

Minnesota Must Change the Law to Mandate the Right to Counsel for Parents in Child Welfare Cases from the First Hearing On

When a child is removed from their home by the state, no parent should have to navigate the legal system on their own. Yet because Minnesota is one of only eight states that does not mandate representation for parents who cannot afford an attorney, some parents do. In even more cases, parents are not represented at their initial removal hearing where their due process rights and their constitutional right to parent are considered by a judge.

National research is clear. **High quality legal representation for parents from the initial hearing on leads to better outcomes for children and families. These outcomes include reunifications that occur more quickly and last longer (fewer system reentries); permanency being established for children sooner; and parents engaging in services more quickly and effectively.**

Children are adversely impacted when they are removed from their homes and separated from their family. Removals traumatize children and we should do all we can to keep children safely in their homes. When we cannot keep children at home and removal is necessary, children fare better when their parents have consistent and quality attorneys.

Parent Attorneys Provide Critical Services to Families in Child Protection Cases

If a child is removed from their home, it is usually not until the first hearing that parents learn what the allegations are against them. This information comes at a time when parents are emotional and frightened because parents do not know where their children are or what will happen to their family moving forward. The first hearing is called an Emergency Protective Care (EPC) hearing and it typically occurs 72-hours after removal.

Extremely important matters are at stake during this all too brief hearing and in many counties across Minnesota parents are left to advocate without an attorney. At the EPC hearing, the judge decides if there is a constitutional basis for removal, where the children will live until the matter is resolved, and how often the children will be able to see their parents. Research is currently being done to determine in how many cases in Minnesota parents do not have attorneys at their initial hearing but it possible that it could be as high as 40%.

Attorneys ensure the law is evenly applied, protect their clients from unjust accusations, and assist in creating visitation and case plans that make sense for the family. Without an attorney present to advocate for the family's perspective, we risk unnecessarily separating families, distressing familial bonds, and traumatizing children.

Further, we risk matters of constitutional due process when parents are left without an attorney. The right to parent one's children is a constitutionally protected right and interference is not taken lightly. Parents alone cannot safeguard their rights and must have a lawyer present to explain their rights and responsibilities under the law.

The County by County Approach Promotes Unequal Treatment

MN Statute 260.163 Subd. 3 governs appointment of counsel for child protection matters. The law tells us that although parents have a right to counsel, there is no right to guaranteed counsel and instead, the court can approve counsel where they feel it is appropriate. Currently, each county decides how they will handle public appointment as counties are responsible for the cost of appointment. In some counties, there is always an attorney with parents for their EPC hearing. Other counties go farther by providing an attorney for both parents whereas in other counties only one parent will have access to an attorney. However, in some counties there is never an attorney available for parents at their EPC hearing. Additionally, the type of contract, wage, and work environment offered to parent's attorneys varies widely by county. This disparity contributes to the gap of attorneys willing to provide these critical legal services. Ultimately, our county by county approach yields disparate treatment for families across the state and can severely disadvantage families in rural counties.

The following changes are proposed to MN Stat. 260C.163 Subd. 3:

Current: (c) Except in proceedings where the sole basis for the petition is habitual truancy, if the parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the parent, guardian, or custodian in any case in which it feels that such an appointment is appropriate if the person would be financially unable to obtain counsel under the guidelines set forth in section 611.17. Court appointed counsel shall be at county expense as outlined in paragraph (h).

Proposed New Statute: (c) In all child protection proceedings where a child is at risk of removal from their parent, guardian or custodian care as evidenced by a government action either pursuing a child's removal from the home, filing a child in need of protection or services petition, termination of parental rights petition, or permanent placement petition, if the parent, guardian or custodian desires counsel and is eligible under the guidelines set forth in section 611.17, the court shall appoint counsel to represent each parent, guardian or custodian at all stages of the proceedings. If a parent, guardian or custodian is eligible for court appointed counsel and wishes to have an attorney present, they must be represented no later than the parent, guardian or custodian's first court appearance. A parent, guardian or custodian shall be represented at county expense.

Federal Aid Exists to Assist in Payment for Parent's Attorneys

The Children's Bureau announced a policy change in December of 2018 to allow Title IV-E of the Social Securities Act to be used for up to a 50% percent federal reimbursement for the cost of parent's attorneys where children are financially eligible. Eligibility is determined by federal guidelines related to the families' income. In Minnesota about 38 percent of children in foster care meet the eligibility criteria for financial reimbursement. DHS is currently working with counties to implement this new policy.