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CONCURRENT PERMANENCY PLANNING: IMPLEMENTATION IN HENNEPIN COUNTY

Brian J. Guidera†

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I. INTRODUCTION

Child protection has a long and strong history in Hennepin County. Dating from the mid-1940s, the Hennepin County program was among the very first formal programs in the nation to offer child protection services specifically as a part of a broader child welfare system.¹ A recent article in a Minneapolis newspaper² alerted the public to new amendments to a Minnesota state law regarding child protective services.³ The law, effective July 1, 1999,

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1. See CHILD PROTECTION SERVICES, HENNEPIN COUNTY BUREAU OF SOCIAL SERVS., DECISION POINTS POLICIES (1990).

2. See Jean Hopensperger, *Law Puts Child's Rights to Stability First*, STAR TRIB. (Minneapolis - St. Paul), Aug. 23, 1999, at 1B.

3. See MINN. STAT. § 260C.201 (Supp. 1999) (formerly codified as § 260.191, subd. 3(b) (1998)).

“mandates that the Commissioner of Human Services establish a program for concurrent permanency planning for child protection services.”⁴ The new system dubbed “concurrent permanency planning” implements two plans, or tracks, for children entering the child protection system.⁵ One plan focuses on reuniting parents and children; the other seeks to find a permanent out-of-home placement for children.⁶ Both plans are pursued simultaneously.⁷ The new law speeds up the termination of parental rights for children who have been abandoned as infants, have spent fifteen of the past twenty-two months in foster care, have been exposed to “egregious harm,” or whose parents have lost parental rights to other children.⁸ If any of these instances occur, the courts are allowed to proceed directly to adoption.⁹ The change in law will have varied results throughout Minnesota and its eighty-seven counties. The counties are charged with the responsibility of providing child protection.¹⁰ This article will review the requirements of the law and discuss how Hennepin County, in particular,¹¹ plans to meet these new requirements.

II. BRIEF HISTORY OF CHILD PROTECTION

Initially, child protection concerns grew out of animal protection rights. In the 1860s, volunteers working on behalf of an abused child found the only way to seek protection was to have the child put under the guardianship of the American Society for the Prevention of Cruelty to Animals.¹² It was argued to the court that the child should have at least the same rights offered to the city’s workhorses.¹³ The case created the birth of a new movement: child

4. MINNESOTA DEP’T. OF HUMAN SERVS., BULLETIN # 98-68-7, DHS ISSUES GUIDANCE ON CURRENT PERMANENCY PLANNING 2 (1998) [hereinafter MDHS # 98-68-7].

5. See Hopensperger, *supra* note 2, at 1B.

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.*

10. See MINN. STAT. § 626.556 (1998).

11. See *Hennepin County Shows Small Loss in Census Bureau’s Latest Estimates*, STAR TRIB. (Minneapolis–St. Paul), Mar. 18, 1998, at 4B (reviewing latest census declaring Hennepin County as the largest and most populated county within the state of Minnesota).

12. See David Gibson, *A Century Of Caring: Children’s Aid Marks Anniversary*, THE RECORD (Bergen County, N.J.), Feb. 8, 1999, at A03.

13. See *id.*

protection.¹⁴

During the last twenty-three years, federal and Minnesota laws on child protection emphasized family preservation and family reunification. In many instances it was difficult to achieve permanence and stability for children since Hennepin County, along with other Minnesota counties, gave multiple chances to families who had abused and neglected their children. In fact, juvenile courts generally supported reunification with parents rather than other outcomes.¹⁵ On a national level, The Child Abuse Prevention and Treatment Act, passed in 1974, brought significant improvements to the child protective service programs throughout Hennepin County.¹⁶

Over the next six years, Congress passed three separate acts: (1) the Child Abuse Prevention and Treatment and Adoption Reform Act;¹⁷ (2) the Indian Child Welfare Act, which returned jurisdiction of Native American children to the tribes;¹⁸ and (3) the Adoption Assistance and Child Welfare Act.¹⁹

The Adoption Assistance and Child Welfare Act of 1980 focused attention on the numbers of children drifting into foster care.²⁰ The Act intended to preserve families and to provide permanency and stability to children.²¹ It required states to make reunification of children with their families a priority over permanent out-of-home placement.²²

In 1997, Congress passed the Adoption and Safe Families Act (ASFA) creating a major shift in federal policy in foster care and

14. *See id.*

15. *See* Victor I. Vieth, *The Mutilation of a Child's Spirit: A Call for a New Approach to Parental Rights in Cases of Child Abuse*, 20 WM. MITCHELL L. REV. 727, 727-79 (1994) (providing an excellent review of the difficulties encountered in achieving permanency for children).

16. *See* The Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 5 (1974) (codified as amended in scattered sections of 42 U.S.C. §§ 5101-5119c (1994 & Supp. III 1997)); NATIONAL ASS'N OF PUB. CHILD WELFARE ADMINISTRATORS, GUIDELINES FOR A MODEL SYSTEM OF PROTECTIVE SERVICES FOR ABUSED AND NEGLECTED CHILDREN AND THEIR FAMILIES 17 (1988) [hereinafter GUIDELINES FOR A MODEL SYSTEM].

17. *See* 42 U.S.C. §§ 5101, 5111-15 (1994 & Supp. 1997).

18. *See* 25 U.S.C. § 1901 (1994) (returning jurisdiction of Native American children to the tribes).

19. *See* 42 U.S.C. §§ 620-628a, 670-679a (1994 & Supp. III 1997).

20. *See* GUIDELINES FOR A MODEL SYSTEM, *supra* note 16, at 17.

21. *See id.*

22. *See id.*

permanency planning for children.²³ The Minnesota Legislature's Health and Human Services Omnibus Bill, effective July 1, 1998, implemented ASFA requirements by amending Minnesota statutory law as follows:

Except for cases where the child is in placement due solely to the child's status as developmentally delayed under United States Code, title 42, section 6001(7), or emotionally handicapped under section 252.27, and where custody has not been transferred to the responsible social services agency, the county attorney shall file a termination of parental rights petition or a petition to support another permanent placement proceeding under section 260C.201, subdivision 11, for all children who are placed in out-of-home care for reasons other than care or treatment of the child's disability, and who are in out-of-home placement on April 21, 1998, and have been in out-of-home care for 15 of the most recent 22 months. This requirement does not apply if there is a compelling reason documented in a case plan filed with the court for determining that filing a termination of parental rights petition or other permanency petition would not be in the best interests of the child or if the responsible social services agency has not provided reasonable efforts necessary for the safe return of the child, if reasonable efforts are required.²⁴

Congress directed the states to achieve permanency for the children who are in out-of-home care fifteen of the most recent twenty-two months in a staggered manner: one-third by the end of the first six months (January 1, 1999, for Minnesota); two-thirds by the end of one year (July 1, 1999); and all by the end of eighteen months (January 1, 2000).²⁵ Congress further directed the states to give priority to children whose permanency plan is adoption and to children who have been in out-of-home care for the longest period of time.²⁶

23. See Adoption and Safe Families Act of 1997, 42 U.S.C.A. §§ 673b, 678, 679b (1999).

24. MINN. STAT. § 260C.301, subd. 4 (Supp. 1999); MINN. DEPT. OF HUMAN SERVS., BULLETIN # 99-68-6, DHS REQUESTS ASSISTANCE IN ASSURING COMPLIANCE WITH AFSA 2 (1999) [hereinafter MDHS # 99-68-6].

25. See MDHS # 99-68-6, *supra* note 24, at 2.

26. See *id.*

III. GUIDELINES IMPLEMENTATION

In an effort to provide guidance and understanding to Minnesota counties, the Minnesota Department of Human Services (MDHS) issued a publication explaining the minimum requirements for concurrent permanency planning.²⁷ The MDHS defines permanency for children as:

the development and delivery of services to the parents and child that will first allow the child to safely return home with a reasonable prospect of remaining in the care of a parent for the foreseeable future, or when that is not possible, will provide the most appropriate legal permanent home away from the parents. The health, safety, and best interests of the child are the paramount consideration in determining permanency for a child.²⁸

Under current Minnesota permanency planning there are two tracks to follow in order to achieve permanency for a child. One track involves services for the child's parent(s) so that the child can safely return home within a specified period of time. The other track, pursued simultaneously as the first, places the child with a family that assumes care of the child, assists and supports reunification efforts with the biological parent, but also pursues adoption if reunification does not take place within the given timeline.²⁹

The five goals of concurrent permanency planning are outlined by the MDHS as follows:

1. Achieve early permanency for the child;
2. Decrease the child's length of stay in foster care;
3. Reduce the number of moves a child experiences in foster care;
4. Develop a group of families who will work toward reunification and also serve as permanent families for children; and

27. See MDHS # 98-68-7, *supra* note 4, at 1 (transmitting copy of Concurrent Permanency Planning Guidelines).

28. FAMILY & CHILDREN'S SERVS. DIV., MINNESOTA DEP'T. OF HUMAN SERVS., CONCURRENT PERMANENCY PLANNING GUIDANCE 1 (1998) [hereinafter C.P.P. GUIDANCE].

29. See *id.* at 3.

5. Decrease the likelihood the child will re-enter care in the future.³⁰

IV. TARGET POPULATIONS FOR CONCURRENT PERMANENCY PLANNING AND IMPLEMENTATION

All children subject to abuse or neglect may be considered subjects for concurrent permanency planning. However, the MDHS requires concurrent permanency planning for children in the following three situations:³¹

1. Immediate permanency cases,³² including Native American children;³³
2. Children under eight and their siblings entering out-of-home care who more than likely will remain in out-of-home care more than ninety days or whose parent's prognosis is deemed poor;³⁴ and
3. Children under age eight and their siblings who remain in out-of-home care for more than ninety days regardless of their parent's assessment.³⁵

While concurrent permanency planning applies to children who are placed outside of their homes due to potential neglect or abuse by their parents, it does not apply to children who are placed outside of their homes due *solely* to their own behavior (e.g., delinquents, runaways, or truants) or due *solely* to lack of development (e.g., emotionally handicapped).³⁶

Hennepin County's Children and Family Services Division

30. *Id.* at 6; see also MINN. STAT. § 257.0711, subd. 1 (1998).

31. See C.P.P. GUIDANCE, *supra* note 28, at 7.

32. See *id.* at 8. The MDHS defines the elements initiating immediate permanency as instances where a child's safety and best interest are at risk, for example:

(1) if a child has experienced egregious harm while in the parent's care; or (2) if abandoned as an infant; or (3) if the rights of another child to the parent were involuntarily terminated; or (4) if efforts to reunite the parent and child have proven to be futile, then the child may be placed in immediate permanency planning.

Id.

33. See *id.* at 6 (defining Indian child as stated in the Minnesota Indian Family Preservation; see MINN. STAT. § 257.351, subd. 6 (1998)).

34. See *id.*.

35. See *id.*

36. See *id.* at 5.

(CFSD) has structured permanency planning by establishing a Permanency Team. One branch of the Permanency Team is chaired by the CFSD Department Director and another branch is chaired by a CFSD Senior Division Manager. Additionally, representatives from Kinship Units,³⁷ Children's Mental Health, Long Term Foster Care, Adoptions, Child Protection, Legal Services and the County Attorney's Office meet weekly with social workers and supervisors to review individual cases. The review process ensures that reasonable efforts are offered, that kinship searches are completed, and that CHIPS³⁸ findings are present. Finally, the Permanency Team makes sure that the CFSD follows the permanency guidelines and approves a permanency plan for each child.

By implementing a two-track system, the CFSD created a post-investigative Child Protective Services Upfront Section (Upfront)³⁹

37. Kinship Unit refers to a specific unit of social workers which are responsible for contacting all the relatives of a child going into placement. The Unit's main focus is to attempt to place the child with a relative if at all possible. In order to insure the safety and maintain the best interests of the child, checks and balances require that relatives utilized in this manner be screened and licensed as if they were part of the foster care network. Once licenced the relative becomes a foster parent eligible to receive foster care benefits while they care for the child.

38. Children in need of protection or services (CHIPS) refers to children designated as dependent or neglected. *See* MINN. STAT. § 260C.001 to 260C.451 (Supp. 1999). This group includes children who are: abandoned; victims of physical or sexual abuse; lack necessary food, clothing, shelter, education or other required physical and medical care; involved in prostitution; runaways; juvenile delinquents; or habitually truant. *See* MINN. STAT. § 260C.007, subd. 4(1)-(16). Once a child is designated as in need of protection or services, he/she is under the juvenile court's jurisdiction. In determining the child's needs, his or her health and safety concerns are paramount. *See* MINN. STAT. §§ 260C.012(a), 260C.101. Any reputable person may petition the juvenile court if that person has knowledge of a child residing in Minnesota who is in need of protection as defined above. *See* MINN. STAT. § 260C.141. The petition must include a statement which: lists the facts establishing the need for protection; declares no protection was provided after reporting the circumstances to the local social services; indicates whether there are any pending juvenile or custody orders; and describes the relationship of the petitioner to the child and any other parties. *See* MINN. STAT. § 260C.141, subd. (b)(1)-(4). Should the court find that a child is in need of protection or services after a hearing the court will enter an order providing appropriate disposition specific to the child's needs. *See* MINN. STAT. § 260C.201.

39. Upfront Unit refers to the child protection units which works with high-risk families. If the child is in no immediate, eminent harm, then upon entering the system that child is assigned to an Upfront Unit social worker. Each social worker within an Upfront Unit handles a smaller caseload consisting of approximately 8-10 cases. The social worker dispenses more intense attention on a one-to-one basis with the family. The worker is more closely involved, visiting the family at least four times per month in an intensive effort to keep the children within their family or to work at reunification. The social worker is required to make

that works intensively with families in order to keep children safe in their home or safely reunites children with their families within the permanency timelines. Upfront meets with the Permanency Team at either six months from the time of court-ordered placement for children who do not meet concurrent permanency planning requirements, or at three months from the time of court-ordered placement for concurrent permanency planning targeted populations. The case is transferred to the Child Protection Permanency Section only if the CFSD gives permission to recommend to the court either a transfer of legal custody to a relative or a termination of parental rights.

All children with permanency findings are assigned two case-workers, a Child Protection Permanency worker and a Child Services worker, who monitor the child's needs and progress while in out-of-home placement. Children who are identified at the time of placement as requiring concurrent permanency planning, are followed by the CFSD to ensure compliance with the required guidelines.

V. SERVICE PROTOCOLS

Service protocols have developed from the Department of Humans Services Bulletin Guidelines which include the following five aspects of concurrent permanency planning: (1) protocols for conducting thorough parent and child assessments; (2) early identification of needed services; (3) recruitment of permanency resource families; (4) full disclosure to parents; and (5) frequent, meaningful visitation.⁴⁰

A. *Protocols for Conducting Thorough Parent and Child Assessments*

The CFSD is involved in two initiatives which will improve various types of parental assessments, including chemical and mental health assessments.⁴¹ The CFSD is also exploring how to include domestic abuse experts in case planning and consultation. It is anticipated that these initiatives will be implemented during the beginning of the year 2000.

open field visits, that may include parenting assistance, or other training which might allow the family to faster regain a solid footing.

40. See C.P.P. GUIDANCE, *supra* note 28, at 16-19.

41. See *id.* at 16-17.

B. Early Identification of Needed Services

Approximately three years ago, the CFSD developed Child Service units to focus solely on the needs of children in placement. The development of this model has offered CFSD the opportunity to develop more comprehensive placement plans and identify assessment and service needs very early in its work with children. The CFSD is aiming at expanding this service to all of the children in placement. Only by thorough interdisciplinary assessments of parents and of children in placement is it possible to identify service needs in a timely manner.⁴²

C. Recruitment of Permanency Resource Families

The CFSD addresses recruitment of permanency resource families in two ways. First, expansion of the Kinship Unit enables the CFSD to complete a comprehensive relative search and an extensive study on each child in placement. The CFSD's highest priority is to place children in out-of-home care with a relative for both interim and permanent care.⁴³ Second, the CFSD's foster care and adoption program will continue to increase the number of foster care and permanent home resources. Further development is planned for the foster care and adoption program, for review of state-of-the-art programs for new ideas, and for seeking technical assistance to ensure timely permanency for children.

D. Full Disclosure to Parents

The CFSD plans to develop both written information for parents and training for all direct service staff to assist parents in understanding concurrent permanency planning and all of its ramifications.⁴⁴ However, this role is not solely the role of the CFSD, both the office of the Public Defender and the court must inform parents and families of the laws related to concurrent permanency planning and their potential outcome.⁴⁵

E. Frequent Meaningful Visitation

Frequent, meaningful visitation is always a challenge as it

42. *See id.* at 17.

43. *See id.* at 18.

44. *See id.*

45. *See id.* at 18-19.

serves a number of purposes, including: maintaining contact with parents and siblings, providing an opportunity to observe parenting skills, and establishing an opportunity for parenting training and support.⁴⁶ In the past year, the CFSD developed a pilot visitation site with a community agency. The CFSD plans to continue expanding this effort. Currently, the CFSD has multiple facilities for visitation, one in its central office and two at other Hennepin County community locations. Case management assistants help facilitate visits at all locations. Child Protection workers and Child Services workers function in tandem to plan and facilitate visits with parents and siblings. An additional challenge will be to provide visits that coordinate with work and school schedules for parents and their children. However, this challenge does not represent a change for the CFSD as this has been and continues to be its practice. The use of contract providers in this context will be further explored in the future.

VI. CONCLUSION AND CONCERNS

In 1998, Hennepin County saw 938 children referred to Upfront, 373 in placement and 272 in concurrent permanency planning.⁴⁷ As of August 1999, 294 were referred to Upfront; 272 in placement; and 124 in concurrent permanency planning.⁴⁸ The CFSD is confident it is able to manage the procedural aspects of concurrent permanency planning. However, the acceleration of permanency timelines has placed increased pressure on parents to comply with case plans within shorter time intervals than in past years. Parents and caretakers, especially those with serious domestic abuse and chemical use problems, will need to engage quickly, intensely and efficiently in treatment, allowing little time for relapse. The opportunities to have children reunited with their families may have positive outcomes, but many advocates fear that more children will have other out-of-home permanency outcomes. Implementation of the concurrent permanency placement program

46. *See id.* at 19.

47. The numbers listed are tabulated internally for Hennepin County by staff member David Wyrens of the Information and Technology section. The data presented is kept in the course of Hennepin County's activities in the area of child services and is utilized within the various departments of Hennepin County. It is presented here to demonstrate the numbers of real people who find themselves faced with permanency placement of their children.

48. *See id.*

will require the CFSD and its contract community providers to have sufficient treatment options, as well as sustained support in the community for parents and caretakers who have successfully completed treatment.

The counties, the state, the legislature and the courts all need to carefully evaluate the outcomes of a commitment to concurrent permanency planning. There are five major areas which require further consideration: early permanency; length of stay in foster care; number of changes of placement; increase in number of resource families; and fewer incidents of recurrence of abuse. From the time a decision is made to terminate parental rights, children remain in pre-adoptive status an average of eighteen months. A transfer of legal custody may not occur for some children until they have been in foster care for six to eighteen months and all relative searches and home studies are completed. Early permanency requires careful consideration, and a clear representation of time lines.

If the CFSD increases the number of children requiring early permanency, then foster families may be asked to be a permanent resource for the child. Foster families must, therefore, be informed that the first or second placement may become the child's permanent placement and further, be prepared for that situation. Such an action would require greater commitment by the foster families, and may result in a diminished number of willing foster families.

The CFSD plans to increase its recruitment efforts in order to supply a sufficient number of resource homes for temporary foster care, legal custody transfers, adoption and long term foster care. Concurrent permanency planning and early permanency will hopefully decrease the number of moves a child makes while in out-of-home placement. Further, these initiatives should lessen the chance of abuse. Above all, Hennepin County's plan and hope is for children to be safe and stable in either their original homes or in new permanent homes.
