother's sister. This placement caused confusion, as the judge had ordered that the child be placed with his other siblings at the grandparents' home at the previous CHIPS hearing. The judge repeated and stressed numerous times her desire to keep the siblings together and seemed unhappy with the current arrangement.

Another judge inherited a case that had been going on for 10 months and at the first hearing gently but firmly questioned the players regarding a permanent situation for the child. He learned that, although the kinship study had unearthed no relatives interested in the children, three of the mother's other children had been placed with relatives in another state. He ordered family group conferencing since relatives had stepped in to help in the past and might be willing to do so now.

While most judges appear to be well-prepared for hearings, WATCH staff infrequently observed hearings where the judge had not read the paperwork. One volunteer noted, "The judge admitted he hadn't had a chance to read all of the exhibits yet, even though yesterday was supposed to be a full day for the trial and we only used 25 minutes!" A DCFS social worker informed another WATCH volunteer that his greatest concern is the backlog on paperwork in the system. He told her he routinely sends his reports to the judge involved, whose clerk staples a cover to the report, staples a cover to the report copy, and returns the copy to him to signify its receipt. Sometimes, however, he waits months for such copies and is not convinced the reports ever get beyond the clerk's desk.

On a final note, to responsibly exercise their oversight responsibilities, juvenile court judges need to have a thorough understanding of the complex issues they confront in court daily. While judges often have extensive experience in running orderly courtrooms, very few have been trained on child development and attachment, family systems, mental health, chemical dependency, and domestic abuse. A sound understanding of these areas is critical to making the best rulings possible.

*Recommendations:*

- *Judges must be willing to exercise judicial oversight with child protection system players.*
- *Judges should read all relevant case documents and come prepared to court hearings.*
- *To make the best rulings possible in CHIPS cases, judges should receive training on issues such as child development and attachment, family systems, mental health, chemical dependency, and domestic abuse, preferably before beginning an assignment in juvenile court.*

### Section 3: Efficiency of the Court

Hennepin County is Minnesota's most populous county with over 1.1 million people, one quarter of which are children. Its juvenile court, housed in a separate facility from the other courts, has the largest caseload in the state. While, WATCH focused its monitoring on children in need of protection or services (CHIPS) abuse or neglect and termination of parental rights (TPR) cases, the juvenile court also processes CHIPS cases involving educational neglect, truancy, and runaways; orders for protection involving juvenile respondents; status offenses; adoptions; parental fee collection unit cases; and delinquency and juvenile traffic cases. On any given business day, over 500 people come to juvenile court to participate in over 100 cases.

The workload of the juvenile court has grown over the past five years. In 2000, 19,181 petitions of all types were filed, up from 15,070 in 1995.<sup>5</sup> During this period, CHIPS petition filings increased from 482 to 635. TPR petition filings also increased from 204 in 1995 to 304 in 2000. TPR cases typically take much longer to process than other types of cases, which could explain the additional resources being allocated to juvenile court.

As previously mentioned, eight judges are assigned to juvenile court as well as three referees, an increase from four judges and five referees in 1995. One of these judges is appointed by the chief judge of district court to serve as the chief judge of juvenile court for a two-year term. With this position comes additional administrative responsibilities and a reduced caseload. Each judge has a judicial clerk and a law clerk to help with legal research, preparation of court documents, data entry, scheduling hearings, and overall case management, and a court reporter to transcribe court proceedings. Space, however, is limited, so not every judge or referee has his or her own courtroom.

The juvenile court administrator oversees a staff of 28 responsible for the court's day-to-day operations, such as calendaring, maintaining legal records, and entering data for the statewide automated information system. Two division directors reporting to the court administrator are charged with overseeing the processing of CHIPS cases and the processing of delinquency and other types of cases, respectively. The CHIPS division comprises five people with two additional staff members handling the truancy and runaway case initiation and scheduling and adoptions.

The juvenile court relies on the "total court information system" (TCIS) to track CHIPS cases and to manage its calendar. TCIS has a number of deficiencies that make effective case management and efficient scheduling difficult to achieve.

Within this environment, WATCH set out to monitor for court efficiency, looking at such things as scheduling and timeliness of hearings and trials, continuances, issues of public access, the court's user friendliness, notification of parties, issues of representation, compliance with governing statutes, and the impact of other court involvement.

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<sup>5</sup> These numbers exclude traffic citations and parental fee notification filings.

### **A. Scheduling and Timeliness of Hearings and Trials**

The scheduling and timeliness of hearings and trials emerged as one of the major problem areas in Hennepin County Juvenile Court in WATCH's months of observation. The first article on open CHIPS hearings in the Fall 1998 *WATCH Post* called attention to the chaotic environment that reigns while parties are waiting for their cases to be heard (see Jacquelyn Hauser's "An Outsider's View of Juvenile Court," pp. 1-4). A former WATCH executive director, Jacquelyn Hauser, wrote, "I am told that the juvenile scheduling system has recently been vastly improved, but I am astonished at the scheduling quagmire that must sponge up a huge amount of the public dollars allocated to these courts." Little had changed by the time a subsequent article in the *WATCH Post* addressed this issue by highlighting one volunteer's experience in attempting to monitor two cases (see Peggy Pluimer's "Waiting in Juvenile Court," *WATCH Post* April 2000, pp. 4-5).

WATCH's CHIPS monitoring form specifically asked volunteers to record the hearing's scheduled and actual start time and the reason for the delay, if any. On average, WATCH volunteers and staff waited 50 minutes from the scheduled to the actual start time. Several of the most timely hearings recorded actually started on time; the least timely hearing was delayed almost three hours.

It seems to be a part of court culture to tolerate such delays. There appears to be disregard for the parents missing work, the children missing school, and the many professionals whom the public, or often cash-strapped parents, are paying to simply wait for a hearing to start. An assistant county attorney, who was on time for every appearance monitored, said that in four years in juvenile court he has never had a hearing start on time. Other players gave reports of how hearings were delayed for hours with no apologies or explanations. Only rarely did WATCH volunteers and staff observe the person responsible for the delay explain the reason for his or her tardiness for the record.

The culture of delay impacts the welfare of children beyond missing school. Department of Children and Family Services (DCFS) social workers are not able to work on their many other cases when they are at court. While waiting for a hearing scheduled to begin at 9 a.m. (it eventually started at 10:45 a.m.), a DCFS child services worker informed a WATCH staff member that the delays are frustrating, especially when she has so much work to do. When asked if she could bring work along, she said there is only so much one can do at court. Guardians ad litem (GALs), children's independent advocates, are in short supply, their recruitment and retention adversely affected by court delays. Professional witnesses, such as psychologists or physicians, who provide judges with valuable information on the merits of the case, may be reluctant to appear in court based upon their experiences with delays. After clearing their schedules to come to court, they may end up waiting all morning to testify and then be told to come back in the afternoon. Finally, members of the public and friends and family concerned about the children may be dissuaded from attending hearings after experiencing court delays. Before one hearing, a WATCH staff person observed an extended family member in one case leave the courthouse after waiting for over an hour because he had another obligation.

Several factors appear to contribute to this particular court culture.



Scheduling is certainly one factor. A glance through the CHIPS court-wide calendar reveals that two or more hearings may be scheduled for the same time before one judge. The rationale appears to be that the case for which the players have all gathered and completed their preliminary discussions will go first. The emergency protective care calendar presents a greater scheduling problem. The average hearing delay experienced by WATCH staff and volunteers when monitoring this calendar was 70 minutes. This is because all emergency protective care hearings, whether one or many, are scheduled for 1:30 p.m.

Another factor is the assumption that preliminary discussions will ensue before the actual start of the hearing. This does not mean that the players come early to the hearing to discuss matters before the scheduled start time. Typically, players show up at the scheduled start time, and discussions then proceed. This, of course, results in hearing delays, especially if the discussions are adversarial.

Public defenders also typically use this time to meet with their clients to discuss the case. Sometimes this is the only such meeting that occurs from one hearing to the next. Not only does this exacerbate delays, but it also may impact the quality of representation as discussions occur in a rushed and oftentimes stressful environment.

Another factor is the practice WATCH has observed of various players disseminating case documents to other players immediately before the hearing. Not only can this cause delays, but one also wonders whether a meaningful review of the documents' accuracy and content is achieved.

Yet another factor contributing to delays is the lack of consequences for players who show up late. Much latitude appears to be given to parents who do not show up on time. While this is perhaps understandable if the hearing is to determine whether parental rights should be terminated, for routine hearings, a 10 to 15 minute wait would seem more than adequate. If parents learn early in the process that the hearing will proceed without them, they may be more inclined to show up on time for the next hearing. WATCH staff did observe a judge express his irritation at one parent who had arrived late for a hearing. However, this was not a consistent policy on the part of this judge; not one word was said to another parent who showed up one hour late for a hearing. Furthermore, this was the only time a WATCH volunteer or staff person recorded such an interaction.

It should be noted that usually other players, not parents, are late for hearings. While WATCH staff and volunteers recorded tardiness across the board, with the exception of GALs, attorneys seemed to be the most egregious offenders. One mother waiting for a delayed hearing was overheard telling a person with her, "You may as well sit down. We're waiting on the attorneys." It was fairly standard to see comments like the following in monitoring notes: "the public defender for the mother was very late, to the annoyance of the two social workers, the GAL, the assistant county attorney, and the psychologist, all who showed up on time."

One problem is the practice of "stacking" hearings, which occurs partly because attorneys simply are responsible for too many cases. But, it also occurs because it serves the needs of the

attorneys. To illustrate, while waiting for a hearing to commence, a WATCH staff member observed two public defenders who were supposed to be in two different courtrooms at the same time trying to determine which judge would be most upset by their tardiness. One stated, “I *have* to stack my hearings or else I’d be down here all day every day.”

Judges can play the lead role in enforcing promptness. As one volunteer wrote, “People involved in this hearing were in and out of the courtroom, and the judge finally went out to gather everyone so they could start a half hour late.” WATCH learned that a former juvenile court referee started all of his hearings on time regardless who showed up; the players quickly learned to prioritize appearances in his courtroom.

Trials that last more than one day also presented scheduling problems. Given the number of players involved in CHIPS proceedings, it was often difficult to schedule two to three consecutive days for a trial. In one case WATCH monitored, the trial had been postponed several times, and the players were confused about which dates had ultimately been chosen. Two consecutive days were eventually found and agreed upon, but the third day for testimony was scheduled several weeks later. Meanwhile, the mother and child were left hanging. Overall, the handling of this particular trial was not very efficient. To take an excerpt from volunteer notes:

The trial, scheduled for 9 a.m., began at 9:30 a.m. The court recessed at 10:15 a.m. to hear another case and break for court personnel. The trial resumed at 10:35 a.m. At 11:25 a.m., one witness had testified and the judge wanted to recess for the day. The assistant county attorney said she had one more witness, who would be brief. The judge objected because he said testimony always lasts longer than expected and his staff needed to get lunch. Since his afternoon calendar had opened up, they could continue then. However, the mother had an afternoon visit at 2 p.m. with the child. Someone suggested she cancel it, but since all the morning’s testimony had been about the importance of consistency for the child, they decided that wasn’t a good idea. The social worker, without conferring with the foster parent who would have told him that a therapist’s visit was scheduled later in the afternoon, said they could push back the time of the mother’s visit. After several more points of discussion, it was agreed to reconvene at 1 p.m. The actual start time was 1:10 p.m.; testimony lasted 15 minutes. The players spent longer discussing whether or not to continue the trial in the afternoon than it would have taken them to conclude the case in the morning!

WATCH learned that Chief Judge of Juvenile Court Robert Blaeser has identified changing the culture of delay as one of his top priorities and is establishing a Daily Delay Committee of representatives of all agencies involved in CHIPS cases to address the reasons and possible solutions for delays.

*Recommendations:*

- *Judges should take the lead in enforcing scheduled start times for hearings.*
- *Hearings in a specific courtroom should be appropriately spaced, not scheduled for the same time.*

- *Each emergency protective care hearing should be scheduled at a specific time or during a specific block of time instead of scheduling these hearings all at once.*
- *Preliminary discussions should be held before the scheduled start time for the case.*
- *Public defenders should meet with their clients prior to the scheduled start time for the case, preferably outside of the courthouse.*
- *Case documents should be disseminated to the players before they arrive at the courthouse for the hearing.*
- *More assistant county attorneys, and especially public defenders, should be hired to reduce individual caseloads.*
- *Attorneys should not be allowed to “stack” their hearings before different judges for the same time.*
- *If a hearing is delayed, court personnel should inform those waiting inside and outside the courtroom and indicate the new start time.*
- *The judge or the person responsible for the delay should provide an explanation to all those waiting for a delayed hearing at its outset.*
- *Trials should be scheduled on consecutive days, and no appearances for other cases should be scheduled during trials.*

## **B. Continuances**

According to the National Council of Juvenile and Family Court Judges’ *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (Resource Guidelines)*, the court should have a strict policy against continuances (p. 21). They should not be granted simply because the hearing dates are inconvenient for attorneys or parties, but only when attorneys or parties are ill, essential witnesses cannot be located, or service of process has not been completed. Reasons for any continuance should also be included in the court record.

WATCH’s CHIPS monitoring form asked volunteers and staff to record the reason for any continuance. Although hearings usually occurred on the day scheduled, they were occasionally continued. The major reason for continuances would appear to be nonattendance of a primary player, although this was not announced nor were the reasons for continuances routinely recorded in the court files that WATCH reviewed.

WATCH volunteers and staff found not notifying the other players and the public about a continuance frustrating. Here are just two examples from WATCH monitoring notes that illustrate the impact of this inefficient system, particularly on family members:

While waiting for another hearing, a father came in and asked if this was the room where his son was to appear. Two social workers were discussing another case. They told him to look outside the door for posted names or to ask at the reception desk. I got the impression that they didn’t appreciate their conversation being interrupted. He came back later and I asked if he’d found the room. He appeared upset—not belligerent but weary—because the hearing had been canceled but he wasn’t informed. He wanted to talk with someone to find out why he wasn’t informed since they had his phone number. Apparently it was the ill attorney’s responsibility to call. The mother, however, did not show up for the hearing, so one can assume that she did receive a call.

I called the judge's clerk at 2:15 p.m. and was told that the 2:30 p.m. hearing would take place. I arrived at 2:30 p.m. Nine other people, many of them family members, were waiting for the hearing to start. The hearing was continued as the judge was not even in the building.

These examples point to the need for the court to specifically assign an individual to notify all parties involved in the case about a continuance. The person requesting the continuance could be required to do so, or perhaps it would be more efficient for the judicial clerk to handle this responsibility.

With continuances, WATCH volunteers and staff were concerned about the missed opportunities to thoroughly review the status of the case and the children. A volunteer wrote,

The hearing was continued after the mother failed to appear. Another hearing was scheduled in three months. The hiatus of almost three months (the judge will not have seen the mother in almost five months!) is disturbing to me, especially since the mother's failure to appear could suggest she is using drugs again. The two children, ages six months and three years, remain with the mother.

Especially frustrating were hearings that were continued despite all the players being present and engaged in discussions. According to one volunteer,

the attorneys spent time in chambers talking with the judge, then talking with the mother, the grandmother, and the older children. After two-and-a-half hours, the case was continued until the next month. The grandmother told me that at the previous hearing, they waited five hours before a continuance.

Occasionally, it was unclear whether a continuance had occurred or whether a public hearing had simply been skipped. A volunteer wrote,

I'm curious about what happened today. The hearing was scheduled for 1:30 p.m. The mother and two others went into a room for about 10 minutes while the remaining players compared notes outside. At 1:45 p.m., about six people went into the judge's chambers. At 1:50 p.m., three came out and at 1:51 p.m., the rest came out. The attorney pointed at the mother, pointed to the conference room, and they went in with one other person. At 2:00 p.m., everyone left without appearing. I overheard someone telling the mother that they would continue prior orders.

When cases are handled in this manner, the system lacks accountability to the public.

In instances such as the preceding two, nowhere is the continuance posted or announced. If someone other than a player is attending the hearing, this information is obtained by overhearing conversations and/or asking a clerk, when one becomes available.

*Recommendations:*

- *Parties should be notified about a continuance before they arrive at the courthouse.*
- *Court personnel should inform those waiting inside and outside the courtroom when a hearing has been continued and why.*
- *The court should specifically assign an individual to notify all parties involved in the case about a continuance.*
- *Continuances should not be granted when all the parties have been notified about the hearing and are present.*
- *When a continuance is granted, the hearing should be rescheduled as soon as possible, not months in the future.*
- *The reason for any continuance should be included in the court record and communicated in open court to all interested parties and members of the public.*

**C. Other Matters of Public Access**

Since first monitoring CHIPS hearings in juvenile court in June 1998, and even since WATCH's revised monitoring project began in November 1999, the juvenile court has become more user friendly. To take several examples, judges' names were not initially posted outside their courtrooms; now they are. Until approximately June 2000, the CHIPS calendar was not always posted nor when posted was it always updated; now it is. At first, it took some time to obtain copies of CHIPS petitions, mainly because the judges' clerks did not always update TCIS when a CHIPS determination had been made at the emergency protective care hearing, allowing the public to access the document. An administrative clerk noticed and solved the problem by sending a memo to the judges' clerks. When WATCH began requesting court files to review, it was pleased to find that they were, with few exceptions, available immediately upon request. The files, particularly those pertaining to state wards, however, did not always include the most recent updates from court hearings.

WATCH commends the juvenile court for these successes. It is WATCH's position, however, that the court can still significantly improve matters of public access, especially in terms of delays and continuances and communicating with parties and the public about scheduled hearings.

Hearings occasionally are moved to a different courtroom without posting the change. A WATCH volunteer noted, "The judge's name was outside the courtroom on the third floor with no indication that the hearing had been moved to 2A." Others interested in hearings besides the players may be planning to attend and are entitled to notification of changes in location.

Communication sometimes breaks down between the judges' clerks and court reception personnel. At the outset of monitoring, WATCH advised volunteers to call the court reception area to determine if a hearing was still scheduled before going to the courthouse. One volunteer reported that she called the court reception area regarding a case and was told it was not on the calendar. She then called the judge's clerk several times and got her voicemail. Eventually, she spoke with the judge, who said the hearing was still on. During a break in the hearing, she asked the judge's clerk about the discrepancy. She was told that the court reception area's information is often incorrect because the clerks sometimes fail to relay current information about hearings.

While overall court reception personnel are very helpful, one practice could frustrate members of the public who would like to come to the courthouse to watch a specific CHIPS case, but may not have a lot of information about it. The calendar used in the court reception area organizes cases according to the name of the child, not the parents. When calling to inquire about a case, callers are thus asked to identify the case by the child's name. If they do not know the child's name, it is possible to look the case up on TCIS using a parent's name instead. The offer to do this, however, is not always forthcoming.

*Recommendations:*

- *If a hearing has been moved to another courtroom, the change should be posted.*
- *Judicial clerks should relay updated information about scheduled hearings to court reception personnel.*
- *Court reception personnel should offer to look up case information in response to all public inquiries.*

#### **D. Notification of Parties and Participants and Attendance at Hearings**

For the juvenile court to work effectively, parties to and participants in hearings need to be informed of upcoming hearing dates in a timely manner. WATCH observed that when parties and participants attended a hearing, they were always presented with a notice to sign for the next hearing.

It was unclear to WATCH volunteers and staff, however, how much effort was spent attempting to locate those parties or participants, usually fathers or alleged or presumed fathers, whose whereabouts were unknown. It was overall quite disturbing how many fathers did not show up for hearings. Notification for these absent parties or participants was often discussed, with the practice being to publish the notice in *Finance and Commerce* if service attempts were unsuccessful. Still, because notification attempts were being made "behind the scenes," WATCH observers were left with the question, "Are fathers not showing up because they don't care, or because they don't know about the hearing?" At the third hearing for one case, the judge declared "it looks like the father [of two of the children as well as the child who had been slain] has not been served." It was decided to provide service by publication.

WATCH observed that attendance was jeopardized for at least five parties not because they failed to receive hearing notices, but because the proper arrangements were not made to transport them from prison or jail. In one case, the private defense attorney did not get the proper writ to have the mother brought in from Shakopee for a court hearing, which was thus continued at the mother's expense. In two other cases, the fathers were not transported from prison, one for a trial, delaying it by a day, and another for a hearing. The public defender for the father involved in the trial had done a writ, but was overheard saying, "these writs are really getting to be a problem." In yet another case, the public defender had again done the writ but apparently her office did not deliver it. In the fifth case, the jail had not been notified to transport the legal guardian to the hearing. The public defender called the jail, and arrangements were made, delaying the hearing by 45 minutes.

*Recommendations:*

- *Every effort should be made at the outset of a case to locate and notify all parties and participants about upcoming hearings.*
- *Public defenders and private defense attorneys whose clients are incarcerated should make the proper arrangements to have clients transported to the courthouse for hearings and should double check before the hearing to make sure that others have followed their instructions.*

**E. Representation Issues**

According to Juvenile Protection Rule 61.02 subd. 2, an indigent parent or legal custodian has the right to a public defender in CHIPS cases when the court determines such an appointment appropriate. When WATCH first started monitoring, the law afforded children over the age of 12 the same right to representation; now it has been expanded to include children over the age of 10. On its CHIPS monitoring form, WATCH asked volunteers and staff to record at each hearing whether all eligible parties were represented.

The court seemed to be very efficient in appointing representation for eligible parents, who simply had to fill out a request form that was quickly processed. Sometimes it would take longer for a father who was a party to the proceeding, but not the custodial parent listed on the petition, to get representation, especially if he missed the first hearing. This could be because a conflicts attorney, or an attorney outside of the Public Defender's Office, would become necessary. Overall, WATCH volunteers and staff observed that eligible adult parties to a proceeding received individual representation.

More problematic was the issue of representation for children. Delays in appointment were sometimes recorded, possibly because eligible children were not always present at court hearings. It is the policy of the Public Defender's Office to appoint representation only for those children who show up for court. Children may not come to court for a variety of reasons. They may feel uncomfortable attending hearings, have school conflicts, or may have no way to get to court if transportation has not been arranged for them. Whatever the reason, these children may still want representation, even if they choose not to attend the hearing.

Even after appointment, it sometimes took several hearings before the public defender for the children appeared in court. WATCH staff and volunteers noted in several cases where the public defender for the children was present before the start of the hearing, but eventually left before the actual appearance.

Furthermore, eligible children were never given individual representation. Instead, the standard practice was to appoint one attorney to represent all eligible children. It was unclear why parents were appointed individual counsel but children were not, although perhaps children agreed about their wishes and so did not need conflicts attorneys.

*Recommendations:*

- *Public defenders should be appointed for eligible children even if the children do not appear in court.*
- *Arrangements should be made so that all children who want to attend court hearings are transported to the courthouse.*
- *If it is their desire, eligible children should be given individual representation.*

**F. Compliance With the Indian Child Welfare Act of 1978**

The federal Indian Child Welfare Act of 1978 (ICWA) governs CHIPS cases involving Indian children. It was passed to address the unwarranted removal of Indian children and their placement in non-Indian homes. Before the passage of ICWA, one of every four Indian infants in Minnesota was in a non-Indian home. In current practice, an agency must first look at placing an Indian child in its custody with a relative, a tribal member, or another Indian family before other foster care or adoptive placements are considered.

ICWA's goals are to promote the stability and security of Indian families, promote the stability and security of Indian tribes, and keep decision making authority over Indian children within the children's Indian community. Minnesota actually expanded ICWA's protections with implementation of the Minnesota Indian Family Preservation Act.

ICWA contains the following provisions: a state court must serve notice to the relevant tribe 10 days before a child custody proceeding unless it is an emergency hearing; the tribal court may under certain conditions take the matter into its own jurisdiction upon the request of either a parent or legal custodian or the tribe; and stricter evidentiary and procedural standards apply to these cases in state court.

With respect to the latter provision, the standard of proof for terminating parental rights is not "clear and convincing evidence" as with non-ICWA cases, but "beyond a reasonable doubt." Other procedural differences include the requirements in ICWA cases that an expert in Indian culture provide testimony before placing a child in foster care (unless it is an emergency placement) or terminating parental rights; that the court establish "beyond a reasonable doubt" that the state provided "active efforts" to keep the family intact, but that these efforts failed; and that the placement preferences be followed.

All ICWA cases in Hennepin County are heard before one of two judges well-versed in the statute. WATCH monitors were asked to note whether ICWA applied in the cases assigned to them and, if so, whether the court complied. Of the five ICWA cases in WATCH's sample, at no hearing did WATCH volunteers and staff see any indication of ICWA violations.

The Minneapolis American Indian Center has a staff attorney monitoring ICWA hearings to determine compliance. According to this attorney, Hennepin County has few violations, with the most common being failure to notify tribal members of hearings; failure to obtain expert testimony when a child has been placed out of home; and attorney no-shows for hearings, which translates to lack of legal representation.



### **G. Compliance With “Reasonable Efforts”**

According to law, the DCFS must make “reasonable efforts” to provide parents with appropriate services to keep families together. WATCH’s CHIPS monitoring form asked volunteers to specify whether quality services aimed at family reunification were being delivered in a timely manner.

WATCH found that services for parents were widely available in Hennepin County. From monitoring hearings and reviewing court files, it would appear that most parents involved in CHIPS proceedings receive numerous services from the county to help them complete their case plans. When chemical dependency was an issue, parents often were given multiple opportunities in multiple programs. The timeliness and quality of the services were often difficult to determine, however.

The only service WATCH found lacking on several occasions was access to supervised visitation at a visitation center. In one case WATCH monitored, for two months the only available time slot at the visitation center was for one hour once a week. WATCH also learned from an educational program with a public defender and dispositional advisor that there is a lack of full-family foster homes.

In some cases, it did become apparent that delivery of services was delayed or complicated in some way. As mentioned in Section 2D, a father in one case was required to pass a random urinalysis before any overnight stay with his daughter would be permitted. The DCFS, however, failed to request the urinalysis, thereby preventing the overnight stays from occurring. In another case, the mother was allowed one supervised visit per month with her child and was instructed to call the social worker to set it up. However, the social worker made a point of stating that it was hard to contact her since her schedule fluctuates. Another mother living out of state who was in the Twin Cities for a long weekend did not get to visit her two children at a shelter because county-provided transportation is not available on weekends. In yet another case, the mother was required to submit urinalyses, but asked for a location closer to her. The assistant county attorney explained that the tests must be done at Hennepin County Medical Center, where the DCFS has a contract.

WATCH volunteers and staff noted instances when parents seemed pleased with the services provided. A WATCH volunteer observed in one case,

the mother said she “never believed it [that she had a chemical dependency problem] but it is true.” She gave the child protection social worker much credit and told the judge, “I love her.” Her attorney said her request that this particular social worker be present at some sessions was the first time that had happened in his career.

In another case, a volunteer wrote, “Considering all that was wrong five months ago concerning the children’s welfare, I’m surprised that so much seemingly is accomplished for the family’s welfare. The public defender stated that his client was thankful for her program experiences.”

*Recommendations:*

- *Hennepin County should establish more visitation centers.*
- *Hennepin County should establish more full-family foster homes.*
- *The DCFS should facilitate weekend visitation for parents and children.*

**H. Compliance With Permanency Timelines**

The permanency laws for CHIPS cases have been discussed in Section 1D. To reiterate, the current law requires that a permanent situation be determined for children under eight if they have been in out-of-home placement for six months. The time limit is one year for children eight and over. However, if a child eight or over has a sibling under eight and both have been placed out-of-home, the more restrictive timeline applies.

It should be noted that time spent out of home need not be continuous. For example, a child under eight could be in out-of-home placement for three months, returned to the parents, and the CHIPS petition dismissed. If a new CHIPS matter arises at a later date and the child is placed out of home for three more months, this time is added to the previous time spent out of home, and some kind of permanency petition must be filed. Such a cumulative effect applies only to those time periods when the child is placed out of home within the previous five years.

WATCH's CHIPS monitoring form asked volunteers to record whether the case was complying with permanency timelines. In 23 of the 45 cases in WATCH's sample, a permanent situation for the children was not achieved before the out-of-home time limit had been exceeded. This could be because even if permanency petitions are filed in a timely manner, case resolution typically takes months as trials are repeatedly delayed. A volunteer monitoring a case where the TPR trial was delayed several times reported that the foster mother told her the child keeps asking when he will have a "forever family" and a "forever home." In such instances, children are effectively denied their right to permanency within the legislated timeframe.

WATCH volunteers were especially concerned about cases with long child protection histories that failed to comply with deadlines. In a case where the children, ages seven and eight, had spent most of their lives involved with child protection and in continuous out-of-home placement for three years from December 1993 to December 1996, the second TPR petition revealed that the first TPR petition had not been filed within the required time frame. While termination of parental rights was eventually ordered for both parents at the first TPR proceeding, the order was stayed and the children reunified with their father. Less than two years later, the family once again became involved with child protection when the second TPR petition was filed. The father voluntarily terminated his parental rights, but the children waited six months before being placed with an aunt in another state. During the interim, a WATCH volunteer monitoring the case wrote, "The case drags on, mainly due to the process, but the children must need permanency." At one hearing, WATCH learned that the children had been moved six times and changed schools three times in the previous few months.

Critics of permanency laws, while recognizing the advantages of more frequent court hearings, point out that parents trying to kick chemical dependency habits or resolve longstanding domestic violence problems simply are not given enough time. Another drawback is that in

attempting to cover all bases, parents may be given overambitious case plans that require extraordinary abilities to successfully complete. WATCH volunteers and staff did see some flexibility in the application of the laws. Judges could and did stay orders terminating parental rights for a specified time period if parents were beginning to make progress with their case plans. If progress was still not deemed sufficient at the later date, then the order was filed.

*Recommendations:*

- *Permanency timelines should be strictly followed to ensure permanency for children.*
- *Termination of parental rights trials should be held without delays.*

### **I. Impact of Other Court Involvement**

WATCH's CHIPS monitoring form asked observers to note the impact of other court cases on CHIPS proceedings, be they in the adult criminal, family, or juvenile courts.

At least 15 of the cases in WATCH's sample had criminal components. The policy—at least in the most serious cases—appeared to be to put CHIPS cases on hold until the criminal case was resolved. When a defendant pleads not guilty to the charges, the delays become extensive. Although different standards of proof apply in CHIPS and criminal cases, there is apparently the perception that a defendant's rights might be jeopardized by what happens in juvenile court. Adding to this may be the desire to avoid conflicting orders from the separate courts.

What is overlooked is the children's need for resolution in such cases. To take one disturbing example, a developmentally delayed 17-year-old boy, sexually victimized by his mother and her boyfriend over several years, has been waiting since November 1999 for even the start of his CHIPS proceeding. The mother's boyfriend was charged with seven counts of 1<sup>st</sup> degree criminal sexual conduct and the mother with five counts of 1<sup>st</sup> degree criminal sexual conduct, one count of 2<sup>nd</sup> degree criminal sexual conduct, and one count of child endangerment. Both defendants appeared on the criminal trial calendar multiple times. Finally, in February 2001, the boyfriend was tried and convicted of all seven counts and was recently sentenced to almost 39 years in prison. The mother plead guilty to one count of 2<sup>nd</sup> degree criminal sexual conduct soon after her boyfriend was convicted and was recently sentenced to 48 months in prison. No progress has been recorded with the CHIPS case.

One possibility for hastening the resolution of accompanying criminal cases would be to dedicate adult criminal court judges who recently served in juvenile court and are thus familiar with the nuances and complexities involved to hear such cases.

Lack of coordination among the courts can also have a harmful effect on the children. In one case, a hearing to dismiss the CHIPS matter was supposed to have been set after the mother's boyfriend was sentenced for sexually assaulting the mother's two daughters, ages six and eight. However, the hearing occurred before the actual sentencing. The mother believed that her daughters had lied about the sexual assaults, despite the defendant's pleading guilty and a criminal complaint citing two previous criminal sexual conduct convictions with juvenile females in another state. The CHIPS case was dismissed with the presumption that the girls

would be much older and less vulnerable by the time the defendant got out of prison. WATCH monitored the sentencing in adult criminal court, where the defendant received only 48 months in prison of which he would serve two-thirds, a downward departure for his having plead guilty to the two counts of first degree criminal sexual conduct.

An innovation WATCH observed was to consolidate cases from different courts into one. This occurred in at least three of the cases WATCH monitored and appeared to maximize coordination and avoid conflicting orders. To illustrate, in one case, a prior CHIPS case had been dismissed after a transfer of legal custody from the mother to the father with certain requirements: the children were to have counseling and the mother was to have regular supervised visits. Soon after, family court became involved because the father was not respecting the requirements: a year later, the children still had not received counseling. When a new CHIPS case was opened after the father allegedly physically attacked one of the children, the GAL asked the presiding juvenile court judge to serve as the family court judge as well. She agreed. The case was transferred to another juvenile court judge, who ensured that the children got counseling and also began to handle the children's delinquency cases.

WATCH was not aware of parents appealing the outcome of any of the 45 cases in its sample. However, it did observe other such cases. According to the new Minnesota Juvenile Protection Rules, in the event of an appeal, the district court has 30 days to prepare the case transcript and the Minnesota Court of Appeals has 60 days to reach a decision. In practice, the process typically takes much longer; it may take months before the case is actually put on the appellate court's calendar. One case WATCH is monitoring that is being appealed has not yet been put on the calendar, although it was submitted seven months ago. Once the appellate court reaches a decision, the case may then be appealed to the Minnesota Supreme Court. Throughout the appellate process, the children involved cannot be adopted, although they can be placed in pre-adoptive homes.

*Recommendations:*

- *CHIPS hearings should be scheduled in accordance with the Minnesota Juvenile Protection Rules rather than awaiting resolution of any related criminal cases.*
- *The processing of criminal cases with corresponding CHIPS cases should be expedited by appointing adult criminal court judges who have recently served in juvenile court and are thus familiar with the nuances and complexities involved to hear such cases.*
- *Communication and coordination between the juvenile and family and criminal courts should be improved, especially when the children's safety and welfare are at stake.*
- *Barriers among different courts should be removed and cases involving the same family consolidated.*
- *Every effort should be made to comply with the Minnesota Juvenile Protection Rules' timelines for appeals in TPR cases.*

## Section 4: Safety and Welfare of the Children

The Department of Children and Family Services (DCFS) receives about 25,000 calls reporting possible child abuse/neglect each year. Screeners take calls 24 hours/day and use a decision tree to determine if the incident/behavior reported rises to the level of the state mandate. If it does, investigative social workers are assigned to investigate the report. Upon investigation, over 2,500 reports are substantiated and about 650 children in need of protection or services (CHIPS) cases are opened each year.

The public can assume that these 650 CHIPS cases involve fairly serious allegations of abuse and neglect. However, the public also has a substantial interest in finding out what happens with the remaining 1,850 reports that are substantiated. General information on what steps are taken to ensure that children in these homes are safe and secure, whether parents are referred to community-based programs that provide needed support and services, and whether the DCFS follows up at some point in the future to see if the abuse/neglect has subsided or escalated is not widely disseminated to the public. Also, given the overrepresentation of minorities in the child protection system, specific information on whether reports involving certain socioeconomic groups are more likely to result in court intervention than others would be useful.

The community does have the opportunity to learn more about the kinds of cases that are opened and how the child protection system responds through the open CHIPS pilot project. Appendix B contains summaries of 15 of the 45 CHIPS and termination of parental rights (TPR) cases WATCH included in its sample. While some of the cases in WATCH's sample involved a one-time incident of abuse and/or neglect, the majority involved recurrent abuse and/or neglect.

WATCH volunteers and staff targeted a host of issues in their monitoring of CHIPS cases, but none so important as the safety and welfare of the children. Some of the questions included on the CHIPS monitoring form were the following:

- Was there a lapse between the time the child protection workers were notified of maltreatment and when the child ended up in a hold hearing (specify dates)?
- Did the DCFS make "reasonable efforts" to prevent the need for the child's removal (specify what)?
- Where has the child been placed? Are other placement options being explored (kinship studies, family group conferencing, therapeutic foster care, etc.)?
- Has the child been returned to the home and, if so, under what conditions (e.g., protective supervision, delivery of in-home services, classes and/or treatment programs)?
- How often will the DCFS social worker be visiting the home of the child once returned to the home?
- Has the GAL visited the child? How many times?
- Did the judge specifically ask how the child was doing? If so, describe.
- Are siblings kept together; and, if not, is visitation among them discussed?
- Was the child's need for immediate treatment, especially therapy, met?

It was difficult to gain information about all of these issues through courtroom observation. The Winter 2000 *WATCH Post* (see Rebecca Kutty's "Putting the child back in child protection," p. 3) discussed how the focus of most court hearings is on the parents, not the children; court records also provide relatively little information about the status of the children. Minnesota law emphasizes, "The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child" (Minn. Stat. 260C.001 subd. 2). However, "best interests" appear to be somewhat narrowly interpreted to mean reunification. Services are thus provided to the parents to help them succeed with their case plans, in keeping with statutory requirements; but children do not have such case plans, and services are not necessarily provided to them.

### **A. Emergency Protective Care Hearings**

WATCH volunteers and staff tracked how quickly the courts became involved after the allegation of abuse and/or neglect described in the CHIPS petition. Most hearings occurred soon after the incident, although several CHIPS petitions contained reports of past abuse and/or neglect that had not resulted in court intervention, which was troubling. In one family where a child was eventually killed, the CHIPS petition recorded 10 years of incidents of abuse and neglect before a CHIPS case was opened. Another CHIPS petition revealed four prior findings of maltreatment dating back six years with no case openings.

If children have been removed from the home, an emergency protective care hearing must occur within 72 hours. When children remain in the home, the preliminary protective care hearing must take place no sooner than five and no later than 20 days after the parties have been served with the CHIPS petition. These legal requirements were upheld in virtually every case WATCH monitored.

Recognizing the potential for trauma to the family and especially the children, the National Council of Juvenile and Family Court Judges' *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (Resource Guidelines)* recommend and the law requires that "reasonable efforts" to prevent removal be made by the DCFS. The *Resource Guidelines* state that "ideally, when a parent is contesting the agency's decision to seek placement of a child, the preliminary protective hearing should occur prior to the removal of the child" (p. 30).

According to monitoring notes, this is not the DCFS's standard practice, perhaps due to the level of severity of the cases that eventually end up in court. Most removals in the cases WATCH monitored occurred before the hearing, triggered by emergencies in which the children were deemed to be in imminent danger if they remained in the home.

A thorough investigation should take place before removal. A recent case described in the February 12-25, 2001, *Southwest Journal* (see Scott Russell's "A misdiagnosed X-ray, a holiday weekend, a family caught in the middle," pp. 1, 18-20), however, revealed that a child had been removed without such an investigation. According to her mother, during her time in foster care, the child "went into her own world to deal with what was happening and that we weren't there." The family contends that it was a case of racial profiling.

While it is understandable that DCFS workers prefer to err on the side of safety, the emotional damage to the children of any removal must also be considered and shortcuts avoided in any investigation to determine if removal is necessary.

The *Resource Guidelines* recommend that the court allocate one full hour for each emergency or preliminary protective care hearing, stating that “Such an investment [of time and resources] results in better decisions for children and their families, and preserves the resources of the court and child welfare system” (p. 32). They advise an in-depth inquiry into the circumstances of the case, hearing from all interested persons present, evaluating whether additional services could preclude placing the child out of home, and seeking the least disruptive out-of-home placement if it is deemed necessary (p. 31). Additionally, the court is encouraged to verify child protection’s compliance with the provision of “reasonable efforts” and take steps to speed the judicial process.

If due to time constraints it is not possible to have a careful and complete initial hearing, the *Resource Guidelines* recommend that the court first decide all issues that can immediately be resolved and then continue the hearing for not more than 24 hours to allow parties to gather more information on the issues (p. 32).

Emergency or preliminary protective care hearings WATCH observed in Hennepin County Juvenile Court lasted an average of 18.5 minutes—far short of the recommended time allotment. Within WATCH’s sample of 45 cases, only one such hearing lasted 60 minutes, and at least five hearings lasted only five minutes. At no emergency or preliminary protective care hearing was the hearing continued for later that day or the next to allow a more substantive airing of the issues.

*Recommendations:*

- *The DCFS should make “reasonable efforts” to families to prevent removing children from their homes.*
- *A preliminary protective care hearing should be scheduled before removal if possible.*
- *A thorough investigation into the incident of alleged abuse or neglect should take place before removing children from the home.*
- *The time allotted for the emergency or preliminary protective care hearing should be increased to allow a more substantive airing of the issues as recommended by the Resource Guidelines.*

## **B. Safeguards to Protect Children in the Home**

WATCH volunteers and staff were especially concerned that safeguards be established if children remained in or were returned to the home. This appeared to be the prevailing sentiment of child protection system personnel as well. If children remained in or were returned to the home, the judge in virtually every case WATCH monitored ordered the DCFS to provide “protective supervision,” which often required the parents to comply with a host of conditions.

One critical safeguard was not discussed at hearings nor was such information typically included in court files: the frequency of home visits by DCFS employees and other in-home service providers. In one case WATCH monitored, a 4-month-old boy was killed by an abusive father, who had forced himself back into the home against the mother's wishes. The children were in the home under "protective supervision," but apparently none of the many service providers assigned to the family had been to the home at the time the abuser returned because they all assumed the others were making visits.

While the children's safety appeared to be a priority in most courtrooms, WATCH infrequently observed cases where children were returned to or placed in questionable situations.

Several cases WATCH monitored involved juvenile mothers in foster care who continued to leave, with or without their children, the homes in which they had been placed. In one case, the 15-year-old mother had run away from foster placements at least nine times, twice with her 9-month-old special needs daughter. At the first hearing WATCH monitored, the judge returned the child, who had been placed on an emergency hold, stating that it "was the holiday season and there was no indication the baby was harmed." In another case, a 1-year-old child was returned to her 17-year-old mother despite the mother's whereabouts having been unknown for almost one month; this mother, too, was frequently on the run.

Another case involved a mother who had been convicted of manslaughter for the death of her first child. A day after the birth of her second child, a TPR petition was filed and later amended to a CHIPS petition, which was eventually dismissed when she successfully completed her case plan. The court file included numerous positive reports from different service providers about the mother's progress and compliance with her case plan. The mother continued to receive individual therapy and parenting support after the initial case was dismissed. The new CHIPS petition included allegations of neglect due to her 1-year-old son's having received potentially life-threatening 2<sup>nd</sup> degree burns when he tipped a bowl of hot water onto himself. CHIPS was adjudicated, and the findings stated that the mother "admits and the Court finds that she did not have an understanding of child development to understand that the child . . . had the ability to reach the boiling water and tip it upon himself." Given the mother's history, WATCH was concerned when the case was dismissed by progress report after two hearings.

In yet another case, the youngest child had been staying with the maternal grandmother, but the father wanted him placed in his home while the mother completed in-patient chemical dependency treatment. The father, however, had a previous order for protection against him for assaulting the oldest child. That child, through his public defender, expressed his concern over such a placement and asked to have the guardian ad litem (GAL) ascertain the younger child's wishes. Many family members from both the maternal and paternal sides were present in the courtroom, and they all agreed that the child should not be placed with the father. Against the family's wishes and without hearing from the younger child, the judge placed him with the father.

### *Recommendations:*



- *Information about the frequency and results of DCFS employees' home visits should be discussed at hearings and included in court files.*
- *Extreme caution should be exercised in returning children to parents with a history of assaultive behavior.*
- *Children should not be temporarily placed with parties who have a history of assaulting other children.*

### **C. Foster Care Placements**

Of the 45 cases in WATCH's sample, all except four had children who at some point ended up in foster care. Such placements, which appeared to be readily available, were mentioned at hearings (the names of foster care providers were kept confidential), but it was often difficult to know from one hearing to the next whether the children remained in the same foster home or had been moved to another. Court files seldom revealed further information. With larger families, it was not always clear how many siblings were placed together and how frequently visitation was set up among siblings if they were not. As one WATCH volunteer (and child psychologist) noted on one of her CHIPS forms, "In addition to keeping kids safe (#1 priority), continuity of relationships is probably next in importance."

WATCH noted in at least one case that the DCFS appeared to favor convenience over continuity. The DCFS recommended placing the two children with their respective fathers. WATCH later learned that this arrangement would necessitate no emergency licensing. The mother and both fathers were willing to have the two children, who were very close, stay with one of the fathers. The judge ordered the children placed together "since they have always lived together and [she] knows how important that is."

In setting up placements, it appeared that the DCFS first attempted to locate relatives. According to the DCFS, 36% of foster care placements are with relatives. If a relative placement is unavailable, the DCFS is required by statute to seek placement with a family from the same cultural group as the children. Cultural heritage information about the children and/or foster parents was not typically provided at hearings. It was apparent to WATCH that in Indian Child Welfare Act (ICWA) cases, difficulties were encountered in finding both relative and non-relative Indian foster placements. WATCH learned that the DCFS does not assign kinship workers to ICWA cases, but expects tribal social service agencies to conduct the searches.

Overall, WATCH volunteers and staff recorded few players' complaints about foster care at hearings. In one case, a mother was unhappy because the foster mother's car seat was not properly installed. In a second case, a father and his two daughters complained about the mice and lack of privacy in the foster home. In a third case, a foster mother had stopped her foster daughter from visiting her sibling as a means of punishment. These situations were, for the most part, dealt with at the hearings.

Rarely were more serious issues with foster care observed, although WATCH did learn at one hearing that all the children in the foster home had been moved after a shaken baby incident. The shaken baby was not identified, and the extent of the injuries, if any, were not discussed.

*Recommendations:*

- *Placements and any changes to them should be regularly discussed at hearings.*
- *Placement histories should be included in court files.*
- *Whether siblings are placed together and, if not, how often they are allowed to visit each other should be discussed at hearings and such information should be included in court files.*
- *Placement decisions should prioritize the best interests of the children, which includes maintaining the continuity of significant relationships.*
- *The DCFS should consider assigning kinship workers to ICWA cases as it does non-ICWA cases.*

**D. Status of the Children**

WATCH volunteers and staff were troubled that the ongoing status of the children was not routinely mentioned in court hearings unless a GAL or public defender had been appointed. Court files often revealed little information about the children. This relative silence concerning the welfare of the children was particularly troubling when monitoring cases in which children had been significantly harmed by their parents or born with serious medical problems due to prenatal exposure to drugs. At the emergency protective care hearing for one case WATCH monitored, no mention was made of the condition of the newborn who had suffered a head injury, stopped breathing, and been disposed of in a trash bin by her mother.

As it is the judge who controls the content of any hearing, WATCH's CHIPS monitoring form asked whether he or she specifically asked how the child was doing. Again, such responses as the following volunteer's were not uncommon,

The judge never made reference to or asked directly about the well-being of the baby. In the foyer, I saw the baby alert and interacting with other people. Fortunately, the gloomy post-natal report doesn't seem to affect him now. The baby was in the courtroom in his carrier and still the judge remained silent. He surely saw the baby at the parents' feet.

When a judge did ask about the children, the response given was often a perfunctory one, such as "fine."

There were, however, noteworthy exceptions. In one case, the judge asked the DCFS social worker what services had been provided for the children. When she was told, "nothing so far," she stated that they needed to have counseling and that she wanted a report by the following week of what had been arranged. She also wanted progress reports on the children's visitation and home checks. She wanted to find out when a bed at a shelter home in Minneapolis would be available for one child placed outside of the city. She also said that if a bed could not be found within three weeks, she would consider placing him with the mother under certain conditions. At the next hearing, the judge specifically asked how all the children were doing, both separately and together.

WATCH volunteers and staff were especially gratified when the children's voices were heard and special consideration taken for their desires and well-being. In one case WATCH monitored

where the father had allegedly physically abused his 12-year-old daughter, the judge asked the daughter where she wanted to live, and she said with her mother. The mother and the father and all other parties as well as the judge agreed with her request.

Another judge in another case thoughtfully declared that since the child knew there was a trial going on about whether he can live with his mother, the judge would make himself available to meet with the child so that he would have an understanding of who was making the decision.

In another case WATCH monitored, the volunteer wrote,

It appears that they are taking the oldest child's needs into account. Some of this information has come from conversations heard outside the courtroom. The DCFS worker talks a lot about the fears this child has, and it appears they are working with the mother to get him to talk about them and for her to respond appropriately. It appears that they are taking his progress as one of the measures of readiness to reunify.

*Recommendations:*

- *The judge should ensure that the status of the children is discussed at every hearing.*
- *Court files should include updates on the status of the children, including written reports of both GALs and DCFS employees.*

## **E. Professionals Looking Out for the Children**

Parents are typically provided with a legion of professionals, including a DCFS child protection worker, an attorney, a dispositional advisor, and various treatment providers, to help them meet the goals of their case plans. Children, however, may or may not be appointed professionals to help look out for their welfare and best interests.

According to law, all children in CHIPS cases must be appointed a GAL. GALs play a vital role in CHIPS proceedings as independent advocates charged with looking out for the best interests of the children. Judges have relayed to WATCH volunteers and staff on several occasions how important they consider the opinion of the GAL when making their decisions. However, because there is a shortage of GALs and noncompliance essentially goes without sanction, the children's right to a GAL is often overlooked. According to the Guardian Ad Litem Office, GALs were appointed for 35 to 40% of CHIPS and TPR cases in 2000. Of the 45 CHIPS cases in WATCH's sample, 33 had GALs appointed.

In practice in Hennepin County, GALs are first appointed to CHIPS cases where children have been placed in non-family foster care. Even then there are not enough GALs to go around; several of the ICWA cases WATCH monitored where children were so placed did not have GALs. Indeed, WATCH learned that most Indian children are not appointed GALs, although Chief Judge Blaeser has made changing this a priority. Minnesota Supreme Court Chief Justice Kathleen Blatz is leading the effort statewide to secure more justice system funding to address the shortage of GALs and has challenged law firms in the Twin Cities, where the shortage of GALs is most acute, to volunteer.

As discussed in Section 3E, when WATCH first started monitoring, the law afforded children over the age of 12 the right to representation. Now it has been expanded to include children over the age of 10. WATCH volunteers and staff recorded occasional delays in appointment, possibly because eligible children were not always present at court hearings. It is the policy of the Public Defender's Office to appoint representation only for those children who show up for court. At no hearing were eligible children given individual representation. Instead, the standard practice was to appoint one attorney to represent all eligible children. Perhaps children agreed about their wishes and so did not need conflicts attorneys.

Attorney no-shows, which occasionally occurred, can be problematic as well. At one hearing WATCH monitored, the child's public defender was not present, although the child was. The child was not addressed until the end of the hearing, when the judge asked him if he had anything to say. He did not, but was that because he truly had nothing to add or because he felt too uncomfortable or intimidated to speak? With another case, a public defender was appointed for the child, but three hearings later had not appeared.

Recognizing the gap in children's representation and the vital need for their voices to be heard in court, the Children's Law Center has been providing pro bono attorneys for Hennepin County state wards since 1999. These attorneys take their responsibilities very seriously, meeting with the children in less stressful out-of-court settings and asking questions that the children understand to determine how they are faring, the quality and appropriateness of court-ordered services, and ultimately what they need and want. The attorneys also provide children with realistic options and ensure that their legal rights are upheld.

The DCFS pioneered its child services program in 1998 and may be the only place in the country employing child services workers, who work directly with the children. An internal study indicated that services to children are enhanced and increased when a DCFS child services worker is assigned to a case. Complete medical, dental, psychological, social, and educational assessments are made, and the children have regular contact with their child services workers. Child services workers, however, are appointed only if the children are in foster care.

The internal study does mention a retention problem, which it attributes to child services workers' relative lack of decision making power vis-a-vis other DCFS employees. Employee turnaround can translate to lack of continuity for the children and sometimes communication breakdowns. In one case WATCH monitored, a volunteer noted,

The child's new worker of about two-three months had taken a new job so there is a new worker for him. The new worker did not have the recent information regarding the mother's use of drugs nor her current address. Maybe it's my legal naiveté, but it seems like it would be important for folks to coordinate. But maybe that's the role of the judge to sort it all out.

Conflicts occasionally arise when the child protection worker and the child services worker disagree on some aspect of the case. In such situations, the workers' supervisors meet to determine a negotiated position to be presented in court.

*Recommendations:*

- *A GAL should be appointed for the children at the outset of every CHIPS case.*
- *Public defenders should be appointed for eligible children even if the children do not appear in court.*
- *Arrangements should be made so that all children who want to attend court hearings are transported to the courthouse.*
- *If it is their desire, eligible children should be given individual representation.*
- *The DCFS should consider appointing child services workers for all children who are the subjects of CHIPS proceedings to ensure that they receive necessary and appropriate services.*

**F. Visitation Issues**

If the children were placed out of home, visitation was frequently discussed at CHIPS hearings. It appeared to WATCH volunteers and staff that the court usually tried to balance the interests of the parents with the children's welfare and safety. It was fairly routine for the judge to order supervised visitation at a visitation center or with DCFS social workers present or to predicate visitation on the child's progress in therapy.

At one hearing WATCH monitored, the DCFS asked to suspend visitation due to the children's behavior after a visit with their mother. This was granted with future visitation contingent on the children's therapist's agreement. In another case, the mother visited the child at a center, and half an hour later the mother tested positive for amphetamines. When picked up at the center, the child was upset, had no attention span, and wet his pants in the car. This wild behavior ensued for one week. The foster mother requested that the visits be monitored at the center after the incident, which they were. In two other cases WATCH monitored, visitation and eventual reunification were occurring according to the child's schedule. One was mentioned in Section 4D. In another, the volunteer wrote, "visitation may increase as the family therapist recommends. The last report from the therapist suggests that reunification can occur on a slow basis."

Some visitation decisions were perplexing. At one hearing, the GAL and assistant county attorney reported that visitation was getting progressively worse between the mother and child. The mother acted immaturely, threatened the child, and refused to play with her. After the visits, the child's behavior in the foster home was problematic. The judge acknowledged that the visits may not be in the best interest of the child, but continued them nonetheless, telling the mother to "do the best she can." Visitation for this child's allegedly sexually abusive father, who was being prosecuted for criminal sexual conduct with another child in another county, was also granted.

It should also be noted that the children's wishes regarding visitation were seldom elicited. In one atypical case, the judge ordered supervised visitation only if the children wanted it. This was because the parents did not show up for the hearing; and, when asked, the assistant county attorney explained to the judge that normally in these situations visitation is suspended unless the children want it.

Bureaucracy also occasionally got in the way of the best interests of the children with respect to visitation. In one case, a volunteer wrote,

the children have been separated from family members since December and the judge was adamant that they needed to see them. This case was complicated because the mother was living in another state and had tried to see the children at the shelter when she arrived in Minneapolis the previous day. She was told she needed to give at least 24 hours notice before a visit. Complications arose in arranging for someone to drive the mother to the shelter the next day as it was a Saturday. The social worker said it would be impossible to make arrangements on such short notice. The resolution was that no visit could be arranged this trip.

*Recommendations:*

- *The children's best interests should take precedence in any visitation decisions.*
- *The children's wishes regarding visitation should be elicited before any visitation decisions are made.*
- *The DCFS should facilitate weekend visitation for parents and children.*

### **G. Services for the Children**

According to Minn. Stat. 260.012, the DCFS is required in most instances to provide "reasonable efforts" to parents and children to move the family toward reunification. On average, parents in the CHIPS cases WATCH monitored received a wide range of services, from help with chemical dependency issues to finding employment and housing to anger management. WATCH volunteers and staff felt that the children's needs for services, however, were not routinely taken into account in many courtrooms, possibly because such services were not regarded as necessary for family reunification.

People involved with the case, such as the child protection worker, child services worker, or GAL may request services for the children and the judge may order them, but much depends on the level of attention the children command in these players' eyes. In one case involving parental domestic violence, drug abuse, and neglect, a volunteer wrote, "I have heard no mention of help for the children except placement and school."

A few judges, however, do an excellent job of focusing on children's needs, especially in serious cases of abuse and neglect. In one case, a volunteer wrote,

both a GAL and a child services worker are on the case, but neither attended the hearing. The judge asked how the children were doing. The assistant county attorney said she thought they were doing fine in the shelter. The judge asked if they needed services, but since no one was there who could say, the judge asked that a report be made by the following Thursday.

In another case involving domestic violence, the volunteer noted it became “clear at the second hearing that the child’s need for immediate treatment was respected—she is being given counseling and individual therapy.”

*Recommendation:*

- *The judge should inquire at the initial hearing about what services the children need, how and when they will be provided, and make follow-up inquiries to ensure that the services are being delivered as the case progresses.*
- *Reports of the services being provided to children should be made in court and included in case files.*

## **H. Protecting Children After a Transfer of Legal Custody or Adoption**

After a transfer of legal custody (TLC) or adoption, the jurisdiction of the juvenile court is dismissed. The DCFS also closes its case. While this may promote efficiency, it may not be in the best interests of the children. Some states keep such cases open for a probationary period to ensure that children who have already been subjected to abuse and/or neglect are truly safe and secure in their new homes.

A case WATCH monitored illustrates the tragic consequences of Hennepin County’s lack of follow up. A mother transferred custody of her four children to their maternal aunt, and the ICWA CHIPS case was closed. Nine months later, the eldest child was fatally beaten by the aunt’s brother. After her death, the other children reported that they had been abused by both the aunt and her brother. In the ensuing news coverage, it came to light that the former foster parents had protested the TLC. They had even filed written reports with the foster care provider on several occasions after the children returned to them with scrapes and bruises after staying in their future home, and one child reported that the aunt’s brother hit him. It appears that the tribe approved the placement; and the DCFS, while expressing reservations, went along with it.

In another case that appeared on the state ward calendar, WATCH learned that after the child was adopted by his foster mother, he was severely beaten to the point where his back now has scars.

Finally, the most recent child homicide in Hennepin County occurred after legal custody of the mother’s other three children had been transferred to her parents. The DCFS became involved with the family after the father of the 1-month-old girl burned her with a blow dryer. After the TLC, the DCFS subsequently closed the case. The father, who had received a probationary sentence for the burning, was released from jail in time for the birth of his youngest child, and within seven months, the baby boy was dead at his father’s hands.

*Recommendation:*

- *After a TLC or adoption, cases should be kept open for a probationary period to ensure the safety and welfare of the children.*

### **I. Checking New Parents for Prior Child Protection Involvement**

The death of the 7-month-old child referred to in Section 4H brings home the need for a better system to track children born to parents with prior child protection involvement. Michigan implemented a system last year to identify children born to parents whose parental rights have previously been terminated after several tragic cases highlighted the gap in the state's child protection system. Michigan also requires its child protection agency to investigate when children are born to such parents.

In light of the recent child homicide, the Hennepin County Board of Commissioners drafted and approved a resolution directing administrative and child protection officials to determine ways to track children born to abusive or negligent parents. State legislators are also discussing legislation and funding to establish a system to track children born to parents whose parental rights to other children have been terminated. While this would be a step in the right direction, cases such as the 7-month-old child's would not be flagged as his mother's rights to his siblings were never terminated.

#### *Recommendations:*

- *Legislation should be introduced to require child protection agencies throughout the state to investigate when children are born to parents with prior child protection involvement who no longer have legal custody of older children.*
- *Legislation should be introduced to fund the technologies necessary to establish such a statewide tracking system.*

### **J. Welfare of State Wards**

Children whose parents have had their parental rights terminated become "wards of the state." The status of these children is reviewed every 90 days at a hearing during the state ward calendar. WATCH learned at an educational program with a public defender and dispositional advisor that the state wards receive the least amount of services of any children in the system. Only within the last four years have state wards been given the right to representation. Children in this calendar are also at risk of being shuffled from placement to placement.

WATCH did not routinely monitor this calendar, but when it did, it was impressed with the oversight the judge exercised. She was actively involved in the cases before her, asking many pointed questions about each case, sorting through problems, and taking the child's best interest into account in her decision making.

To illustrate, in responding to a case where a child was placed in a group home without the proper authorization, the judge stated, "Because this placement is more restrictive [than the original placement that was authorized] it shouldn't have been done without a hearing and letting the child speak." When, in another case, the foster parent canceled visits with a child's sibling because of the child's behavior problems, the judge agreed with the Children's Law Center attorney who argued that the visits be sacrosanct. She asked the DCFS social worker to tell the foster mother that visits cannot be used to discipline the child in this way. In another case, the



judge acted against the wishes of the DCFS by transferring legal custody to the recently discovered biological father of a boy whose adoptive mother's parental rights had been terminated after she beat him. The DCFS had had three months to assess the placement with the father, but wanted more time.

WATCH was also pleased to see attorneys involved with Faegre & Benson's JUSTice FOR KIDS initiative representing GALs at this calendar. These attorneys represent GALs on a pro bono basis and help to prepare written reports for the court on the status of the children.

*Recommendation:*

- *The DCFS should provide necessary and appropriate services to state wards.*

## Section 5: Family Safety in CHIPS Cases with Domestic Violence

As WATCH wrote in its April 2000 *WATCH Post* (see Rebecca Kutty's "Children the Invisible Victims," pp. 1 and 5), parental chemical abuse issues loom large in children in need of protection or services (CHIPS) cases. What surprised WATCH volunteers and staff was that in its sample of 45 cases, 25 referenced domestic violence in the household, making it almost as prevalent as chemical abuse. Domestic violence was often one of the primary reasons children had been removed or were in the home under protective supervision. Research shows that often where spousal abuse is occurring, so too is child abuse.<sup>6</sup> It is estimated that between 30 to 60% of children in households experiencing domestic violence are also being abused.

These cases present a great challenge to the child protection system. According to law, the safety and welfare of the children must be foremost in all decision making. Thus, if the abuser is present with or without the victim's consent and the children are at risk, steps must be taken to protect them. If necessary, they should be removed from the home to a safe environment. While this ensures their physical safety, children suffer emotionally from most every removal, and victims of domestic abuse are revictimized by a system that appears to blame them at least as much as their abusers for the violence.

According to the U.S. Department of Justice's 2000 *Safe From the Start: Taking Action on Children Exposed to Violence*, "Research shows that even when children do not suffer physical injury, the emotional consequences of viewing or hearing violent acts can be severe and long lasting" (p. 30). The action plan cites a National Council of Juvenile and Family Court Judges' report showing that, overall, children who witness domestic violence exhibit higher levels of behavioral, social, and emotional problems than other children. The report also states that due to moderating factors, some children are more resilient and that before interventions are required, each child's response to domestic violence should be carefully assessed.

In WATCH's experience monitoring domestic abuse cases in adult court, children are seldom mentioned. In view of this, WATCH was particularly interested in recording the impact on the children in CHIPS cases. From reviewing CHIPS petitions, it would appear that many of the children witnessed the domestic violence in their homes. In one case, the incident that precipitated a CHIPS petition for a 6-year-old girl involved an altercation between her parents where her mother's hand was cut with a knife, requiring 14 stitches. When the police arrived on the scene (the father had called 911), they found the girl helping her mother stitch up her finger. The girl was eventually placed with shelter foster parents. While at play, they observed her beating a doll, saying "I'm going to kick your ass" and "How many times have I told you not to get pregnant?"

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<sup>6</sup> Drs. Jeffrey Edleson and Sandra Beeman's 1999 report "Responding to the Co-occurrence of Child Maltreatment and Adult Domestic Violence in Hennepin County" showed that among the 177 cases with substantiated child maltreatment in the study, 115 also had an indication of domestic violence. Of the 67 cases eventually opened by the DCFS, 52 had both child maltreatment and domestic violence.

In another case involving a 15-year-old boy whose mother had been in an abusive relationship with her boyfriend for 11 years, the CHIPS petition cited numerous incidents of domestic violence where both the mother and the boy were assaulted. In the most recent incident two weeks before the CHIPS petition was filed, the boyfriend had entered the home without permission and sprayed both the mother and boy with mace. At a court hearing, the boy's attorney relayed the boy's concerns and his deep love for his mother. From the boy's perspective, there was no way to ensure that the boyfriend would not reappear. His mother had had orders for protection (OFPs) before, with little effect. He was also concerned about the safety of his two younger siblings in another state who were coming back home for the holidays.

WATCH recorded other CHIPS cases involving domestic violence where children were assaulted and injured. In one case WATCH monitored, a father threw his 2-year-old son to the ground when the child attempted to stop his father from beating his mother. Another case details at least three occasions when children were injured during domestic assaults involving two different perpetrators. In one incident, the mother's boyfriend fractured her daughter's right femur during a physical altercation with the mother. In another, the father punched his 4-month-old daughter in the face during an assault on the mother. Almost two years later, he assaulted his 4-month-old son, choking him, throwing him against a wall, and punching him in the face during a domestic dispute. The child died from his injuries.

Hennepin County Juvenile Court recognizes the seriousness of these cases. The Family Violence Coordinating Council established a subcommittee to look into the overlap between domestic violence and child maltreatment within the same family. This subcommittee has recently been reorganized and renamed the Subcommittee on Domestic Abuse and Children's Issues and is meeting regularly to develop policies and recommendations based on the latest research into "best practices."

### **A. The Importance of Training**

Because of the pervasiveness of domestic violence in CHIPS cases, there is a need for all those within the system to be continually trained and to educate themselves on its dynamics. Decision makers need to understand how batterers exercise "power and control" over their victims, often isolating and intimidating them so that leaving becomes impossible. Without obtaining and applying such knowledge, system responses may be inappropriate, unfair, and even dangerous.

The Twin Cities is particularly rich in domestic violence training resources. Virtually all organizations that offer services or shelter to victims or conduct research employ trainers and advocates who are willing to educate system personnel about this most serious issue. Last year, Hennepin County hosted a conference that dealt with domestic violence and another that focused on domestic violence in child protection cases. A wealth of literature about domestic violence has also been published over the last 25 years, and research on the overlap between domestic violence and child maltreatment is burgeoning.

The Subcommittee on Domestic Abuse and Children's Issues has pinpointed systematic and ongoing training on the interrelationship of domestic violence and child maltreatment using a multi-disciplinary approach as one of its priorities. Subcommittee member Jeff Edleson, director

of the Minnesota Center Against Violence and Abuse at the University of Minnesota, has outlined “best practices” throughout the country. One such “best practice” at the state level in Minnesota being led by David Thompson is the development of training recommendations on child protection and domestic violence.

*Recommendation:*

- *All players involved in the child protection system should receive ongoing training about the dynamics of domestic abuse as it relates to child maltreatment and apply this knowledge in their work.*

## **B. Confronting the Violence in Court**

Over the past eight years, WATCH has monitored thousands of cases of domestic violence, both criminal and civil, in the adult and family courts. All too often at court appearances, unless a trial or an evidentiary hearing ensues, the actual violence that spurred the case is glossed over or completely ignored. The impact on the children who may have witnessed or fallen prey to the violence in the past is also rarely discussed. This, too, appears to be the situation in juvenile court.

WATCH monitored one case where the mother’s boyfriend had physically assaulted the mother and struck her in the head with a telephone. A volunteer wrote she “wished the judge would have addressed the domestic violence with him” the first time the boyfriend attended a hearing. Instead, no mention was made of it.

In another case before a different judge, the CHIPS petition described an incident of domestic violence where, in front of their 3-year-old daughter, the father kicked, punched, and pulled the mother’s hair at a bus stop. The police arrived and discovered that the father had an unconfirmed OFP in another county barring him from having contact with the victim and their daughter. It was the mother, however, who was arrested on an outstanding warrant for a probation violation in a case of domestic assault against the father. The father was arrested a day later for an outstanding felony warrant, after which the police placed the child on a hold. Despite the incident that sparked the case and others outlined in the CHIPS petition, the issue of domestic violence was not discussed at the initial hearing, although the case file revealed that a domestic abuse program was ordered for both parents.

In only one case WATCH monitored was the impact of the domestic violence on the child discussed at any length. The judge expressed her concern about how the violence was affecting the 9-year-old daughter, stating that “children who witness domestic violence are much more likely to suffer from depression, use more chemicals, be prone to risk-taking behavior, and be in violent relationships as adults.” Both parents had a string of domestic assault charges on their records.

WATCH believes that the actual violence needs to be confronted and its impact discussed at court hearings; otherwise, perpetrators may be given the impression that “it doesn’t really matter,” much like what can happen in adult court where about 90% of domestic assault and

violation of protection order cases are charged as misdemeanors, the majority of which are eventually dismissed.

*Recommendation:*

- *In CHIPS cases involving domestic violence, the actual violence needs to be confronted and its impact, especially on the children, discussed at court hearings.*

### **C. “Blaming the Victim”**

After a domestic homicide almost two years ago, a newspaper reporter interviewed the victim’s co-workers. One said, “He was rough on her . . . but it’s like that battered women’s [syndrome]: For some reason they get involved with someone and take the abuse, and they don’t have to.”<sup>7</sup> This response reflects the prevailing societal attitude which more often questions why a victim remains in an abusive relationship and focuses on her actions instead of asking why the batterer batters and kills.

This attitude, which shifts responsibility for the abusive relationship to the victim, can also be present in the justice system. In adult court proceedings, victims are often described by defense attorneys and judges as “violating” OFPs, and prosecutors routinely dismiss domestic assault cases because of the victim’s “failure to cooperate.” WATCH recently witnessed a victim seeking an OFP being impatiently questioned by a referee about why she remained with her batterer, who sat virtually ignored in the courtroom.

In juvenile court proceedings, this attitude is even more prevalent, perhaps because child protection workers have historically focused on the children’s safety instead of the family’s. Minnesota’s child abuse statutes consider victims and perpetrators equally responsible for “exposing children to domestic violence.” One CHIPS petition WATCH reviewed stated, “[The child] is without parental care due to the parent’s mental illness or immaturity as evidenced by the following: [The mother] has admitted that she has maintained a decade-long relationship with a man who regularly abuses her.” The same petition describes the victim’s “failure to follow through with the prosecution of her assaultive boyfriend. This failure has left [the child] exposed to assault by this abusive man.”

Victims also are often held responsible for changing the conditions, namely their abuser’s behavior, that led to court intervention. In one case WATCH monitored, a victim was instructed to maintain a domestic abuse-free household for a specified period to keep custody of her children. Directives such as this give perpetrators even more power over their victims and could have the unintended consequence of increasing the risk of injury to both mother and children. The WATCH volunteer monitoring this case noted “the system in effect gives the perpetrator a green light to abuse, for if he does beat her in that time, she probably won’t call the police for fear of losing her children.”

*Recommendations:*

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<sup>7</sup> Chris Graves, “Boyfriend is held in Brooklyn Park woman’s death,” September 5, 1999, *Star Tribune*, p. 7B.

- *Holding the victim responsible for the abuse in cases of domestic violence should be avoided in both policy and practice.*
- *Domestic violence victims should not be held responsible in court for changing their abusers' behavior.*

#### **D. Holding Perpetrators Accountable**

WATCH's CHIPS monitoring form included the question, "Does there seem to be a lack of consequences for domestic abusers, leading to juvenile court involvement?." This was a difficult question to answer simply from monitoring hearings, although volunteers and staff recorded parties' reactions. In one case, for example, the children's father said,

What a joke. How can they say they're working their case plan when all he [the abusive stepfather, who was not at the hearing] has is an appointment with the domestic abuse program? It's been three weeks since I got my notice; he could have done something by now. This has to stop or it's not going to end until one of them is dead.

In another case, a victim of domestic violence commented that she was only in court because her children's father beats on her and she did not think it made sense.

The petitions often included information about previous incidents of domestic violence, although it would appear that in many cases no accompanying criminal charges were filed. Even if they were filed, a recent report revealed that in 1998, about 65% of misdemeanor domestic assault and violation of protection order cases in Hennepin County were eventually dismissed.<sup>8</sup> This points to the need for a better track record for prosecuting domestic assault cases, the overwhelming majority of which are charged at the misdemeanor level.

WATCH has advocated for evidence-based prosecution in the past (see Daryl Coppoletti's "It's Time to Take the Burden Off Victims in the Prosecution of Domestic Assault Cases, 2<sup>nd</sup> Quarter 1999 *WATCH Post*, pp. 1-4) and its monitoring in juvenile court reinforces this position. The decision not to prosecute a case because the victim is uncooperative can hurt the battered woman and the children exposed to domestic violence.

Records on how many victims in these cases had obtained OFPs against their abusers were not accessible, but from its monitoring in adult court, WATCH is aware that OFPs are frequently violated with few consequences. Often, the juvenile court requires victims to obtain OFPs against their abusers as part of their case plan. This does little good if violating them results in a slap on the wrist and little more. Judges, police, and probation officers need to do more to ensure that there are consequences for those who violate OFPs.

Although the child protection system has little control over what happens in the adult and family courts, it could take steps on its own to hold perpetrators of domestic violence accountable. Two little-used statutes (Minn. Stat. 260C.335 and 260C.425) allow the County Attorney's Office to

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<sup>8</sup> Family Violence Coordinating Council, *System Responses to Domestic Abuse: Criminal Misdemeanor Cases in Division I of the Fourth Judicial District Court*, November 13, 2000, p. 26.

file civil petitions or criminal complaints in juvenile court against persons who have been found to contribute to the need for child protection or services. With the former, an abuser can be prohibited from associating or communicating in any manner with a child; in other words, he can be excluded from the home. With the latter, an abuser can be charged with a gross misdemeanor for encouraging, causing, or contributing to the need for child protection or services. A prior or pending CHIPS petition is not a prerequisite to a complaint or a conviction, so this could be used as a starting point when intervening with such families.

Other measures include excluding the alleged abusing party from the home when the child has been a victim of domestic child abuse (see Minn. Stat. 260C.148 subd. 2 (a) (2)). Domestic child abuse, however, does not include witnessing domestic violence (see Nancy Ver Steegh's "The Silent Victims: Children and Domestic Violence, William Mitchell Law Review, vol. 26, num. 3, 2000, p. 806). Nancy Ver Steegh, a local expert in domestic violence and custody cases, thus recommends adopting the National Council of Juvenile and Family Court Judges' *Model Code on Domestic and Family Violence* section 409 provision that says courts can remove the alleged perpetrator to *prevent* abuse or neglect of the child.

*Recommendations:*

- *Judges, police, and probation officers should ensure that there are consequences for those who violate OFPs.*
- *In adult court, the County Attorney's Office should continue its efforts to prosecute domestic assault cases even if the victim is unable or unwilling to cooperate.*
- *The County Attorney's Office should explore filing civil petitions under Minn. Stat. 260C.335 and criminal complaints under Minn. Stat. 260C.425 against domestic abusers who contribute to the need for protection or services of a child.*
- *Steps should be taken to remove the alleged domestic abuser from the home instead of removing the children from the home.*
- *Minnesota should adopt the National Council of Juvenile and Family Court Judges' Model Code on Domestic and Family Violence section 409 provision that says courts can remove the alleged perpetrator to prevent abuse or neglect of a child.*

## **E. Precautionary Measures**

WATCH has observed situations in juvenile court that raise red flags about the safety of victims of domestic violence. Judges and all court personnel need to be vigilant and ensure that the necessary precautions are taken to protect victims and those who are keeping them from further harm.

When a victim has escaped to a battered women's shelter or any other haven, the address should be kept confidential. In one case WATCH monitored, the mother expressed concern that the shelter's address was being used in court documents. Although after the fact, the judge did order that both parents' addresses be redacted from court documents being provided to parties.

Sometimes it can be difficult for the victim to even be in the same courtroom as the abuser. A WATCH volunteer reported that at a week-long trial in a CHIPS case stemming from a 20-year

history of domestic violence, the mother, who had recently been severely physically assaulted after the father burglarized her home, was visibly uncomfortable sitting at the same table as the abuser. She continually shifted in her chair to keep him out of her view. In such situations, the court should be vigilant to ensure that neither verbal nor nonverbal intimidation tactics are allowed.

Visitation can be another dangerous arena for domestic violence victims. Judges should issue clear orders that safeguard victims when dropping off children for visitation or picking them up. In one case WATCH monitored, the mother, who had obtained an OFP against the father, had custody of the child and the father had been granted unsupervised visitation. The judge ordered the child protection social worker to assist in arranging drop off and pick up at a safe location where the parents would not have to interact.

As a result of open CHIPS proceedings, domestic abuse advocates working with victims are now allowed to attend CHIPS hearings without the consent of other family members. Advocates place themselves at the front lines in the war on domestic violence. They help victims with safety plans, assist in obtaining necessary services, and offer support at court hearings. From monitoring OFP hearings in family court, WATCH is aware of many instances when advocates have been threatened and even assaulted by respondents. Because of this danger, most advocates use only their first names for identification purposes. WATCH was thus concerned when a juvenile court judge asked an advocate to identify herself for the record and insisted that she also disclose her last name.

Victims of domestic violence with open CHIPS cases are often instructed or required to obtain an OFP against their abusers as part of their case plans. Many victims are willing to obtain an OFP and feel that it is in their best interests. However, research has shown that victims can best predict when they are placing themselves at greater risk by attempting to remove the abuser from their lives. Also, increasingly research shows that one of the most dangerous times for a victim of domestic violence is after she obtains an OFP. This real danger—most domestic homicides occur when a victim is attempting to leave her abuser—is something the system needs to recognize in its decision making.

Caution also needs to be taken in assigning cases with domestic violence to family group conferencing. At least one case WATCH monitored involving past domestic abuse was assigned to family group conferencing. Family group conferencing is a relatively new program in Hennepin County that brings the parents together with their extended family members to identify strengths and develop appropriate case plans that address the issues that brought them to child protection as well as the safety and welfare of the children. The program has had very positive results. However, ordering victims and abusers to work together can be dangerous to victims. If family group conferencing is being considered, the victim should be asked privately by her attorney or an advocate working with her whether she would like to engage in this type of mediation, and her wishes should be respected. Also, it should be realized that not all family members are immune to “victim blaming” nor do they necessarily prioritize victim safety.

### *Recommendations:*



- *Addresses where victims of domestic abuse reside should be kept confidential in court records.*
- *The juvenile court should consider seating victims and perpetrators of domestic violence at separate tables in the courtroom if the victim feels unsafe or intimidated in the presence of the abuser.*
- *Judges should be vigilant to ensure that perpetrators are neither verbally nor nonverbally intimidating victims in the courtroom.*
- *Judges should issue clear orders that safeguard victims when dropping off children for visitation or picking them up.*
- *Domestic abuse advocates should not be asked to disclose their names in court.*
- *The child protection system should use caution when requiring domestic abuse victims to take legal responsibility for removing the abuser from their homes and lives.*
- *The wishes of domestic abuse victims should be respected when considering the use of family group conferencing.*

## **F. Providing Appropriate Services**

In most of the CHIPS cases with domestic violence WATCH monitored, the victim and abuser were given some kind of service through a domestic abuse program. In the case involving the death of the 4-month-old baby, however, domestic abuse services were never provided to the baby's mother. Apparently there had been known physical violence in the mother's home since 1989 when her daughter's leg was broken by her boyfriend. In 1997, her abusive husband pled guilty to 5<sup>th</sup> degree assault (according to her public defender, he "made an admission under oath that he was beating up my client") and was incarcerated. The juvenile court was aware of this history when it finally intervened in January 1999. Yet, no domestic abuse services were ordered as part of the mother's case plan.

It was not always clear to WATCH volunteers and staff whether children involved in these cases received services to help them deal with the violence. According to Ver Steegh, "At a minimum, children should receive information about domestic violence, help in understanding that they did not cause the violence, help with safety planning, a chance to grieve and the opportunity to learn non-violent methods of conflict resolution" (p. 787). An innovative program in the Family Court of the First Circuit in Honolulu, Hawaii, ensures that children's needs are taken into account in such cases. Recognizing that a "different level of commitment, knowledge, skills, philosophy, and resources than traditional guardians" was required, the court contracted with a domestic violence and advocacy agency to recruit guardians ad litem (GALs) to advocate for the children.<sup>9</sup> Feedback has been positive as judges have found the GALs' expertise valuable in helping them to make the best decisions for the children as well as the abused parent.

### *Recommendations:*

- *In CHIPS cases with domestic violence, appropriate services addressing the abuse should be provided to all family members.*

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<sup>9</sup> Andrew Klein, "Domestic violence advocates assigned child abuse and neglect case," February 2001 *National Bulletin on Domestic Violence Prevention*, pp. 6-7.

- *The juvenile court should explore appointing domestic abuse advocates as GALs in cases with both domestic abuse and child maltreatment.*

### **G. Alternative Methods for Handling These Cases**

The National Council of Juvenile and Family Court Judges developed and published guidelines for practice and policy in cases where domestic violence and child maltreatment overlap in its 1999 *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*. One recommendation states that “the leaders of public child protection services, community-based child welfare services, and domestic violence agencies should design a differential response to the diverse range of families experiencing domestic violence and child maltreatment” (p. 21). This should include the possibility of obtaining help with or without opening a CHIPS case.

Minnesota law allows for such alternative responses. According to Ver Steegh, “the legislature authorized an ‘alternative response’ to reports made under Minnesota Statute section 626.556. Under Minnesota Statute section 626.5551, local welfare agencies can make a risk assessment and offer community-based services to families on a voluntary basis. Thus, in less serious cases [of domestic violence where children are present], a family can receive early assistance without a formal investigation and finding of maltreatment” (p. 806).

A 1999 amendment to Minnesota’s Maltreatment of Minors Act included a “sight/sound” provision that required a maltreatment assessment when children were present during an incident of domestic abuse. If maltreatment was found, alternative responses could be pursued. The language, however, was repealed after only one year because child protection system personnel felt there were not enough resources to assess the many more cases being referred to child protection and insufficient services for the corresponding influx of children.

Hennepin County participates in a pilot project led by the state to develop alternative response programs where families needing services can be referred by the DCFS when an official child protection case is not opened. The Subcommittee on Domestic Abuse and Children’s Issues has discussed the idea of adding domestic violence related services to these alternative response programs.

#### *Recommendation:*

- *Cases with both domestic violence and child maltreatment should be assessed for risk and alternative responses to court involvement employed where appropriate.*

## Section 6: Breaking the Cycle of Child Abuse and Neglect

Of the 45 children in need of protection or services (CHIPS) cases in WATCH's monitoring sample, 13 are still active, 14 resulted in termination of parental rights, either involuntarily or voluntarily, 10 were dismissed after parents substantially complied with case plans or, in one case, the child was old enough to live elsewhere, 11 resulted in a transfer of legal custody to either a family member or close friend, and two resulted in long-term foster care for the children.<sup>10</sup>

Among the success stories was one mother who battled a chemical dependency problem with amphetamines to have her case dismissed four months after the CHIPS petition was filed. The WATCH volunteer who attended the dismissal hearing noted, "I saw a remarkable improvement in the mother's looks and actions from the first court date. She was animated and made suggestions to staff before the hearing that were acceptable. What a turnaround! Everyone was pleased with her progress." Another case involving drug addiction was dismissed five months after the CHIPS petition was filed. The WATCH volunteer summarized,

This was a good ending to a case that had many positive features from the beginning. In addition to family support, the children, who are 12 and 15, remained in their home while their father moved in temporarily to care for them while the mother was completing an in-patient treatment program. Her public defender didn't even recognize her before the hearing she had changed so much. He said, "you've come 1000%."

While these successes were uplifting, optimism about the future of these families was somewhat tempered by the fact that 28 of the 45 families in WATCH's sample had prior child protection involvement, often due to chemical dependency issues. It was not uncommon to encounter families that had child protection histories in several jurisdictions.

Some cases that WATCH monitored had intergenerational child protection histories. In one case, a CHIPS petition had been filed for the second time against the mother, who requested that her 6-year-old daughter be placed with the maternal grandmother. However, as WATCH noted, "the judge expressed her concern regarding this request because the maternal grandmother had physically abused this mother as a child." The CHIPS petition indicated that as a juvenile, the mother had been the subject of a CHIPS petition soon after she delivered her daughter, who in turn became the subject of a CHIPS petition a few weeks later.

In another case, a termination of parental rights (TPR) petition stated one of the reasons that the mother was unfit to parent her own child was because she "as a child lived in multiple foster homes . . . was a victim of sexual abuse as a toddler, and was physically abused by her mother, her grandmother, and at least one foster care provider." The TPR petition also described the multiple injuries she had sustained due to an ongoing violent relationship with the alleged father of her child, who as a child was himself a victim of domestic violence.

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<sup>10</sup> Five of the cases had different outcomes for different children and so have been double counted.

In another case, child protection involvement spanned four generations. The mother had transferred legal custody of four of her children to her mother and her mother's husband. Several months later, a CHIPS petition was filed for alleged physical abuse of one child by the step-grandfather. CHIPS was soon adjudicated and the case dismissed two years later. Within two years, the maternal grandmother and step-grandfather were again responding to a CHIPS petition alleging physical and sexual abuse of the children by the step-grandfather. The incident that precipitated this CHIPS petition was a report that the step-grandfather had allegedly choked and beaten one of the children. Upon investigation, the DCFS also learned that the 14-year-old granddaughter had been repeatedly raped by the step-grandfather for five years and had a 19-month-old son by him (the earlier CHIPS case was dismissed when she was several months pregnant). This 19-month-old child became the subject of a separate CHIPS petition naming the granddaughter as the respondent.

Three other children in WATCH's case sample had juvenile mothers who were themselves the subjects of CHIPS petitions (see Rebecca Kutty's "Breaking the Cycle," Summer 2000 *WATCH Post*, pp. 1-3). At the outset of the proceedings in one of these cases, the public defender for the juvenile mother stated that she was familiar with the situation since she represented the juvenile mother's mother for her CHIPS case. The judge originally planned to move the case to another judge because he was familiar with the juvenile mother from her mother's CHIPS matter, but ended up keeping the case. In another case, WATCH learned that the mother's sister, also a juvenile, was involved in a similar CHIPS proceeding. A family group conference had been arranged to try to find a relative placement for the sister's child. The judge ordered the family group conference expanded to include both juvenile mothers. The WATCH volunteer monitoring the case wrote, "I wonder if years ago—before she became a mother, but was building the pattern of truancy from foster placement—there had been intervention other than placement if this case could have been prevented. She needs help and I believe has needed help for years."

The question needs to be asked whether the system and community are doing enough to address the problems of families with recurring child protection involvement and to prevent the intergenerational cycle of child abuse and neglect.

### **A. Breaking the Cycle of Intergenerational Child Abuse and Neglect**

WATCH learned of several initiatives in Hennepin County that are steps in the right direction in preventing the intergenerational cycle of child abuse and neglect.

The Department of Children and Family Services (DCFS) has studied the issue of foster children with children of their own and is considering a policy to file CHIPS petitions in all cases where the mother is a foster child. Supporters of this proposed policy hope to gain more control over the baby and be able to quickly intervene if the baby is clearly at risk. Critics contend that the proposed policy would create a double standard by targeting young mothers based on their status rather than allegations of child abuse or neglect.

Life University, run by the county, focuses on children over 16 years in long-term foster care. It provides strength-based life skills workshops and support groups to help abused and neglected

children become productive adults. The program has served at least 50 of the 300 kids in this population. Its workshops have included such topics as financial management, protecting against sexually transmitted diseases, and parenting.

Another program, the 30-year-old Friend to Child Program, has 60 volunteers who regularly meet with and mentor children whose families are receiving services from the county. Almost half of these children are the subjects of child protection matters. Mentors are encouraged to serve as role models and to engage children in activities that parents can later provide on their own. The few teen moms in the program develop positive parenting skills and benefit from the mentors' support.

Breaking the Intergenerational Cycle of Child Abuse, a subcommittee of the Initiative for Violence-Free Families in Hennepin County, has produced a draft plan to reduce child maltreatment in Hennepin County based on a year of research. It will be presenting the draft plan to the public for input in the next few months. Among other things, it recommends "breaking the cycle of child abuse among people with histories of children maltreatment before they become parents." The plan includes teaching non-violence in the early grades, educating high school students on effective parenting, and incorporating presentations on parenting styles and healthy parent-child relationships into classes for expectant parents. Mentoring is also emphasized since a significant factor in avoiding further involvement with child protection as an adult is having a relationship with at least one caring and supportive adult other than a parent during childhood.

*Recommendations:*

- *Target prevention programs at children who are the subjects of CHIPS petitions.*
- *Initiate mentoring programs for all children who are the subjects of CHIPS petitions.*
- *Follow the recommendations of the Breaking the Intergenerational Cycle of Child Abuse Subcommittee to reduce child maltreatment in Hennepin County..*

## **B. Community Involvement**

The consensus across the country is that communities must do more to ensure that children are protected from abuse and neglect. According to the Edna McConnell Clark Foundation's report "We Are In This Together: Community Child Protection in America," the U.S. Advisory Board on Child Abuse and Neglect called for reform of the existing child protection system, declaring child maltreatment a "national emergency" in 1990 (p. 6). Soon after, the National Commission on Child Welfare and Family Preservation was formed to make recommendations. Among these were building neighborhood-based services for families, early intervention, more partnerships and collaboration among public and private agencies, and greater community involvement. The urgent message was that child protection agencies, though integral, cannot do it alone. The report showcases five locations where locally-based collaborative approaches to child protection are being undertaken.

The Initiative for Violence-Free Families C.H.A.S.E. for Families Action Team heard representatives from the American Humane Association (AHA) present on their national training

initiative, The Front Porch Project. The Front Porch Project strives to recapture the sense of responsibility for the welfare of children in the community that prevailed in the past. The project “advocates for becoming involved in each other’s lives, the power of one person to make a significant difference in the life of a child, and applying strategies for intervening when necessary to help protect children and assist families.” A selected community partner serves as the coordination point for the local Front Porch Project. AHA trainers conduct a two-phase training for local residents and potential trainers, teaching them how to appropriately intervene when encountering a situation in which the treatment of a child makes them concerned or uncomfortable. The C.H.A.S.E. for Families Action Team sees the Front Porch Project as a model for implementing some of the recommendations of the Breaking the Intergenerational Cycle of Child Abuse Subcommittee’s draft plan.

An important aspect of preventing child abuse and neglect in the first place is creating communities that provide essential resources for children. The Twin Cities is home to Search Institute, a national leader in applied research into youth development. Search Institute has identified 40 developmental assets that are critical for the growth and development of children. These include external assets, such as a supportive environment and known boundaries and expectations, and internal assets, such as developing social competencies and a positive identity. In 1993, St. Louis Park became the first community in the nation to use Search Institute data in its “Children First Initiative.” A 1998 survey showed that St. Louis Park youth were experiencing more assets than when the initiative started. The community has since implemented a training program for all community members on asset building. Many other communities across the county have followed suit.

*Recommendation:*

- *The DCFS should expand its network of community partners and support and use community-based services that strengthen families and keep children safe from abuse and neglect.*

## Section 7: Conclusion

This report has presented WATCH's view of certain aspects of Hennepin County children in need of protection or services (CHIPS) proceedings based on its court monitoring from June 22, 1998, to the present. Many of the observations and recommendations stem from WATCH's systematic monitoring of 45 child protection cases beginning in November 1999. The project is ongoing.

WATCH initially determined that monitoring and reporting on how juvenile court judges handle CHIPS cases was imperative given their crucial decision making and oversight role. It also realized that such issues as court efficiency, the safety and welfare of the children, family safety in cases involving domestic violence and child maltreatment, and breaking the intergenerational cycle of child abuse and neglect also needed to be discussed at length in its report.

The following issues in CHIPS cases were identified as well, but were beyond the scope of this report:

- the cycling of the same families in and out of the child protection system;
- the extent to which issues of poverty contribute to involvement with the child protection system;
- the overrepresentation of women as respondents;
- the overrepresentation of minorities as respondents;
- the relative absence and noninvolvement of fathers;
- the burden on female relatives, who often end up raising respondents' children, with very few resources;
- the powerlessness of respondents and other parties to question the decisions of the child protection system if they feel that they or the children have been treated unfairly.<sup>11</sup>

WATCH's impression is that those working within the child protection system are trying their best to deal with difficult and taxing situations on a daily basis. The juvenile court's leadership is strong and bent on innovation and change. Some of the overall system's efforts have been highlighted in this report.

The recently-launched Children's Justice Initiative involving Hennepin and 11 other counties and eventually all 87 counties in Minnesota is worth noting. This five-year project, spearheaded by Chief Justice Kathleen Blatz, is a joint venture of the Minnesota Supreme Court and the Minnesota Department of Human Services. It asks government and court officials to look at child protection cases "through the eyes of a child." The goal is to trim paperwork and proceedings that delay permanent outcomes for children. As Chief Justice Blatz has said, a continuance of even 90 days can seem like a "lifetime" to children, as they, in the words of one child WATCH observed, wait for their "forever families" and "forever homes."

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<sup>11</sup> The Department of Children and Family Services (DCFS) recently created the foster care quality assurance manager position to investigate foster parents' concerns with the handling of cases. This individual will report to the director of the DCFS and the county administrator.





## **Appendix A: WATCH CHIPS Monitoring Form**

**CHIPS Monitoring Form**

**Tracking information:** date \_\_\_\_\_ type of appearance \_\_\_\_\_ your initials \_\_\_\_\_  
 case #/names of parties \_\_\_\_\_ Judge \_\_\_\_\_

**Family present:** mom yes\_\_\_ no\_\_\_  
 dad yes\_\_\_ no\_\_\_  
 child(ren) yes\_\_\_ no\_\_\_  
 others \_\_\_\_\_

**Court personnel present:** county attorney yes\_\_\_ no\_\_\_  
 public defender for mom yes\_\_\_ no\_\_\_  
 public defender for dad yes\_\_\_ no\_\_\_  
 DCFS social worker yes\_\_\_ no\_\_\_  
 DCFS kinship worker yes\_\_\_ no\_\_\_  
 GAL yes\_\_\_ no\_\_\_  
 others \_\_\_\_\_

**I. Efficiency of the court**

- What time was this hearing scheduled? \_\_\_\_\_ What time did it begin? \_\_\_\_\_ end? \_\_\_\_\_
- What is the reason for the delay, if any? \_\_\_\_\_
- Was the CHIPS calendar for the week on display and updated? \_\_\_\_\_
- How many different judges have heard this case? \_\_\_\_\_
- Are all parties that qualify represented by counsel? \_\_\_\_\_
- Are orders and findings given immediately to parties after the hearing? \_\_\_\_\_
- What is the outcome of the hearing? \_\_\_\_\_
- If dismissed or continued, what was the reason? \_\_\_\_\_

**II. Safety/welfare of the child**

- Where has the child been placed? Are other placement options being explored (kinship studies, family group conferencing, therapeutic foster care, etc.)?
- Was there a lapse between the time the child protection workers were notified of maltreatment and when the child ended up in a hold hearing (specify dates)?
- Did the DCFS make "reasonable efforts" to prevent the need for the child's removal (specify what)?
- Has the child been returned to the home and, if so, under what conditions (e.g., protective supervision, delivery of in-home services, classes and/or treatment programs)?
- How often will the DCFS social worker be visiting the home of the child once returned to the home?
- Has the GAL visited the child? How many times?
- Did the judge specifically ask how the child was doing? If so, describe.
- Who will monitor the delivery and participation of services, especially sobriety of parent(s) (e.g., self-reporting)? Specify the services being delivered (parenting classes, CD treatment, etc.), their usefulness, and if the parent(s) is following through.

- i. Are siblings kept together; and, if not, is visitation among them discussed?
- j. Was the child's need for immediate treatment, especially therapy, met?
- k. Comments:

### III. Judicial Demeanor/Court Decorum

- a. Did the judge clearly explain the proceeding to the parent(s)? yes\_\_\_ no\_\_\_
- b. Was the judge respectful of all parties? yes\_\_\_ no\_\_\_
- c. Did the judge explain that s/he is not an arm of the DCFS, but an impartial decision maker? yes\_\_\_ no\_\_\_
- d. Was the atmosphere problem-solving rather than adversarial? yes\_\_\_ no\_\_\_
- e. Was the judge compassionate (especially in cases involving housing issues and/or domestic abuse)? yes\_\_\_ no\_\_\_
- f. If orders issue, did the judge clearly explain what this means to the respondent(s)? yes\_\_\_ no\_\_\_
- g. Did the judge generally keep control of the courtroom? yes\_\_\_ no\_\_\_
- h. Did the judge make a decision at the end of the proceeding? yes\_\_\_ no\_\_\_
- i. Comments:

### IV. Application of the Law

- a. Is this in keeping with the timelines for permanency (six months for children under 8 and 12 months for children 8 and over)?
- b. Is this an Indian Child Welfare Act (ICWA) case? If so, is ICWA being complied with?
- c. How is the DCFS doing with "reasonable efforts"? Are quality services aimed at family reunification available in a timely manner or must parents wait for services?
- d. Is a foster family available if one is needed?
- e. Other comments, questions, or concerns:

### V. Other Court Involvement

- a. Are you aware of other court involvement (e.g., OFPs, criminal charges, etc.)? If so, describe.
- b. Does there seem to be a lack of consequences for domestic abusers, leading to juvenile court involvement?
- c. Do adult court orders seem to conflict with juvenile court orders?

Date and time of next appearance\_\_\_\_\_

Type of appearance\_\_\_\_\_

**Comments:**

## **Appendix B: Sample Case Summaries**

### Case #1

This active case involves three children: two boys, ages 2 and 9, and a girl, 7. The mother is 26. The 31-year-old adjudicated father of the older children and the 25-year-old adjudicated father of the youngest child are participants to the proceeding. The maternal grandmother is also a participant. A guardian ad litem (GAL) has been appointed.

A children in need of protection or services (CHIPS) petition was filed three judicial working days after the Department of Children and Family Services (DCFS) received a report that all three children had been placed with their maternal grandmother on a 72-hour police health and welfare hold. A neighbor called 911 when the eldest was afraid to return home after his mother hit him. The child's injuries included red marks, bruises, swelling, scratches, and a cut. When interviewed by police, the mother admitted to slapping him twice in the head and once on the leg with an open hand. The boy said his mother hit him at least 11 times and pulled his hair after he ate something he was not supposed to. He also stated that she has beaten him in the past with worse injuries and that she has also hit his sister.

The mother told the DCFS that the boy's father abused her and that is why she abused the boy. Her boyfriend, the father of the youngest child, has also been abusive. The CHIPS petition refers to an incident of domestic violence where the mother sustained injuries that required medical attention. Before she was transported to the hospital, the mother told a responding police officer that she was afraid for the safety of the two children at home. Apparently the children were left with the abuser, who later brought them to the maternal grandmother's home. Child protection was notified, but closed the case with no finding of maltreatment.

A week after the CHIPS petition was filed, police received a call from the maternal step-grandfather stating that the mother, who had been given liberal and unsupervised visitation, had not returned the children by the agreed-upon time. According to the criminal complaint filed the next day, officers went to her apartment and found the older children in a downstairs apartment. The mother had dropped them off at the beach, but had not picked them back up. When it became dark, they walked 1.5 miles home. The mother did not answer the door until the officers banged on it. The youngest child was sleeping on the couch with his mother. Two beer bottles and a marijuana pipe were on the floor. The CHIPS petition was amended to include this incident as well two others that had since occurred: the mother received a citation for a vehicle violation and smoking marijuana in her car; and a missing persons report was filed for her, but she was later found in her apartment in a stupor.

Both the mother and the father of the older children have criminal histories. The mother's dates from 1996 and includes a conviction for misdemeanor 5<sup>th</sup> degree assault – causing fear. She was charged with gross misdemeanor malicious punishment for the incident in the initial petition and gross misdemeanor child endangerment for the incident described in the previous paragraph. The malicious punishment charge was dismissed on motion of the prosecutor. She plead guilty to the child endangerment charge and was given a stay of imposition of the sentence and put on probation for two years with the following conditions: 10 days on the county work crew, completing Project Rebound, abiding by the terms of the child protection case plan, no drugs or alcohol, and submitting to whatever testing probation requests. A sentence of 60 days at the

workhouse with credit for seven days was imposed four months later after she violated her probation by failing to abide by the terms of the child protection plan. She was ordered to complete an updated rule 25 chemical dependency assessment and was to be furloughed to a treatment program. The father's criminal history dates from 1988 and includes convictions for misdemeanor disorderly conduct, misdemeanor receiving stolen goods, and petty misdemeanor possession of drug paraphernalia.

CHIPS was adjudicated within three months with findings for the allegations in the amended CHIPS petition. A case plan for the mother was ordered based on the results of family group conferencing. The case plan includes a residential chemical dependency program, twice weekly urinalyses, Alcoholics Anonymous with sponsorship, a parenting assessment, a psychological evaluation, and compliance with probation. The mother made progress with her case plan for several months, and reunification looked possible. However, she did not stay sober and stopped following her case plan. A termination of parental rights (TPR) petition was filed seven months after the original CHIPS petition. The father of the youngest child is working his case plan, given five months after the case began, and has been granted unsupervised visitation with the children. He is interested in obtaining custody of all three children but must first obtain suitable housing. The father of the older children has not participated in any court proceedings.

## Case #2

This completed case involved a 6-year-old girl. The mother was 32. The father was 39. A GAL was appointed.

A CHIPS petition was filed five judicial working days after the child was placed on a sheriff's department hold and transported to a shelter due to conflicting orders from family court regarding the child's custody. Both parents had obtained ex parte orders for protection against each other based on an incident of domestic violence, which the child witnessed.

The parents gave conflicting stories regarding the incident. The father stated that the mother was intoxicated, tried to stab him with a knife, and cut her hand when they struggled over the knife. According to police officers responding to the father's 911 call, the child gave a similar account. The mother, who appeared intoxicated to the officers, denied the fight, stating instead that she had fallen and cut her fingers. She was taken into custody, but no charges were filed.

At the family court hearing and when interviewed by an investigative social worker at a safe house, the mother stated that she was defending herself with the knife after the father tried to rape her. They struggled and she cut her hand, which required 14 stitches. She said that he threatened her and told her he would rather see her dead than alive. She cited his history of domestic violence, including occasions when he threatened to kill her with a handgun in front of their daughter and threatened to kill her mother and a sibling. She said she moved to Minnesota to get away from him, but he followed her here and refused to comply with her wish to end the relationship.

The father has a criminal history of 30 offenses in another state dating from 1980, including but not limited to assault, battery, burglary, and unlawful use of a weapon. Since moving to Minnesota, he had been charged with simple assault and 2<sup>nd</sup> degree assault.

The petition also states that the child was hit with a belt by both parents and that the shelter parents observed the child beating a doll and saying "I'm going to kick you ass" and "How many times have I told you not to get pregnant?"

CHIPS was adjudicated within three months and case plans ordered for both parents. The mother's included a rule 25 chemical dependency assessment plus following all recommendations, abstaining from alcohol and drugs, an out-patient chemical dependency treatment program, domestic abuse counseling, psychological and parenting assessments plus following all recommendations, random urinalyses, and visitation. The father's included establishing paternity, domestic abuse counseling, psychological and parenting assessments plus following all recommendations, random urinalyses, and visitation. The child's included visitation, domestic abuse counseling, and individual therapy. Seven months later, the case was dismissed based on the mother's compliance with her case plan. The father had since moved to another state.



**Case #3**

This completed case involved two girls, ages 6 and 8, under joint custody of their divorced parents. The mother was 38. The father was 36. A GAL was not appointed.

A CHIPS petition was filed a month after the DCFS received reports of neglect in the mother's home and provided some services to her. The children remained with the father throughout the processing of the case. While investigating, the DCFS learned that the children had missed three weeks of school the previous year and were frequently tardy. School personnel also expressed concerns about the children's hygiene, including head lice that went untreated for five months. The home was inspected, and at least three cages of mice were found and ordered removed. A public health nurse determined that the mother's adult daughter was the primary caregiver to the children and that when she was unavailable, the mother relied on a friend who had lost custody of her own children due to drug abuse and neglect. The mother denied using drugs, but two urinalyses tested positive for cocaine. Reports from neighbors suggested drug use and trafficking in the home.

CHIPS was adjudicated within one month with findings for the allegations in the CHIPS petition and a case plan ordered. The case plan included twice weekly urinalyses, no drugs or alcohol, a parenting assessment plus following all recommendations, supervised visitation, a rule 25 chemical dependency assessment plus following all recommendations, a psychological evaluation plus following all recommendations, finding and maintaining employment, and cooperating with home-based services. The mother seemed to be making progress with her case plan, but then stopped complying with it. At a later hearing, therapy for the children was authorized. A transfer of legal custody (TLC) petition was filed nine months after the CHIPS petition, and custody was transferred to the father one month later.

### Case #4

This completed case involved two girls, ages 8 and 10. The divorced mother and father were 37. An 11-year-old boy was also one of the subjects of a prior TPR petition, but was not listed on the most recent TPR petition. His status was unclear from court documents. The mother's parental rights to another boy were terminated three years ago in another state. A GAL was appointed.

A TPR petition was filed four judicial working days after the children were placed on a 72-hour police health and welfare hold in response to a report that they had been abandoned by the father's girlfriend. She had been caring for them for a week after the father was arrested for driving without a license and detained on an outstanding warrant. The mother's whereabouts were unknown. The petition states that the father had a clear and consistent pattern of chemical abuse. His criminal history includes convictions for felony controlled substance criminal possession 2<sup>nd</sup> degree and 5<sup>th</sup> degree and misdemeanor driving after revocation and open bottle. He was incarcerated for the latter conviction.

Six years ago, the father was granted sole legal and physical custody of the children. CHIPS was twice adjudicated—seven and then four years ago—due to chemical abuse, neglect, abandonment, and physical and sexual abuse. A TPR petition was filed and parental rights terminated three years ago for the mother, but stayed pending resolution of the father's TPR proceeding. The findings in the termination stated that the mother had a 12-year history of chemical abuse and that she had not visited the children in two years nor had she complied with her case plan, which included 18 different services.

Parental rights for the father were terminated the same year, but stayed for six months conditioned on compliance with his case plan. The findings in the termination stated that he failed to substantially comply with his case plan and indicated a seven-year history of chemical abuse. While incarcerated four years earlier, he completed chemical dependency treatment, but was unable to maintain sobriety. After being released, he did not complete the required psycho-educational sexual behavior class to address the allegations of sexual abuse. The DCFS provided at least 11 different services to the father. Later that year, he was reunified with the children, who had been in out-of-home placement for three years. The case was dismissed five months later.

After the second TPR petition was filed, the mother's parental rights were terminated at the second hearing. At a subsequent hearing, the guardian ad litem reported that the children had been moved six times in the past seven months and changed schools three times in the last year. The father voluntarily relinquished his parental rights eight months after the petition was filed; the order was stayed for six weeks to give relatives priority in adopting the children. Six months later, the children were placed with the father's sister in another state with the adoption to be finalized after a six-month probationary period.

### Case #5

This completed case involved seven children: two girls, ages 1 and 14, and five boys, ages 2, 7, 8, 9, and 12. The mother was 39. The 7-year-old boy's father was 40. The other fathers were originally listed as unknown, although the latest TPR petition refers to an alleged father for the youngest girl, and an adjudicated father for the 12-year-old boy was recently located. A GAL was appointed.

A TPR petition was filed for the youngest girl pursuant to a 72-hour health and welfare hold after the mother and then-newborn tested positive for cocaine. According to the petition, the mother had a five-year history of chemical dependency and had failed multiple chemical dependency treatment programs. Two of her other children were also exposed to cocaine in-utero. The DCFS received a report two weeks before the baby was born that the mother was smoking crack and that drugs were being sold from her house. A police report indicated that in a seven-month period, 17 calls to 911 were made from the residence, four in response to domestic incidents, one to an assault, and one to a shooting.

The older six children were adjudicated CHIPS after a drug raid on the mother's home more than two years earlier. The children were thin and "desperate for food." The house was infested with cockroaches and very dirty. Cocaine, weapons, and drug paraphernalia were within reach of the children. One of the children, then 3-years-old, tested positive for cocaine. At least two of the children had been sexually abused. The mother was charged with probable cause narcotics and child endangerment. She was evicted from the home and the children were placed in foster care.

A permanency petition for alternative relief was filed for the eldest five children seven months later and amended to include the sixth child after he was born while the mother was committed to a treatment center. The baby was immediately returned to his mother as she had been chemically free for over five months, and the next two youngest children were returned two weeks later, all under protective supervision. The remaining three children were returned a month later under the same conditions.

Permanency was stayed, but the court issued these findings: the mother left another state unbeknownst to its child protection system, which had jurisdiction over the children; the DCFS had provided 20 services to her; she had failed numerous chemical dependency treatment programs; and the children had significant special needs as a result of neglect, physical abuse, and sexual abuse (one child reported being raped by three different men). At a review hearing two months later, the mother was complying with her case plan, and the next hearing in 90 days was to be for dismissal. Three months later, the children were placed in foster care, three together and three in separate homes, when the mother failed to comply with the terms of the protective supervision order.

Parental rights to the six older children were terminated four months after their last removal. Parental rights to the youngest child, who has medical problems, were terminated two months later. Custody of the 7-year-old boy was transferred to his father in another state. An adjudicated father for the oldest boy has surfaced and is interested in obtaining custody.

### Case #6

This completed case involved a 1-month-old boy. The mother was 32. The alleged father was 41. The mother has four other daughters with her ex-husband, ages 2, 4, 6, and 8, who were not the subjects of the CHIPS petition. Legal and physical custody had been transferred to the maternal grandparents a year earlier after these children were the subjects of a CHIPS petition in another county. A GAL was not appointed.

The latest CHIPS petition was filed several weeks after the boy was born. He was presumed to be with the maternal grandparents at that time. The mother had a four-year history of chemical dependency for which she had not been treated. Two months before the baby was born, the DCFS learned that the mother was using methamphetamines. She insisted that she was chemical-free; a subsequent urinalysis tested positive for amphetamines, and all but one other ordered were not done. The clinic where the mother said she was receiving prenatal care was contacted and informed the DCFS that the mother had made no visits since her release from prison six months earlier. The child protection social worker alerted area hospitals to contact her if the mother delivered her baby. The hospital where she delivered, however, failed to do so. The mother eventually called the child protection social worker to tell her that she had delivered a healthy baby boy.

Both the mother and the alleged father have criminal histories. The mother's includes multiple misdemeanor charges as well as convictions for gross misdemeanor and felony check forgery. The alleged father's includes convictions for a felony-level controlled substance crime and theft.

The petition was amended two weeks after it was filed to include an incident that subsequently occurred. The mother and alleged father were pulled over by the police for a traffic violation. Police found the baby and his 2-year-old sister in the backseat. Two butane torches and pseudoephedrine pills were found in the vehicle, and a vial of methamphetamine in the diaper bag. The alleged father admitted planning to manufacture methamphetamine unbeknownst to the mother. Both were arrested on outstanding warrants.

The previous CHIPS petition in another county was filed when it was learned that the mother, who was eight months pregnant, tested positive for large amounts of methamphetamines and amphetamines. When she delivered her youngest daughter, both tested positive for amphetamines. That petition also cites educational neglect for the eldest daughter and a history of domestic violence with the mother's then-husband.

The boy was placed with his maternal aunt soon after the first hearing, although the judge had ordered him placed with his siblings at the maternal grandparents. CHIPS was never adjudicated, although the mother was provided with a voluntary preliminary case plan that included a rule 25 chemical dependency assessment plus following all recommendations, urinalyses as required, securing safe and stable housing, and supervised visitation. Custody was transferred to the maternal grandparents four months after the petition was filed.

### Case #7

This completed case involved a 1-year-old boy. The mother was 22 and the alleged father, a participant to the proceeding, was 21. A GAL was appointed. The mother was convicted of 2<sup>nd</sup> degree manslaughter four years earlier for the death of the couple's 11-month-old daughter and subsequently involved with child protection for five months.

The DCFS received a report that the boy had suffered 2<sup>nd</sup> degree burns on his right shoulder, arm pit area, back and chest adjacent to his shoulder with a high suspicion of neglect. The injuries were potentially life threatening. The mother said the child grabbed a bowl of hot water and tipped it over on himself. The child was placed on a 72-hour health and welfare hold. A CHIPS petition was filed seven judicial working days after the report. The mother was living alone in her apartment at the time, and most of the services from the prior child protection case were no longer available to her. The petition alleges that the mother missed her son's last three medical appointments, that financial issues had resurfaced, and that she did not have daycare on weekends and left the child with friends, some of whom were involved with the DCFS.

The CHIPS petition outlined the events of the eldest child's death. The mother threw the baby across the room and into a television set with enough force to cause craniocerebral injuries, including a skull fracture, internal scalp hemorrhaging, and a subdural hematoma. She initially said the child had fallen off the top of the refrigerator. Later she disclosed that she was under stress from financial problems and was upset over the child's crying and trying to crawl onto her lap. She was given a stayed sentence of 48 months in prison and placed on probation for five years.

The DCFS again became involved with the mother by filing a TPR petition for her 1-day-old son three years later. This petition referred to the mother's low intellectual functioning and psychological conditions and described the mother's long-term violent relationship with the alleged father, who had physically abused and threatened not only her but at least two other women. It also described the mother's childhood experiences: she was sexually abused as a toddler and physically abused by her mother, grandmother, and at least one of her multiple foster care providers.

The case was kept open for a year. The child was eventually returned to the mother under protective supervision, and the TPR petition was amended to a CHIPS petition. CHIPS was adjudicated within four months and a case plan ordered that included at least 12 different services. Court files indicate that the mother was exemplary in almost every program ordered. Court jurisdiction was dismissed, and the DCFS closed its case a short time later.

Within two months, the most recent CHIPS case was opened. CHIPS was adjudicated at the second hearing and a case plan ordered. The child was soon returned to the mother under protective supervision, and the case was dismissed by progress report with no additional hearings. The case was open just over three months.

### **Case #8**

This active Indian Child Welfare Act (ICWA) case involves two boys, ages 10 and 12. The mother is 34, and the adjudicated father of the 10-year-old is 31. The alleged father of the 12-year-old is 32. The mother has an 18-year-old daughter who was previously in relative foster care in another county. A permanency petition was filed in that case. A GAL has not been appointed.

An ICWA CHIPS petition was filed three judicial working days after the DCFS received a report that the youngest child was tearful and afraid to go home from school because his mother and her boyfriend were smoking and selling crack. The child was also concerned that since he told child protection, his mother would assault him. The petition alleges that the week before she hit him on the head with her fist when she was drunk. A month earlier, the DCFS received a report that the child was afraid to go home from school because his mother and her boyfriend fight and his mother gets hurt. He also said they sell cocaine and that they smoke marijuana and drink. The mother was interviewed after the second report and admitted to smoking marijuana and having no permanent address. The child was placed on a 72-hour police health and welfare hold. The 12-year-old boy had been living with his half-brother's adjudicated father for 14 months, but he was also removed and both children were placed in a shelter home.

The mother has a history with child protection. Two months before the CHIPS petition was filed, the DCFS substantiated a report of neglect against the mother's boyfriend regarding an incident of domestic violence. The previous year, the DCFS substantiated a report of neglect against both the mother and her boyfriend for smoking marijuana and allowing the children to smoke marijuana and for incidents of domestic violence. A report of maltreatment was substantiated in another county two years earlier when the youngest son was found to have bruises on his face caused by the mother's hitting him with a belt or hanger.

At the time of the CHIPS petition, a misdemeanor warrant was out for the mother's arrest for driving without insurance. Her criminal history also includes arrests for prostitution and ATM card fraud. A misdemeanor warrant was out for the adjudicated father for some traffic-related offenses. A misdemeanor warrant was out for the mother's boyfriend as well.

The children were placed with the adjudicated father after he obtained adequate housing and emergency foster care licensing was in place. CHIPS was adjudicated within a month and the allegations in the petition found. A case plan was ordered for the mother that includes a rule 25 chemical dependency assessment, urinalyses, parenting services, a domestic abuse program with anger management, and case management services. The adjudicated father was also ordered to comply with a case plan. The children ended up in foster care once again when he left his home during a fight with his wife and she brought them to a shelter. They were returned to him, but placed in foster care after he moved to another city two months later.

A TPR petition was filed five months after the initial proceedings. Also named as participants are the children, the alleged father of the eldest child, and the current foster parent. At the arraignment hearing on the TPR petition, the mother was actively participating with her case plan, and one was ordered for the mother's boyfriend. The adjudicated father voluntarily

relinquished his parental rights. Reunification by progress report was ordered at the most recent hearing.

**Case #9**

This completed ICWA case involved an 11-month-old boy. The mother was 15. The presumed father was 24 and was not a party to the proceeding. An Indian custodian/tribal representative was a participant. A GAL was not appointed.

A CHIPS petition was filed two days after the child was born. The petition indicates that the mother and her three siblings were adjudicated CHIPS five years earlier due to their mother's issues with alcohol and neglect. The mother was ordered into long-term foster care three years ago. She had a history of running from foster care placements, did not attend school the previous year, and had only one prenatal medical visit.

The child was placed with the mother in foster care and a voluntary case plan provided. A restraining order was issued against the presumed father barring contact with the mother. He eventually admitted to having sexual relations with the mother when she was 13, but refused to participate in the CHIPS proceedings. CHIPS was adjudicated four months after the petition was filed when the mother failed to appear for a hearing after abandoning the baby with the foster family. A case plan was ordered that included individual counseling, parenting education, a psychological assessment, home-based services, and public health nursing. Several weeks later, a TPR petition was filed.

The mother eventually reappeared and was ordered into residential placement, which she vacated two months later. She resurfaced again after a three-month hiatus when she was picked up on a CHIPS warrant. At the subsequent hearing, she revealed that the presumed father was not be the biological father, naming a 21-year-old adult as the father instead. She had not seen the child in the last few months nor had she had contact with the DCFS. She said that she would go back to school if placed with her grandmother, but a decision on her placement was not made at the hearing. It was ordered that she be detained, submit urinalyses, have a physical, and be tested for sexually transmitted diseases. At the next hearing, the mother voluntarily relinquished her parental rights, and the father's parental rights were terminated.



**Case #10**

This completed case involved four children: two boys, ages 8 and 13, and two girls, ages 9 and 15. The respondent mother was 30. The adjudicated father of the two older children was 44, and the presumed father of the two younger children was 38. The mother and the 38-year-old father have another daughter whose custody was transferred to a maternal aunt and uncle four years ago. A GAL was appointed.

A CHIPS petition was filed four judicial working days after a report of physical abuse of the oldest boy naming the maternal grandmother and step-grandfather, then the legal custodians, as respondents. Three of the children had been placed on a 72-hour police health and welfare hold; the injured child was staying with his maternal great-grandmother. According to the petition, the step-grandfather choked the boy and beat him with a belt three days earlier. When police were investigating, it was reported that two of the children had been sexually abused by the step-grandfather.

Interviews for three of the children were arranged at Corner House. It was reported that the step-grandfather had repeatedly raped the eldest girl since she was 9 and was the father of her then-19-month-old child (the subject of the child protection proceedings in Case #11). The younger girl was also a victim of sexual abuse. The children had recently told their grandmother about the abuse, and she told them she would take care of things.

The family has a history with child protection. A CHIPS petition was filed on behalf of the three older children almost nine years ago when they were still in their mother's custody and later amended to include the youngest child when he was born. The children were adjudicated as CHIPS seven years ago, and custody was transferred a year and a half later to the maternal grandmother and step-grandfather. Less than four months later, a CHIPS petition was filed against the new custodians after a report of physical abuse of the youngest child, then 2 years old, by the step-grandfather. A year later, the children were adjudicated CHIPS; and two years after that, the case was dismissed (the eldest girl would have been several months pregnant at the time).

The step-grandfather was charged with two counts of 1<sup>st</sup> degree criminal sexual conduct for the incidents in the latest CHIPS petition. He plead guilty to one count of 1<sup>st</sup> degree criminal sexual conduct and is serving 200 months in prison. His criminal history also includes felony charges for 3<sup>rd</sup> degree assault and malicious punishment of a child for the incident involving the 2-year-old and a conviction for 5<sup>th</sup> degree assault.

At the initial hearing, the children were ordered to remain in out-of-home placement. The grandmother was not allowed supervised visitation with the children until she obtained an order for protection (OFP) against her husband. She obtained an OFP for both herself and the children. In her OFP petition, she claimed she was a victim of domestic violence and referred to instances when her husband had physically abused the eldest girl and slapped and choked the grandmother when she tried to intervene. The grandmother and step-grandfather's legal and physical custody was subsequently terminated under chapter 518.

A combined TPR and long-term foster care petition was filed six months after the CHIPS petition was filed. Parties to the proceeding included the GAL. Participants included the children, the maternal grandmother, the foster parent for the youngest girl, and the foster parent for the two boys. Long-term foster care was sought for the eldest girl and termination of parental rights for the other three children. The father of the two older children could not participate in the proceedings, and the father of the two younger children was in custody and did not appear for the hearings. The mother agreed to long-term foster care for three of the children, and it was ordered. Her rights to the youngest girl were terminated when she failed to appear for a hearing.

**Case #11**

This active case involves a 2-year-old boy. The mother, who was one of the subjects of the child protection proceedings in Case #10, is 15. The presumed father is 33. The mother's GAL in Case #10 has also been appointed for the child.

A CHIPS petition was filed three judicial working days after the child was placed on a 72-hour health and welfare following an interview at Corner House with his mother and his aunt. The mother and two of her siblings were also placed on a 72-hour health and welfare hold. The interview indicated that the mother's legal custodian (the presumed father) had been sexually active with her since she was 9 and impregnated her when she was 11. At age 12, she gave birth to the boy and has taken responsibility for his health and well-being. The petition also refers to the mother's mental health issues.

At the initial hearing, the mother and child were ordered to continue in out-of-home placement. A full-family foster home was ordered, but since none was available, the mother and child were placed at a residence for juvenile mothers. The presumed father, who was charged with two counts of 1<sup>st</sup> degree criminal sexual conduct, was not transported from the jail for the first two appearances. The mother was given a voluntary case plan that includes remaining in placement, allowing professionals' access to the child, providing appropriate medical care to the child, attending school, and having regular contact with the DCFS social worker. At the next hearing, the court expressed concern about the mother's parenting skills and the level of supervision of her child. After the fifth hearing, the mother was ordered to a residential treatment center in another city while the child was to remain in his current foster home.

A TPR petition was filed eight months after the CHIPS petition. Parties to the proceeding include the GAL, and participants include the child, the maternal grandmother, and the child's current foster parent. The presumed father subsequently voluntarily relinquished his parental rights. He is serving 200 months in prison after pleading guilty to one count of 1<sup>st</sup> degree criminal sexual conduct.

At a hearing earlier this year, the mother was making some progress with her case plan. A new TPR petition was recently filed and a trial is pending.

### **Case #12**

This active case involves seven children: two boys, ages 10 and 18, and five girls, ages 6, 8, 13, 16, and 17. The mother is 45. The alleged father of the eldest child's age is unknown, and the presumed father of the other children is 46. Both the alleged and presumed fathers are participants to the proceeding. A GAL has been appointed.

A CHIPS petition was filed two judicial working days after police placed five of the children on a 72-hour health and welfare hold due to extremely filthy and unsanitary conditions in the home. The other two children were babysitting at the time and were then reported to be on the run. According to the petition, the presumed father, who does not live in the home, had gone to a nearby store with two of the children. Police were called to transport him and the children home after he was observed to be intoxicated. Outside the house, police found a dog kennel with 10 dogs—one was dead, two were near death, and the rest were malnourished and dehydrated. The house smelled of rotting food and feces and was infested with cockroaches and flies. The plumbing did not work, and garbage was everywhere. One officer described it as “worse than the ones shown during police training for shock.”

The mother has a history with child protection. More than a year earlier, the DCFS received a report alleging educational neglect of four of the children. The children had missed more than a month of school. Maltreatment was found, but the mother agreed to voluntary services, which were provided for four months. At the time of the petition, the mother was receiving services from a community agency. The father, who has mental health and chemical dependency issues, was in detox.

The mother was arrested on probable cause misdemeanor child endangerment and taken into custody based on the incident described in the petition. She plead guilty and was sentenced to 365 days in prison stayed for two years providing she complies with the conditions of probation.

At the initial hearing, the children were ordered to continue in out-of-home placement with the mother given unsupervised visitation and the father no visitation. At the next hearing, the father was granted supervised visitation if the children desired. By the third hearing, the three youngest children were in the same foster home, the middle two children were in another foster home, and the two oldest children had moved to a school dormitory. The middle two children expressed dissatisfaction with their placement.

CHIPS was adjudicated four months after the petition was filed. A case plan, including psychological, psychiatric, and parenting assessments, individual and family therapy, in-home parenting services, securing safe and suitable housing, and having contact with the DCFS social worker, was ordered for the mother. The mother appears to have been partially complying with her case plan over the last four months. The father has remained sober for seven months and will soon begin an aftercare program. The next hearing will be to determine if the children can be returned to the mother's home.

**Case #13**

This completed case involved a 12-year-old boy and a 14-year-old girl. The divorced mother and father were 44 and 52, respectively. A GAL was appointed.

A CHIPS petition was filed three judicial working days after the children were placed on a 72-hour police health and welfare hold after a search warrant was executed for narcotics at the mother's boyfriend's home. The police reported that they found three guests who had injected methamphetamines and cocaine earlier in the day and admitted to coming to the house frequently to buy and inject drugs. A syringe with what was believed to be methamphetamines was found in the bathroom. Another syringe and a bent spoon were found in the mother's bedroom. Other drug paraphernalia were found in the house. The mother was arrested for probable cause child endangerment and narcotics, but not charged. She admitted to injecting cocaine and said she used to smoke marijuana.

The father has joint legal, but not physical, custody. It was decided at the initial hearing that the father would move into the house to care for the children and the mother would move out. The mother's preliminary case plan included a rule 25 chemical dependency assessment plus following all recommendations, random urinalyses, securing safe and suitable housing, an updated psychiatric evaluation, and supervised visitation. At the next hearing, the mother agreed to complete in-patient chemical dependency treatment, after which with two weeks of clean urinalyses she could be reunified with her children via progress report. The children were subsequently returned to her and in-home parenting services provided. CHIPS was adjudicated at the next hearing, and the case was dismissed as the mother was complying with her case plan.

**Case #14**

This completed case involved a 12-year-old girl. The mother's age was unknown. The adjudicated father, a participant to the proceeding, was 68. A GAL was not appointed.

A CHIPS petition was filed seven judicial working days after the DCFS received a report that the father had allegedly physically abused the child. The child came to school with welts on her arm and shoulder, which she said were caused when her father hit her with a belt and a plastic mini-blind arm. It was the third report of physical abuse that the DCFS had received in a year. The first report, which was substantiated, stated that the father hit the child with a mini-blind arm. A second report was not substantiated.

At the initial hearing, the child asked to be placed with her mother. This placement was ordered under protective supervision. The case was dismissed at the second hearing after it was determined that, although the child had lived with the father since the age of 4, the mother was the custodial parent.

### **Case #15**

This completed case involved seven children: three girls, ages 1, 9, and 15, and four boys, ages 3, 11, 13, and 18. The 36-year-old mother also has a 20-year-old daughter. The alleged father of the two youngest children was 56. The ages of the six other alleged fathers were unknown. The maternal grandmother, who had cared for the four oldest children for nine years, was a participant to the proceeding. A GAL was assigned.

The DCFS received a report that the mother, who was 33 weeks pregnant, tested positive for cocaine. Maltreatment was determined and a case was opened for services. When the baby was born a month later, both the mother and baby tested positive for cocaine. The mother signed a protective services plan for the three youngest children in which she agreed to complete chemical dependency treatment, submit urinalyses, accept public health nursing services, and ensure medical services for the children. For the next few months, her attendance at treatment was sporadic. At one point, the mother left the three youngest children with the maternal grandmother while she went to another state. When she returned, she learned that her mother had taken the three youngest children to the same state and left the four oldest children at a shelter with minimal supervision. She contacted the police to help her get the children back.

The police interviewed the maternal grandmother and the two oldest girls, who reported drug use, physical abuse, and allegations of sexual abuse in the home. The three youngest children were placed on a 72-hour health and welfare hold in the maternal grandmother's care. A CHIPS petition was filed three judicial working days later.

The mother has a history with child protection. She had a child protection case in another state that was opened 17 years ago when three men molested her oldest daughter, then 4 years old. The case was open for eight years, during which the mother made little progress on her case plan due to various hospitalizations and being in jail. The case was dismissed when the maternal grandmother moved to Minnesota with the children eight years ago.

The DCFS became involved with the family a year later when it received report of neglect due to the mother's alcohol abuse and educational neglect of the then-youngest child. During the course of investigation, the DCFS social worker uncovered a report of alleged sexual abuse of the other children by the mother's boyfriend and of the younger children by the older children. The boyfriend was also charged five times with 5<sup>th</sup> degree domestic assault of the mother over a two-year period, but the prosecutor dismissed all charges. A CHIPS petition was filed within two months with respect to the two youngest children. CHIPS was adjudicated three months later. The case was dismissed four months later as it was believed that the mother and her children had moved to another state.

CHIPS was adjudicated six months after the petition was filed in the most recent case and the maternal grandmother filed a petition to transfer legal custody of the children to her. The mother, who was initially working her case plan, agreed to this and the transfer occurred.





## **Appendix C: Minnesota Child Abuse and Neglect Statutes**

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<b>Definitions</b>	260.015	“Child in need of protection or services” (includes truant and runaways with abuse and neglect)
<b>Voluntary Placement</b>	257.071(3) 260.192 260.192(a)	If a child is not returned within six months, petition must be filed for review Review of voluntary placement within six months Upon review, court may continue six months
<b>Emergency Hearing or “Detention Hearing”</b>	260.133 260.172	Emergency order valid for no more than 14 days Court must hold hearing within 72 hours excluding Saturdays, Sundays, holidays; court may continue custody detention for eight days, excluding Saturdays, Sundays, holidays, but may continue custody every eight days, upon informal review
<b>Petition Filed</b>	260.131 260.133 260.171(2)(d)	Anyone may petition Within five days of temporary order for protection Cannot be held in shelter care for more than 72 hours unless petition filed excluding Saturdays, Sundays, holidays, and the judge determines child to remain
<b>Adjudicatory Hearing</b>	260.155 260.172(4)	In certain abuse and neglect cases, findings may be filed within 15 days (physical or sexual abuse) of hearing If child in custody, adjudicatory hearing within 60 days from detention hearing upon request of any party; may be continued to 90 days (or longer if good cause)
<b>Dispositional Hearing</b>	260.191	Disposition alternatives
<b>Court Reviews</b>	260.191(3a)	If child in residential facility, review every six months (defines residential facility as any group home or family foster home)

<b>Court Permanency Plan Reviews</b>	260.191(3b)(d)  260.242  260.191(3b)	After permanency plan decisions made, hearings as requested by federal law; if adoption plan is not finalized, or if disruption, no later than every six months After termination of parental rights, disposition hearing within 18 months of foster care placement and every two years after (unless long-term foster care) Child in residential facility, permanency plan hearing within 12 months
<b>Permanency Deadline</b>	Not specified	
<b>Agency or Citizen Review</b>	260.151	“Treatment screening teams”
<b>Reports, Plans</b>	260.171(6b)  260.191 260.191(e)  257.071	Report to court when child delivered to shelter care facility Disposition case plan must be filed with court Case plan written with parents, child, foster parents, etc. If child in foster care, case plan prepared within 30 days (including voluntary placement)
<b>Attorney/GAL for Children</b>	260.155(2)  260.155(4)	Court shall appoint counsel when it feels it is desirable, and child cannot afford Court shall appoint guardian ad litem in every abuse and neglect case
<b>Attorney for Parent</b>	260.155(2)	Court shall appoint if indigent and in any case court feels it would be desirable
<b>CASA</b>	Not specified	
<b>Termination of Parental Rights and Adoption</b>	260.221 260.231	Permits termination of parental rights within one year; presumption if out-of-home for more than one year and no indication that reunification possible in near future procedures
<b>Reasonable Efforts</b>	260.012  260.221(5)	Reasonable efforts defined; requires cultural competence Reasonable efforts on party of agency to reunite parents and children under termination of parental rights proceedings