

01-01-91
MFI
124557

Research Department
Minnesota House of Representatives

The Research Department of the Minnesota House of Representatives is a non-partisan professional research organization serving the needs of members of the House and its committees. The Department assists members and committees in developing legislation, drafting and amending legislation.

The Department also conducts in-depth research studies and reports on issues and provides information regarding public policy issues to House members.

Research Department
Minnesota House of Representatives
100 State Office Building, S.W. Tower
St. Paul, MN 55155

YOUTH AND THE LAW

A Guide for Legislators

November 1988

124557

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Minnesota House of Representatives
Research Department

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

YOUTH AND THE LAW was a cooperative project by Legislative Analysts in the Research Department of the Minnesota House of Representatives. Topical questions should be addressed to the analyst who covers that particular subject area.

ECONOMIC PROTECTION	Deborah McKnight	296-5056
EDUCATION	Lisa Larson	296-8036
FAMILY RELATIONS	Deborah McKnight	296-5056
HEALTH	Randall Chun	296-8639
SOCIAL SERVICES	Laura Kadwell	296-5044
CRIMINAL LAW	Emily Shapiro	296-5041
CIVIL LAW	Deborah McKnight	296-5056
JUVENILE LAW	Emily Shapiro	296-5041

Secretarial Support was provided by Jackie Ballard

Contents

	<u>Page</u>
CONTENTS	i
INTRODUCTION	iii
GLOSSARY	v
PART I: The Laws	
Laws Index	1
Economic Protection	7
Educational Rights and Responsibilities	13
Family Relations	21
Health and Social Services	27
Criminal Violations by Youths	33
Criminal Violations Against Youths	35
Miscellaneous Age Provisions	41
PART II: The Courts	
Civil Adult Court	45
Criminal Adult Court	47
Juvenile Court	51

Introduction

Youth and the Law describes Minnesota statutes and cases that provide rights, responsibilities, and protections for young people different from those applicable to adults. The purpose of the guidebook is to give legislators an overview of all laws affecting young people in order to have a reference aid on current state policies toward youth. The guidebook should prove useful for evaluating any proposals for changing these policies.

This is basically a *STATE GUIDE*. Federal statutes and cases are included only in a few areas where they dictate state policy or where state policy has been closely linked with federal law for some other reason. *Youth and the Law* does not attempt to cover federal statutes, cases or programs in general.

LEGAL DISTINCTIONS are generally made between adults, who are statutorily defined as age 18 and over, and minors, who are statutorily defined as under age 18. *Youth and the Law* uses the terms "minor" and "child" as synonyms. Exceptions occur if the text clearly indicates that "child" means a minor of a particular age or means an individual of any age in relation to his or her parents.

Youth and the Law is divided into two parts: Part I consists of substantive laws organized by subject categories. An index to the topic of each statute is provided at the beginning with page reference. Part II explains the courts and procedures that deal with youths. A glossary of terms used throughout both Parts I and II is provided at the beginning of the guide.

Unless otherwise noted, all citations are to Minnesota Statutes, 1988 or Minnesota Rules, 1988 Supplement.

Glossary

Age of Majority	The period of time after an individual reaches the age of 18 (M.S. 645.451, subdivision 5).
CHIPS	An acronym denoting a category of juvenile court jurisdiction. "CHIPS" means Child in Need of Protection or Services.
Civil Action	A lawsuit to establish or redress certain rights. It can be based on a statutory right or a legal rule developed in court cases. It can involve seeking payment of money (damages) or compelling someone to act or refrain from an action (injunction). It involves no possible criminal punishment, such as imprisonment, criminal fine, or developing a record of a criminal conviction. Civil action examples: personal injury, breach of contract, marriage dissolution.
Contract	An agreement between two or more persons that creates a legal obligation to do or not to do a particular thing, such as to perform a service or to buy or sell goods or real estate.
Crime	Conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.
Delinquent	A minor ten years old or older who has committed an act that would be a crime if committed by an adult.
Felony	A crime punishable by a sentence of more than one year imprisonment. Fines for felony offenses may range from \$3,000 to \$1,000,000, depending on the offense.
Gross Misdemeanor	A crime punishable by a sentence of incarceration for more than 90 days but not more than one year, and/or up to a \$3,000 fine.
Juvenile	A person who is younger than the age of majority.
Legal or Full Age	Eighteen years of age or older. (M.S. 645.451, subd. 6).
Misdemeanor	A crime punishable by a sentence of up to 90 days incarceration and/or up to a \$700 fine.
Petty Misdemeanor	An offense that is not a crime, which carries no possibility of imprisonment, but for which a sentence of a fine of up to \$200 may be imposed.
Statute of Limitations	A deadline set by statute for beginning a particular kind of lawsuit.
Tort	The area of law that involves (1) the breach of a duty to another person, (2) imposed by law, (3) when the person is injured by the breach. It is sometimes defined as the law of legal wrongs committed by private individuals against each other, not based on contracts. Examples include personal injury and libel.

Part I.

The Laws

Minnesota law makes many distinctions between adults and young persons' rights and responsibilities. Part I describes the major statutory and case law that differentiates between youths and adults. These provisions have been divided into the areas of economic regulations, education, family relations, health and social services, and criminal law. There is a miscellaneous section for other age provisions. An index of the subject of each law is provided at the beginning of Part I.

Usually, legal distinctions are drawn at the age of majority, which is statutorily defined as 18 years. Persons under 18 are minors. They are deemed less able than adults to take responsibility for themselves or to carry out obligations to others. Similarly, they are considered more in need of protection both from their own inexperienced judgments and from the actions of others.

Minnesota law makes some distinctions between adults and youth at points other than 18 years. For example, a few rights are withheld and a few protections are extended until ages 19 or 21 in the belief that 18 year olds are not ready to be entirely on their own in particular areas. On the other hand, not all minors are treated identically under the law. In some instances younger children are considered in need of greater protection or unable to carry out the greater responsibilities of older children. As a result, certain statutes treat minors under such ages as 16, 14, or 10 differently from minors over those ages.

Laws Index

ECONOMIC PROTECTION

CHILD SUPPORT	8
All Parents	8
Divorced Parents	8
Support Guidelines	8
Unmarried Parents	8
Enforcement	8
Step-parents	8
PROPERTY RIGHTS	9
Control of a Minor's Earnings or Property	9
Minor's Contracts	9
Wills	9
Inheritance from Parents	9
Uniform Transfers to Minors Act	9
EMPLOYMENT	10
Age Restrictions	10
Day and Hour Restrictions	10
Occupation Restrictions	10
Exemptions from Restrictions	10
Minimum Wage	10
Age Discrimination in Employment	11
Unemployment Compensation	11

EDUCATIONAL RIGHTS AND RESPONSIBILITIES

COMPULSORY ATTENDANCE	14
Age of Attendance; Compulsory Attendance; Penalty	14
Residency Requirements	14
Enrollment Options	14
DISCIPLINE	15
Corporal Punishment	15
Dismissal Generally	15
Suspension	15
Expulsion and Exclusion	15
Removal from Class	15
PARTICIPATION IN ATHLETICS	16
State Discrimination Law	16
Federal Discrimination Law	16
Equal Protection Clause	16
Right of Participation	16
HANDICAPPED CHILDREN	17
Education for all Handicapped Children Act of 1975	17
Availability and Procedural Requirements Under State Law	17

PUBLIC SCHOOL FEE LAW	17
Prohibited Fees	17
Authorized Fees	17
ACCESS TO INFORMATION	18
Student's Right to Inspect	18
Parent's Right to Inspect	18
RIGHTS OF NON-PUBLIC SCHOOL PUPILS	18
Educational Materials and Pupil Support Services	18
Transportation	18
Tuition Tax Deduction	18
FIRST AMENDMENT RIGHTS	19
Freedom of Speech	19
Prayer in the Schools	19
Religious Observances	19
Course Requirements	19
Access to Facilities for Religious Purposes	20
Exemption from Compulsory Attendance	20
FOURTH AMENDMENT RIGHTS	20
Search and Seizure	20
Drug Testing	20
FAMILY RELATIONS	
ALL FAMILIES	22
Child's Residence	22
Housing Discrimination Against Families with Children	22
Emancipation of a Minor	22
Marriage by a Minor	22
DIVORCED PARENTS	22
Child Custody	22
Changing Child's Residence	22
Parent's Visitation Rights	23
Other Parental Rights	23
Grandparent's Visitation Rights	23
DECEASED PARENTS	23
Appointing a Guardian for an Orphan	23
UNMARRIED PARENTS	24
Child Custody and Visitation	24
Establishing Parentage	24
ADOPTED CHILDREN	24
Required Consents	24
Adoptee's Access to Original Birth Certificate	25
Adoptee's Access to Other Information	25

HEALTH AND SOCIAL SERVICES

MINORS' CONSENT FOR HEALTH SERVICES	28
Marriage or Giving Birth	28
Living Apart from Parents and Financially Independent	28
Pregnancy, Venereal Disease, Alcohol or Drug Abuse	28
Emergency Treatment	28
Representations to Persons Rendering Service	28
Information to Parent	28
Financial Responsibility	28
Blood Donations	29
Anatomical Gifts	29
Abortion	29
Voluntary Institutional Treatment	29
Insurance	29
SOCIAL SERVICES	30
Child Welfare	30
Child Care	30
Community Social Services	30
Foster Care Review	30
Subsidized Adoption Program	30
Child Abuse Reporting	31
Medical Neglect	31
Child Abuse Prevention Trust Fund	31

CRIMINAL VIOLATIONS BY YOUTHS

Purchase and Consumption of Alcoholic Beverages	34
Use of Tobacco or Tobacco-Related Devices	34
Possession of a Pistol	34
Possession of a Firearm	34
Possession or Use of Toxic Glue	34
Possession or Use of Tear Gas	34
Possession or Use of Electronic Incapacitation Device	34

CRIMINAL VIOLATIONS AGAINST YOUTHS

PORNOGRAPHY LAWS	36
Child Pornography	36
Dissemination of Obscene Works to Minors	36
SEXUAL ABUSE LAWS	36
Criminal Sexual Conduct	36
Prostitution	36
Sexual Solicitation	37

PHYSICAL AND EMOTIONAL ABUSE LAWS	37
Death Caused by Child Abuse	37
False Imprisonment	37
Malicious Punishment	37
Neglect	37
Nonsupport	37
Kidnapping	38
Parental Abduction	38
SAFETY LAWS	38
Unused Refrigerator or Container	38
Tobacco Sales	38
Tear Gas Sales	38
Electronic Incapacitation Device Sales	38
Toxic Glue Sales	38
Child Restraint Seats	38
DRUG-RELATED LAWS	39
Drug Distribution to Persons Under 18	39
Drug Possession on School Property	39
Drug Paraphernalia Sales	39
MISCELLANEOUS CHILD PROTECTION LAWS	39
Sale of Alcoholic Beverages	39
Dance Halls	39
Pawnbrokers and Junkdealers	39
Abduction for Marriage	40
Contributing to Delinquency	40
MISCELLANEOUS AGE PROVISIONS	
Access to Government Records	42
Driver's License	42
Fishing and Hunting Licenses	42
Office Holding	42
Voting	42
CIVIL ADULT COURT	
Parental Liability for Children's Torts and Contracts	46
Parents' Liability to Children	46
Injury to Minors	46
Statute of Limitations	46
Minors as Witnesses	46

CRIMINAL ADULT COURT

Criminal Responsibility	48
Admissibility of a Child's Hearsay Statements in Child Abuse Cases	48
Testimony by Closed Circuit TV or VideoTape	48
Minors as Witnesses	48
Child Sex Abuse Victims	48
Exclusion of Public from Trials Involving Children	48
Exclusion of Children from Criminal and Scandalous Trials	48
Care and Custody of Juvenile Offenders	49

JUVENILE COURT

PURPOSE AND JURISDICTION OF JUVENILE COURT	52
Juveniles Who Commit Unlawful Acts	53
Referral for Adult Prosecution	53
Juvenile Court Dispositions	53
CHIPS Cases	54
Types of Dispositions	55
COURT PROCESS FOR DELINQUENCY AND OTHER OFFENSES	55
Apprehension	55
Pretrial Detention	55
Filing of Petition or Citation	55
Arraignment Hearing	56
Reference for Adult Prosecution	56
Adjudicatory Hearing	56
Disposition Hearing	56
Major Constitutional Rights of a Child in Juvenile Court	57
COURT PROCESS FOR CHIPS CASES	58
Pre-Adjudication Detention	58
Filing of Petition or Citation	58
First Appearance	59
Adjudicatory Hearing	59
Disposition Hearing	59

ECONOMIC PROTECTION

Minors' economic rights and activities are heavily regulated by statute because it is believed that minors are much less able than adults to support themselves, to make decisions about managing property, or to bargain as equals in employment and other business situations.

CHILD SUPPORT	8
All Parents	8
Divorced Parents	8
Support Guidelines	8
Unmarried Parents	8
Enforcement	8
Step-parents	8
 PROPERTY RIGHTS	9
Control of a Minor's Earnings or Property	9
Minor's Contracts	9
Wills	9
Inheritance from Parents	9
Uniform Transfers to Minors Act	9
 EMPLOYMENT	10
Age Restrictions	10
Day and Hour Restrictions	10
Occupation Restrictions	10
Exemptions from Restrictions	10
Minimum Wage	10
Age Discrimination in Employment	11
Unemployment Compensation	11

Child Support

ALL PARENTS

A parent who is financially able to support a child but fails to do so may have his or her parental rights terminated by the juvenile court. *M.S. 260.221 (b)(2)*

DIVORCED PARENTS

The court may order either or both parents to pay child support. A parent may also be required to provide health insurance or pay medical expenses for a child. Child means an individual: (1) under 18; (2) under 20 who is still attending secondary school; or (3) who, because of his or her physical or mental condition, cannot support himself or herself. *M.S. 518.17(4); 518.171; 518.54, subd. 2*

SUPPORT GUIDELINES

Statutory guidelines amounts and other specified factors affect the amount of parental support courts will award to children of divorced parents, unless the parents each have separate counsel and reach their own support agreement. *M.S. 518.551, subd. 5*

UNMARRIED PARENTS

If an individual admits she or he is a child's parent or if parentage is established in a court action, the individual is legally obligated to support the child. *M.S. 257.67, subd. 1*

ENFORCEMENT

If a court orders a parent to pay child support, including health insurance or medical costs, legal mechanisms exist to enforce the order in Minnesota or against a parent who moves to another state. *M.S. 256.87; 257.66; 518.611; 548.091; Chapter 518C; 518.613; and 518.614*

STEP-PARENTS

In determining the amount of public assistance to be granted for a dependent child, the income of a step-parent living in the same household will be considered, after subtracting the first \$75 of earned income and any amount the step-parent pays to support other dependents and for alimony and child support. *M.S. 256.74, subd. 1a*

When a divorced parent seeks a change in court-ordered child support, the income of both parents' new spouses, if any, will not be considered in raising or lowering the support amount. *M.S. 518.64, subd. 2*

Property Rights

CONTROL OF A MINOR'S EARNINGS OR PROPERTY

A parent or guardian may claim a minor's wages by notifying the minor's employer. Otherwise, the minor has control of his or her own wages. *M.S. 181.01*

A minor may control his or her own savings account. *M.S. 48.30*

MINOR'S CONTRACTS

A minor may make a contract but may choose not to complete it, unless it involves the purchase of necessities, like food or shelter. Miller v. Smith, 26 Minn. 248, 2 N.W. 942 (1879)

WILLS

A minor may not make a will. *M.S. 524.2 - 501*

INHERITANCE FROM PARENTS

If an individual is adopted, she or he has a legal right to an intestate share of the adopted parents' estate but not to the biological parents' estate, unless the individual was adopted by a step-parent. *M.S. 524.2 - 109*

If a parent does not make a will, children of any age whose parents were married share the estate with the surviving spouse. If no spouse survives, the children share the estate among themselves. *M.S. 524.2-102 and 524.2-103*

If parents were not married to each other and did not leave wills, children of any age inherit from either parent, if parentage is established pursuant to the Uniform Parentage Act. *M.S. 524.2 - 109*

If a parent makes a will, he or she may intentionally disinherit a child. If it seems the child was omitted from the will by error or because of being born after the parent's death, the child will inherit something. *M.S. 524.2-108 and 524.2-302*

UNIFORM TRANSFERS TO MINORS ACT

Any kind of property (money, real estate, stocks, etc.) may be transferred to a custodian for a minor's benefit. A custodianship created under this 1985 act lasts until age 21. *M.S. 527.21 to 527.44*

Employment

AGE RESTRICTIONS

No minor under the age of 14 may be employed, except: (1) a minor may be an actor, performer, or model; (2) those 11 and older may be newspaper carriers; (3) those 12 and older may work in agricultural operations. *M.S. 181A.04, subd. 1; 181A.07, subds. 1, 2, 3*

DAY AND HOUR RESTRICTIONS

On school days during school hours, no minor under 16 years may be employed except with a valid employment certificate. *M.S. 181A.04, subd. 2; 181A.05*

No minor under 16 may work any day before 7 a.m. or after 9:30 p.m. except as a newspaper carrier. *M.S. 181A.04, subd. 3; 181A.07, subd. 3*

No one may employ a minor under 16 more than 40 hours per week or more than eight hours in any 24-hour period, except for minors working in agricultural operations with their parents' or guardian's permission. *M.S. 181A.04, subd. 4; 181A.07, subd. 1*

OCCUPATION RESTRICTIONS

All minors may be excluded from employment in any occupation which the Commissioner of Labor and Industry finds by rule hazardous to their well-being. The Commissioner also has the power to exempt an individual minor from this restriction. *M.S. 181A.04, subd. 5; Minn. Rules 5200.0940-0960*

EXEMPTIONS FROM RESTRICTIONS

Minors employed to do home chores or babysitting or employed by their parents are exempt from all the above restrictions. *M.S. 181A.07, subd. 4*

No state law prevents a minor's employment in any agricultural work permitted by 29 U.S.C. §213(c)(2). *M.S. 181A.11*

MINIMUM WAGE

Employees under the age of 18 who work for employers covered by federal law must be paid at least \$3.20 per hour as of January 1, 1988, \$3.47 per hour as of January 1, 1989, and \$3.56 per hour as of January 1, 1990.

Employees under the age of 18 who work for employers covered by state law must be paid at least \$3.15 per hour as of January 1, 1988, \$3.29 per hour as of January 1, 1989, and \$3.42 per hour as of January 1, 1990.

This does not include persons under the age of 18 who are: (1) doing certain agricultural work, (2) babysitting as a sole practitioner, or (3) employed part-time by a municipality as part of a recreational program. *M.S. 177.24, subd. 1; 177.23, subd. 7*

**AGE DISCRIMINATION
IN EMPLOYMENT**

Minors and young adults are not protected against this. Different treatment in privileges, benefits, services, or facilities for employees under 21 is permitted. *M.S. 363.02, subd. 6*

**UNEMPLOYMENT
COMPENSATION**

Like all adults, a minor may be covered by unemployment compensation laws if she or he satisfies the statutory requirements regarding eligibility. *M.S. 268.07, subd. 2* However, minors in the following employment areas are not eligible for unemployment compensation: (1) agricultural labor performed by a child under 16; (2) service performed by a child under 18 in the employ of a parent; (3) work performed by a student for an academic or vocational program; (4) work performed at a school or university by a student enrolled there; and (5) newspaper delivery by anyone under 18. *M.S. 268.04, subds. 11; 12(13)(f), (15)(d); and 268.07*

EDUCATIONAL RIGHTS AND RESPONSIBILITIES

The state of Minnesota is required by its constitution to provide a free education to all children in the state. This section provides an overview of some of the rights and responsibilities students have while attending elementary and secondary schools.

COMPULSORY ATTENDANCE	14
Age of Attendance; Compulsory Attendance; Penalty	14
Residency Requirements	14
Enrollment Options	14
DISCIPLINE	15
Corporal Punishment	15
Dismissal Generally	15
Suspension	15
Expulsion and Exclusion	15
Removal from Class	15
PARTICIPATION IN ATHLETICS	16
State Discrimination Law	16
Federal Discrimination Law	16
Equal Protection Clause	16
Right of Participation	16
HANDICAPPED CHILDREN	17
Education for all Handicapped Children Act of 1975	17
Availability and Procedural Requirements Under State Law	17
PUBLIC SCHOOL FEE LAW	17
Prohibited Fees	17
Authorized Fees	17
ACCESS TO INFORMATION	18
Student's Right to Inspect	18
Parent's Right to Inspect	18
RIGHTS OF NON-PUBLIC SCHOOL PUPILS	18
Educational Materials and Pupil Support Services	18
Transportation	18
Tuition Tax Deduction	18
FIRST AMENDMENT RIGHTS	19
Freedom of Speech	19
Prayer in the Schools	19
Religious Observances	19
Course Requirements	19
Access to Facilities for Religious Purposes	20
Exemption from Compulsory Attendance	20
FOURTH AMENDMENT RIGHTS	20
Search and Seizure	20
Drug Testing	20

Compulsory Attendance

AGE OF ATTENDANCE; COMPULSORY ATTENDANCE; PENALTY

Children aged seven to 16 must receive instruction for at least 170 days each year. For the 2000-2001 school year and beyond, a child must remain in school until that child completes the high school graduation requirements or is 18 years old. A minor who is a parent and who has not completed high school must attend school in order to receive AFDC (Aid to Families with Dependent Children). *M.S. 256.736, subd. 3b*

A school age child may be exempted from mandatory attendance requirements under certain circumstances. *M.S. 120.101, subd. 9*

Instruction must occur either in a public school, a non-public school, a church or religious organization, or a home-school. *M.S. 120.101, subd. 4*

Instruction is required in specific subject areas, and must be provided by a person who meets the specific requirements for instructors. *M.S. 120.101, subd. 6-7*

The performance of every child not enrolled in a public school must be assessed each year. All persons in charge of providing instruction to a child must provide documentation that the child has received instruction as required by law, except for those receiving instruction from an accredited or state-recognized body. *M.S. 120.102, subd. 1-3*

Depending on their qualifications as instructors, parents instructing their children in a home-school may be required to provide greater assessment and documentation of their children's instruction. *M.S. 120.101, subd. 8(b), 120.102, subd. 1(4)*

It is a misdemeanor if a person responsible for instruction in an unaccredited non-public school, home, or other institution, fails to comply with compulsory instruction. *M.S. 120.103*

Any person who fails or refuses to provide for instruction of a child of whom the person has legal custody and which child is required to receive instruction commits a misdemeanor. *M.S. 127.20*

RESIDENCY REQUIREMENTS

School age children who reside within a district operating public schools may attend those schools without charge. *M.S. 120.06, subd. 1*

ENROLLMENT OPTIONS

Beginning with the 1989-1990 school year, those pupils residing in districts with more than 1,000 pupil units in grades kindergarten through 12 have the option of attending a school or program in a district in which the pupil does not reside, unless (1) a school board determines by resolution that nonresident pupils may not attend its schools or programs, or (2) a district with a desegregation plan limits the number of transferees. A school board is required to adopt specific standards for accepting and rejecting timely applications. The program applies to all districts in the 1990-1991 school year. *M.S. 120.062*

Discipline

CORPORAL PUNISHMENT

A school official may use reasonable force to discipline a child. *M.S. 609.06, clause (6)* While the U.S. Supreme Court agrees that the imposition of corporal punishment of school children invades a "liberty" interest, it has held that such punishment may be imposed without any administrative hearing. The opportunity for community scrutiny of a school system plus the availability of common law tort remedies is deemed to give adequate protection against teacher abuse. *Ingraham v. Wright*, 430 U.S. 651 (1977).

DISMISSAL GENERALLY

Dismissals from school are generally governed by the Pupil Fair Dismissal Act of 1974. *M.S. 127.26-127.39*

Grounds for dismissal are the willful violation of clearly defined school board regulations, substantial disruption of the learning process, or posing a serious danger to persons or property. *M.S. 127.29, subd. 2* A public school student is entitled to due process and equal protection guarantees when facing dismissal proceedings. Possible outcomes include exclusion, expulsion or suspension. *M.S. 127.28* A school must attempt to provide a student subject to dismissal with an alternative education program, except under certain circumstances. *M.S. 127.29, subd. 1*

SUSPENSION

Before being suspended for one to five days, a student is generally entitled to notice and a meeting with the administration, where he or she will be informed of the grounds for suspension. *M.S. 127.27, subd. 10* If the student poses a serious danger he or she can be suspended for up to 15 days, provided the school implements an alternative education program for any suspension over five days. *M.S. 127.27, subd. 10*. The U.S. Supreme Court has declared that suspending a student from a public school requires procedural due process, including written notice of the charges, an explanation of the evidence the authorities have, and an opportunity for the student to present his or her side of the story. These requirements do not include the right to counsel, a right to confront and cross-examine witnesses, or a right to call the student's own witnesses. *Goss v. Lopez*, 419 U.S. 565 (1975).

EXPULSION AND EXCLUSION

If a student is subject to expulsion (precluding an enrolled student from attending school for up to one year) or exclusion (preventing a prospective student from enrolling in school for up to one year), he or she is entitled to notice from the administration and to information regarding attendance rights, including the right to a formal hearing and appeal. *M.S. 127.27, subds. 4 and 5; 127.31; 127.32; 127.33* The school may be required to notify the student within ten days of termination of the dismissal period. *M.S. 127.37*

REMOVAL FROM CLASS

If a student willfully engages in disruptive, dangerous and unsanctioned conduct, a school official may prohibit that student from attending class for up to three class periods. This is not considered dismissal under the Pupil Fair Dismissal Act. *M.S. 127.27, subd. 2; 127.40; 127.41*

Participation in Athletics

STATE DISCRIMINATION LAW

All educational institutions are required to provide equal opportunity for both sexes to participate in athletic programs. Depending upon the grade level, past circumstances, extent of interest and the particular sport, sports programs may offer single sex teams in some cases. *M.S. 126.21*

FEDERAL DISCRIMINATION LAW

Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted interscholastic athletic opportunities for male and female students, specifies what educational institutions must do in order not to be subject to a cut-off of federal funds. *Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 20 U.S.C. §§1681-1686.*

EQUAL PROTECTION CLAUSE

Female athletes alleging sex discrimination in athletic programs have argued that the equal protection clause of the fourteenth amendment prohibits rules barring them from male athletic teams or treating female teams differently from male teams. While courts generally agree that the equal protection clause requires permitting females to try out for male teams in contact and non-contact sports, they are unwilling to find a right for females to participate on male teams when there is a separate female team available. See, Brendan v. Independent School District 742, 477 F.2d 1292 (8th Cir. 1973); Leffel v. Wisconsin Interscholastic Athletic Association, 444 F.Supp. 1117 (E.D. Wisc. 1978); O'Connor v. Board of Education, Dist. #23, 645 F.2d 578 (7th Cir., 1980) cert. denied 454 U.S. 1084.

RIGHT OF PARTICIPATION

The right of participation in extracurricular activities is not a constitutionally protected property interest and is not of equal importance with the right to an education. Without a protected property interest, there are no due process requirements in dismissing a student from a team. Athletic programs are not included in the statutory protections under the Pupil Fair Dismissal Act. *M.S. 127.39, subd. 2*; Dorn v. Anoka-Hennepin Independent School District No. 11, Case No. C6-87-1186, Edward W. Bearse, 10th Judicial District (Minn. State trial court) (March 10, 1988).

Handicapped Children

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975; P. L. 94-142

The Act provides federal funding to states and local educational agencies for expenses incurred in providing special education and related services to handicapped school age children who qualify for assistance under the Act's eligibility provisions. In order to be eligible for funding, states must have a "right to education" policy, establish priorities for services, and assure that handicapped children and their parents are guaranteed procedural safeguards in decisions affecting the children's education. States are held accountable for the expenditure of these funds. The State Department of Education is responsible for assuring that all handicapped children within the state receive a free appropriate public education. *20 U.S.C. §§1401-1454, et seq.*

AVAILABILITY & PROCEDURAL REQUIREMENTS UNDER STATE LAW

Each school district is required to provide appropriate nondiscriminatory instruction and services for handicapped children from birth until the handicapped child is 21 or completes secondary school. *M.S. 120.03; 120.17, subds. 1, 1b*

State law guarantees procedural safeguards and parental participation in the assessment and educational placement of handicapped children. *M.S. 120.17, subds. 3a and 3b*

Public School Fee Law

PROHIBITED FEES

Public school education is free to all eligible students. School boards may not charge fees for necessary goods and services such as instructional materials and supplies, required library books, or required school activities. A school board may require payment of transportation costs for which state aid is not authorized, if guidelines are established to guarantee no one is denied an education based upon this cost alone. *M.S. 120.72; 120.73; 120.74*

The U. S. Supreme Court ruled against a poor family's equal protection challenge to a North Dakota law allowing some school districts to charge a bussing fee while providing students in other districts with free transportation. Kadrmas v. Dickinson Public Schools, 108 S.Ct. 2481 (1988)

AUTHORIZED FEES

School districts may require students to pay for certain school-related costs specified in statute, such as fees for extracurricular activities, security deposits, personal athletic equipment, supplementary field trips, musical instruments, and personal stationery supplies. *M.S. 120.73; 120.75*

Access to Information

STUDENT'S RIGHT TO INSPECT

A student may inspect or copy any public or private educational data concerning that student with certain exceptions, such as parental financial records filed with the school. *M.S. 13.03; 13.04; 13.32, subd. 1*

PARENT'S RIGHT TO INSPECT

The parents of a minor student may inspect public or private educational data concerning their child unless, at the request of the minor, the responsible authority determines that it is in the best interest of the minor that the information be withheld. *M.S. 1302, subd. 8*

Rights of Non-Public School Pupils

EDUCATIONAL MATERIALS AND PUPIL SUPPORT SERVICES

School districts are required to provide all pupils not attending public schools, including those in home schools, with textbooks, individualized instructional materials, and standardized tests. All material must be secular in nature and not used for religious instruction or worship. A district must provide the same health services to pupils of non-public schools as it provides to public school pupils. Non-public secondary pupils must be offered guidance and counseling services by the public secondary schools. Allotments for non-public school costs are not to exceed average expenditures for the same public school services. *M.S. 123.931-132.937*

Public school teachers cannot provide Chapter 1 instructional services (a federally funded program for educationally deprived children) to eligible non-public school students on non-public school premises because of the potential for violating the establishment clause of the First Amendment. Aguilar v. Felton, 473 U.S. 402 (1985).

TRANSPORTATION

School districts are required to provide "equal transportation" for non-public school pupils within the district's boundaries to the same extent they are required to provide transportation for public school pupils. A district may provide transportation to a non-public school located in another district, but the non-public school pays the cost of the transportation. *M.S. 123.78*

TUITION TAX DEDUCTION

A taxpayer may deduct the costs of tuition, textbooks and transportation up to \$650 for each dependent in grades K-6 and \$1,000 for each dependent in grades 7 to 12. The costs of religious books and materials and the expenses of participating in extracurricular non-public school activities may not be deducted. *M.S. 290.01, subd. 19(b)(3)*

First Amendment Rights

FREEDOM OF SPEECH

Students retain their first amendment right to freedom of speech in school provided their speech does not result in "material disruption" of the education process. Tinker v. Des Moines Ind. Comm. School District, 393 U.S. 503 (1969). The test for determining the degree of disruption is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

The Supreme Court has ruled that a student's speech containing "explicit sexual metaphors" is not protected by the first amendment. Bethel School District v. Fraser, 106 S.Ct. 3159 (1986).

School officials have the right to impose reasonable restrictions on student speech in school sponsored student papers. Hazelwood School Dist. v. Kuhlmeier, 108 S.Ct. 562 (1988).

PRAYER IN THE SCHOOLS

The U.S. Supreme Court has declared the district-sanctioned recitation of a non-denominational prayer at the beginning of each school day to be a violation of the first amendment prohibition against establishment of religion. Engel v. Vitale, 370 U.S. 421 (1962). The Supreme Court recently ruled that a law authorizing a short period for "voluntary or silent prayer" is also unconstitutional, but indicated that allowing a moment of silence probably would not violate the Constitution. Wallace v. Jaffree, 472 U.S. 38 (1985). Federal courts are split on whether an invocation and a benediction at graduation ceremonies violate the establishment clause. See, Grossberg v. Deusebio, 380 F.Supp. 285 (E.D. Va. 1974).

RELIGIOUS OBSERVANCES

The Eighth Circuit Court of Appeals has held that it is not a violation of the first amendment's establishment clause for a school to observe holidays that have both a religious and a secular basis through programs containing music, art, literature and drama having religious themes and via the temporary display of religious symbols associated with religious holidays. Flore v. Sioux Falls School District 49-5, 619 F.2d 1311 (8th Cir. 1980), cert. denied 449 U.S. 987 (1980).

COURSE REQUIREMENTS

A statute forbidding the teaching of evolution unless "creation science" was also taught was held to violate the constitutional ban on a state establishment of religion. Edwards v. Aguillard, 107 S.Ct. 2573 (1987).

**ACCESS TO
FACILITIES FOR
RELIGIOUS
PURPOSES**

Two federal appellate courts have ruled that the use of public elementary and secondary schools by students for religious purposes violates the establishment clause of the first amendment. Brandon v. Board of Education of Guilderland Central School District, 635 F.2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981); Lubbock Independent School Dist. v. Lubbock Civil Liberties Union, 669 F.2d 1038 (5th Cir. 1982), cert. denied, 459 U.S. 1155, (1983). However, a law was enacted by Congress which forbids secondary schools receiving federal funds from barring religious student groups from meeting at school if the school has a general policy of allowing student meetings. 20 U.S.C. §4071 The Supreme Court has not yet issued a ruling that would resolve the conflict between these court decisions and the legislation.

**EXEMPTION FROM
COMPULSORY
ATTENDANCE**

The United States Supreme Court has ruled that certain pupils may be exempt from the state compulsory attendance law if they can show that the law imposes an unnecessary burden on the right to free exercise of religion under the first amendment. Wisconsin v. Yoder, 46 U.S. 205 (1972).

<h2>Fourth Amendment Rights</h2>

**SEARCH AND
SEIZURE**

The United States Supreme Court has ruled that the fourth amendment of the Constitution protects students, but permits school officials to search students if there are "reasonable grounds" for suspecting that a student has violated the law or school rules. New Jersey v. T.L.O., 469 U.S. 325 (1985). This is less stringent than the usual standard requiring a "warrant based on probable cause" used by the courts in adult criminal search and seizure cases.

DRUG TESTING

A drug test is a search covered by the fourth amendment. However, a federal court upheld a school district's drug testing program requiring random urinalysis for high school athletes and cheerleaders on the grounds that (1) the right to participate in extracurricular activities was not constitutionally guaranteed and (2) school officials' interest in a drug free athletic program outweighed students' privacy interest. Schail v. Tippecanoe County School Corp., 679 F.Supp. 833 (N.D. Ind. 1988). A policy requiring all students to submit to urinalysis likely would be ruled unconstitutional.

FAMILY RELATIONS

With a few exceptions noted in this section and elsewhere in the guide, the statutes do not regulate relations between married parents and their children who live together. Statutes exist primarily to deal with needs that arise when a new family is being created--for example, by adoption--or when a family is changing form--for example, due to events like divorce, death, or a minor's marriage. For provisions regulating circumstances arising from neglect or abuse of children by family members see *CRIMINAL VIOLATIONS AGAINST YOUTHS* and the *JUVENILE COURT* section of Part II.

ALL FAMILIES	22
Child's Residence	22
Housing Discrimination Against Families with Children	22
Emancipation of a Minor	22
Marriage by a Minor	22
DIVORCED PARENTS	22
Child Custody	22
Changing Child's Residence	22
Parent's Visitation Rights	23
Other Parental Rights	23
Grandparent's Visitation Rights	23
DECEASED PARENTS	23
Appointing a Guardian for an Orphan	23
UNMARRIED PARENTS	24
Child Custody and Visitation	24
Establishing Parentage	24
ADOPTED CHILDREN	24
Required Consents	24
Adoptee's Access to Original Birth Certificate	25
Adoptee's Access to Other Information	25

All Families

CHILD'S RESIDENCE

Parents choose the residence of an unmarried child under age 18. A child who leaves that residence without permission is considered a runaway and can be taken into custody. *M.S. 260.015, subd. 20; 260.165*

HOUSING DISCRIMINATION AGAINST FAMILIES WITH CHILDREN

The Human Rights Act prohibits (1) refusal to rent or sell real estate to persons with children and (2) any unlawful restrictions against children in a real estate sale or rental advertisement. Various exceptions exist for owner-occupied, cooperative, and elderly housing units. *M.S. 363.01-363.03*

EMANCIPATION OF A MINOR

"Emancipation" means that a minor has the same legal rights and obligations as an 18 year old adult. A minor can be emancipated by a legal marriage or by parental consent. *State ex. rel. Scott v. Lowell*, 78 Minn. 166, 80 N.W. 877 (1899); *Minneapolis v. Orono*, 212 Minn. 7; 2 N.W.2d 149 (1942).

MARRIAGE BY A MINOR

A 16 year old may marry with parental consent. Anyone may marry at age 18. *M.S. 517.02*

Divorced Parents

CHILD CUSTODY

After an annulment, dissolution, or legal separation, the court must order either sole or joint legal and physical custody of minor children. In deciding custody, the court must consider the best interests of the child and not prefer one parent over the other on the basis of the parent's sex. There is a presumption that joint legal custody is in the child's best interests. If the child is old enough the judge may ask her or his custody preference. *M.S. 518.17*

CHANGING CHILD'S RESIDENCE

The child resides with the parent who has physical custody. If the noncustodial parent has visitation rights, the child can be moved out of state only with a court order or the noncustodial parent's consent. *M.S. 518.175, subd. 3*

**PARENT'S
VISITATION
RIGHTS**

In dissolution or legal separation proceedings, on request of the noncustodial parent, the court must grant visitation rights in the best interests of the child. The court may restrict visitation or deny it entirely, if it would endanger or impair the child. A parent's failure to pay support because of inability to do so is not sufficient cause to deny visitation. If one parent wrongfully denies the other's visitation rights, compensatory visitation time may be obtained by court order. *M.S. 518.175*

**OTHER
PARENTAL
RIGHTS**

Notice must be given to both parties that they have the right to (1) obtain certain education, health and religious records of the child, and (2) attend school conferences, unless a court waives the notice to protect the welfare of a party or child. *M.S. 518.17, subd. 3*

**GRANDPARENT'S
VISITATION
RIGHTS**

In all dissolution, separation, custody, annulment, and parentage proceedings, the child's grandparent or great-grandparent may ask the court for reasonable visitation rights to an unmarried minor child. The rights may be granted if they do not interfere with the parent and child relationship. Visitation rights end if the child is adopted by someone other than a step-parent or grandparent. *M.S. 257.022*

Deceased Parents

**APPOINTING A
GUARDIAN FOR
AN ORPHAN**

An unmarried minor's parent may appoint a guardian by will. A minor 14 years or older or an adult interested in the minor's welfare may object to the choice. *M.S. 525.6155; 525.616*

If parents do not name a guardian by will, the court may put the child under the guardianship of the Commissioner of Human Services, a licensed child placing agency, or an individual willing and able to take responsibility. *M.S. 260.242, subd. 1b(a)-(c)*

Guardianship ends when the child dies, is adopted, legally marries, or turns 18. *M.S. 525.6192*

Unmarried Parents

CHILD CUSTODY AND VISITATION

The mother has sole custody until paternity is established, either by the father's legally effective admission or by court action. If paternity is established, the father may petition the court for custody or visitation. If the child is old enough, the court may ask his or her custody preference. *M.S. 257.541, subd. 2(b)*

ESTABLISHING PARENTAGE

The child, parent, or welfare agency may bring an action to establish the child's parentage. The parties may be required to have blood tests. An action to determine the existence of the father and child relationship a child who has no presumed father is not barred until one year after the child reaches the age of majority. *M.S. 257.51-257.74*

An alternative to legal action: A man is presumed to be the natural father of the child if he and the child's natural mother acknowledge his paternity in a writing signed by both of them and filed with the state registrar of vital statistics. *M.S. 257.34; 257.55, subd. 1*

Adopted Children

REQUIRED CONSENTS

An individual aged 14 or older may be adopted only if she or he consents. *M.S. 259.24, subd. 3*

If an unmarried parent under 18 wants to place a child for adoption, he or she must be offered consultation with an attorney, clergy, or physician before consenting to the adoption. The consent of the minor's parents or guardian, if any, also is required. If the minor has no parent or guardian to give consent, the Commissioner of Human Services may do so. *M.S. 259.24, subd. 2*

**ADOPTEE'S
ACCESS TO
ORIGINAL BIRTH
CERTIFICATE**

An adopted person 21 or older may request the information on his or her original birth certificate. The Commissioner of Human Services must try to notify each parent identified on the certificate of the request. If the parents agree, the information is disclosed.

If the Commissioner cannot notify a parent and if the parent has not filed a consent to disclosure, the information may be disclosed as follows:

- If the person was adopted before August 1, 1977, he or she may petition for disclosure, which will be granted if the court determines that it is more beneficial than nondisclosure.
- If the person was adopted on or after August 1, 1977, the information must be released unless the parent filed an affidavit requesting nondisclosure.

If a parent dies without revoking a nondisclosure request, the adopted person may petition the court for disclosure. The petition will be granted if the court determines that disclosure would be more beneficial than nondisclosure. *M.S. 259.49*

**ADOPTEE'S
ACCESS TO OTHER
INFORMATION**

Adopted persons age 19 and older may ask the adoption agency to help determine whether a biological parent or adult sibling wants to have contact or share information. The agency will also transmit health information relevant to any genetically related parties to an adoption. A reimbursement fee may be charged for these services. *M.S. 259.47*

HEALTH AND SOCIAL SERVICES

Minors' access to health care services is dependent upon the parents or guardians, who are expected to act in the best interest of the child. Exceptions are made for older children who are financially independent, who have married or who have borne children themselves. Minors' access to social services is specifically authorized by a number of state laws that require counties to provide day care subsidies for currently eligible children, and child welfare and protective services for children at risk.

MINORS' CONSENT FOR HEALTH SERVICES	28
Marriage or Giving Birth	28
Living Apart from Parents and Financially Independent	28
Pregnancy, Venereal Disease, Alcohol or Drug Abuse	28
Emergency Treatment	28
Representations to Persons Rendering Service	28
Information to Parent	28
Financial Responsibility	28
Blood Donations	29
Anatomical Gifts	29
Abortion	29
Voluntary Institutional Treatment	29
Insurance	29
SOCIAL SERVICES	30
Child Welfare	30
Child Care	30
Community Social Services	30
Foster Care Review	30
Subsidized Adoption Program	30
Child Abuse Reporting	31
Medical Neglect	31
Child Abuse Prevention Trust Fund	31

Minors' Consent for Health Services

MARRIAGE OR GIVING BIRTH

Any minor who has been married or has borne a child may give effective consent to medical, mental, dental or other health services for his or her child, and for himself or herself. *M.S. 144.342*

LIVING APART FROM PARENTS & FINANCIALLY INDEPENDENT

Any minor (1) who is living apart from his or her parents or legal guardian, with or without consent to do so and regardless of the duration of such separate residence, and (2) who is financially independent, regardless of the source or extent of his or her income, may give effective consent to medical, dental, mental or other health services for himself or herself. *M.S. 144.341*

PREGNANCY, VENEREAL DISEASE, ALCOHOL OR DRUG ABUSE

Any minor may give effective consent for medical, mental or other health services to determine the presence of or to treat pregnancy, venereal disease, alcohol and other drug abuse. *M.S. 144.343, subd. 1*

EMERGENCY TREATMENT

Medical, dental, mental and other health services may be provided to minors without parental consent when, in a professional's judgment, treatment should be given without delay. *M.S. 144.344*

REPRESENTATION TO PERSONS RENDERING SERVICE

If a minor represents that he or she may give effective consent but in fact may not do so, his or her consent is effective if relied upon in good faith by the person rendering service. *M.S. 144.345*

INFORMATION TO PARENT

A professional may inform a minor's parent of any medical treatment given, whenever the professional determines it is necessary to the health of the minor. For purposes of access to health records of a minor, the term "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian, except in cases where minors have received treatment related to pregnancy, venereal disease, alcohol or drug abuse. *M.S. 144.335 and 144.346*

FINANCIAL RESPONSIBILITY

A minor who gives legally effective consent is financially responsible for services rendered. *M.S. 144.347*

**BLOOD
DONATIONS**

Any person 17 or over may donate blood in a noncompensatory blood program without obtaining parental consent. *M.S. 145.41*

**ANATOMICAL
GIFTS**

Any person of sound mind who is at least 18 or any minor, with written consent from parents or legal guardian, may donate all or any part of his or her body for medical purposes. *M.S. 525.922*

ABORTION

If a minor wishes not to notify both parents of a planned abortion, the court must determine after a hearing, whether the minor is mature and capable of giving informed consent to the proposed abortion. If the minor is determined to be mature, the court must authorize a physician to perform the abortion without parental notification. If the minor does not claim to be mature, the court must authorize the abortion without notification if it finds that so doing would be in the minor's best interests.

An expedited confidential appeal shall be available to any minor for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. *M.S. 144.343, subd. 6*

Note: The above statute is in effect as of the decision by the federal Court of Appeals in Hodgson v. State, 853 F.2d 1452 (8th Cir. 1988).

**VOLUNTARY
INSTITUTIONAL
TREATMENT**

Any person 16 years of age or older may request informal admission to a treatment facility for observation or treatment of mental illness, chemical dependency or mental retardation, and may consent to treatment for emergency or short-term acute care. Any person under the age of 16 may be admitted as a voluntary patient upon the signature of a parent or guardian, so long as there is some independent review of the placement in accordance with Parham v. J.R., 442 U.S. 584 (1979). *M.S. 253B.03, subd. 6(d); 253B.04, subd. 1*

INSURANCE

Minors' rights to insurance benefits depend on the purchase of insurance coverage by a parent or guardian. The purchase of family coverage will insure any children up to age 19 years and dependent children of any age. *M.S. 62A.03*

Social Services

CHILD WELFARE

Counties are required to provide child welfare services to assure protection and financial assistance for children confronted with social, physical or emotional problems. *M.S. 393.07*

For a full description of the special eligibility requirements and benefits of the major public assistance programs, see A Guide to Public Assistance Programs in Minnesota, Research Department, Minnesota House of Representatives.

CHILD CARE

Child care services for income-eligible families are funded through social service agencies and post-secondary institutions using, in various combinations, community social service funds, child care sliding fee funds, state set-aside money, and federal funding. *M.S. 245.84 and 268.91*

COMMUNITY SOCIAL SERVICES

County boards are responsible for the administration, planning, and funding of social services. They are required to provide services to children who are abused, neglected, dependent, mentally retarded, chemically dependent, or income-eligible and in need of child care. The county of financial responsibility for a minor is the county in which her or his parents reside. *M.S. 256E.08; 256G.01, subd. 4*

Counties are also required to give priority to minor parents when allocating case management and employment and training services for recipients of Aid to Families with Dependent Children. *M.S. 256.736*

FOSTER CARE REVIEW

Social service agencies are required to conduct administrative reviews of foster care placements and to seek court review, where applicable, in order to assure that children have been appropriately placed and that case plans are being implemented. *M.S. 257.071*

SUBSIDIZED ADOPTION PROGRAM

Adoption subsidies are available to eligible families desiring to adopt "difficult-to-place" children. This program was established in 1979. The law was amended in 1982 so that its provisions would conform with 42 U.S.C. §§670-676, the federal Foster Care and Adoption Assistance Act. The Department of Human Services administers both the state program and the federal program through the county welfare agencies. *M.S. 259.40*

CHILD ABUSE REPORTING

State law requires certain professionals to report information if they know or have reason to believe a child is being abused, or has been abused within the preceding three years. Reports are made to welfare or law enforcement personnel. Failures to report are prosecuted by the county attorney. Local welfare agencies are required to investigate all reports. Special procedures have been enacted in regard to interviewing alleged child abuse victims. Agencies must also provide protective services where necessary. One form of protective service is removing the child from the home and placing him or her in a foster care setting. *M.S. 626.556*

MEDICAL NEGLECT

Withholding medically indicated treatment from an infant with a life-threatening condition is defined as a form of neglect that must be reported under the Child Abuse Reporting Act. Required treatment is specified and circumstances are listed in which treatment can be limited.

If a report of medical neglect is received, the local welfare agency must consult the hospital and parents and, if necessary, obtain a court order for an independent medical examination and treatment of the infant. *M.S. 260.015, subd. 2a; 626.556, subd. 10c*

CHILD ABUSE PREVENTION TRUST FUND

Services and education programs designed to help prevent child abuse before it occurs may be developed and offered by private and public organizations at the local level and financed through grants obtained from the state Child Abuse Prevention Trust Fund. The Trust Fund is supported by a surcharge on birth certificate filings and by federal, state and private contributions. It will eventually have a balance of \$20 million. *M.S. 299A.20 to 299A.27*

CRIMINAL VIOLATIONS BY YOUTHS

Minnesota law prohibits young people from performing certain activities that adults are allowed to do, and imposes penalties for such conduct. The rationale behind these laws is that, due to the harmful nature of the activity and the immature judgment abilities of young people, it is necessary to place stricter controls on youths than adults.

Purchase and Consumption of Alcoholic Beverages	34
Use of Tobacco or Tobacco-Related Devices	34
Possession of a Pistol	34
Possession of a Firearm	34
Possession or Use of Toxic Glue :	34
Possession or Use of Tear Gas	34
Possession or Use of Electronic Incapacitation Device	34

**PURCHASE AND
CONSUMPTION OF
ALCOHOLIC
BEVERAGES
(Misdemeanor)**

No person under 21 years of age may purchase alcoholic beverages, or possess or consume alcoholic beverages at a place other than his or her parent's home. Additionally, any person under 19 who purchases or attempts to purchase alcohol by using a driver's license can lose his or her license for up to 30 days. *M.S. 171.171 and 304A.503*

**USE OF TOBACCO
OR TOBACCO-
RELATED
DEVICES (Petty
Misdemeanor)**

No minor may use tobacco or tobacco-related devices such as cigarette papers or pipes. *M.S. 609.685*

**POSSESSION OF A
PISTOL
(Gross Misdemeanor)**

No minor may possess a pistol unless the minor (a) is in the actual presence or under the direct supervision of a parent or guardian, (b) is possessing it for military drill purposes, (c) is using it in an approved and supervised target practice range or (d) has completed a state-approved marksmanship and safety course. *M.S. 624.713*

**POSSESSION OF A
FIREARM
(Misdemeanor)**

No child under 16 years of age may possess a firearm or airgun for hunting, target practice or any other purpose, unless he or she is either accompanied by a parent or guardian or is over 14 and has a firearm safety certificate from the Department of Natural Resources. *M.S. 97.83 and 97.55*

**POSSESSION OR
USE OF TOXIC
GLUE
(Misdemeanor)**

No person under 19 years may use or possess toxic glue with the intent of inducing intoxication, excitement or stupefaction of the nervous system (i.e., "glue-sniffing") except on doctor's orders. *M.S. 145.39*

**POSSESSION OR
USE OF TEAR GAS
(Misdemeanor)**

No person under the age of 16 may use or possess tear gas except by written permission of a parent or guardian. *M.S. 624.731*

**POSSESSION OR
USE OF
ELECTRONIC
INCAPACITATION
DEVICE
(Misdemeanor)**

No person under the age of 18 may use or possess an electronic incapacitation device ("stun gun"). *M.S. 624.731*

CRIMINAL VIOLATIONS AGAINST YOUTHS

There are a number of Minnesota laws that make it a crime to commit certain acts with or upon children. These criminal laws are designed to protect young people in a variety of situations where, due to youth and immaturity, children are considered particularly vulnerable to physical or emotional harm.

PORNOGRAPHY LAWS	36
Child Pornography	36
Dissemination of Obscene Works to Minors	36
SEXUAL ABUSE LAWS	36
Criminal Sexual Conduct	36
Prostitution	36
Sexual Solicitation	37
PHYSICAL AND EMOTIONAL ABUSE LAWS	37
Death Caused by Child Abuse	37
False Imprisonment	37
Malicious Punishment	37
Neglect	37
Nonsupport	37
Kidnapping	38
Parental Abduction	38
SAFETY LAWS	38
Unused Refrigerator or Container	38
Tobacco Sales	38
Tear Gas Sales	38
Electronic Incapacitation Device Sales	38
Toxic Glue Sales	38
Child Restraint Seats	38
DRUG-RELATED LAWS	39
Drug Distribution to Persons Under 18	39
Drug Possession on School Property	39
Drug Paraphernalia Sales	39
MISCELLANEOUS CHILD PROTECTION LAWS	39
Sale of Alcoholic Beverages	39
Dance Halls	39
Pawnbrokers and Junkdealers	39
Abduction for Marriage	40
Contributing to Delinquency	40

Pornography Laws

CHILD PORNOGRAPHY (Felony)

It is a crime to employ, use or permit a minor to pose or model for a sexual performance, or to disseminate or distribute for profit pictures or works depicting minors in a sexual performance. *M.S. 617.246*

(Gross Misdemeanor)

It is a crime to disseminate or possess photographic representations of sexual conduct involving a minor. *M.S. 617.247*

DISSEMINATION OF OBSCENE WORKS TO MINORS (Gross Misdemeanor)

No person may knowingly sell or rent obscene pictures or films to a minor, or show or admit minors, whether or not for monetary consideration, to see such films or other presentation in a place of public accommodation.

(Misdemeanor)

The display of obscene materials is forbidden unless minors are physically segregated from the display or an opaque cover blocks from view those materials which may be harmful to minors. *M.S. 617.293-617.294*

Sexual Abuse Laws

CRIMINAL SEXUAL CONDUCT (Felony)

It is a crime for any person to engage in sexual conduct with a minor who is less than 13 years of age; a minor between the ages of 13 and 18 who is a certain number of years younger than the actor and/or under the actor's authority and control; or a minor who is under 16 and with whom the actor has a "significant relationship" as defined by law.

It is a crime for an adult to engage in sexual conduct with a minor when that person has a significant relationship to the minor, or is the minor's guardian. "Significant relationship" includes relationships by blood, marriage and adoption but excludes relationships more distant than first cousins. *M.S. 609.341-609.345*

PROSTITUTION (Felony)

It is a crime for any person to solicit, induce, promote or receive profit from the practice of prostitution by a minor or to hire a minor for sexual purposes. The penalty for the offense varies depending on the age of the minor, with the highest penalties reserved for the prostitution of a minor under the age of 13. It is also a crime for a non-relative to permit a minor to reside with him or her without parental consent when the non-relative knows or has reason to know that the minor is engaging in prostitution. *M.S. 609.321 to 609.324*

**SEXUAL
SOLICITATION
(Felony)**

It is a crime for an adult to solicit (i.e. command, entreat, or attempt to persuade) a child under the age of 15 to engage in sexual conduct. Mistake as to age is not a defense to this crime. *M.S. 609.352*

Physical and Emotional Abuse Laws
--

**DEATH CAUSED
BY CHILD ABUSE
(Felony; Life
Imprisonment)**

A person who causes the death of a child while committing or attempting to commit child abuse is guilty of first degree murder if (1) there is a past pattern of child abuse and (2) death occurs under circumstances manifesting an extreme indifference to human life. *M.S. 609.185 (5)*

**FALSE
IMPRISONMENT
(Felony)**

No person may intentionally restrain a minor who is not the person's own child, without the consent of the minor's parent or legal custodian.

(Gross Misdemeanor)

No parent, guardian or caretaker may subject a minor to unreasonable physical confinement or restraint, if done in a cruel manner and if excessive under the circumstances.

(Felony)

If substantial bodily harm results from the unreasonable restraint, the offense becomes a felony. *M.S. 609.255*

**MALICIOUS
PUNISHMENT
(Gross Misdemeanor)**

No parent, guardian or caretaker may commit an intentional act or series of acts against a minor which evidence unreasonable force or cruelty to the minor.

(Felony)

If substantial bodily harm results from the person's actions, the offense becomes a felony. *M.S. 609.377*

**NEGLECT
(Gross Misdemeanor)**

A parent, guardian or caretaker may not willfully neglect a minor child when reasonably able to take care of him or her, thereby substantially harming the child's physical or emotional health, and may not knowingly permit the continuing physical or sexual abuse of the child. *M.S. 609.378*

**NONSUPPORT
(Misdemeanor)**

No person legally obligated to provide for the support of a child in necessitous circumstances under the age of 16 may knowingly fail to do so without lawful excuse.

(Felony)

The offense becomes a felony if the nonsupport continues for more than 90 days. *M.S. 609.375*

**KIDNAPPING
(Felony)**

No child under 16 years of age may be kidnapped without the consent of the child's parents or legal custodial guardian. Unlike the situation with adult kidnapping victims, consent of the child victim to the kidnapping is not a defense. *M.S. 609.25*

**PARENTAL
ABDUCTION
(Felony)**

No person may conceal a minor child for the purpose of depriving a parent or other custodian of his or her parental, custodial or visitation rights to the child, nor may a person abduct a minor child for the purpose of depriving a parent of his or her parental rights, unless a person reasonably believes the action is necessary to prevent physical or sexual assault or substantial emotional harm. *M.S. 609.26*

<h2>Safety Laws</h2>

**UNUSED
REFRIGERATOR
OR CONTAINER
(Misdemeanor)**

It is unlawful to allow an unused refrigerator or other container to be exposed and accessible to children, if it is large enough to contain a child and has doors which fasten automatically when closed. *M.S. 609.675*

**TOBACCO SALES
(Misdemeanor)**

It is unlawful to furnish tobacco or tobacco-related devices, such as cigarette papers or pipes, to a minor. *M.S. 609.685*

**TEAR GAS SALES
(Misdemeanor)**

No one may knowingly sell or furnish tear gas to a child under 16 years of age without the written permission of the child's parent or guardian. *M.S. 624.731*

**ELECTRONIC
INCAPACITATION
DEVICE SALES
(Misdemeanor)**

No one may knowingly sell or furnish an electronic incapacitation device ("stun gun") to a child under 18 years of age. *M.S. 624.731*

**TOXIC GLUE
SALES
(Misdemeanor)**

No one may sell toxic glue to a person under 19 years of age, unless the glue is contained in a packaged model construction kit. *M.S. 145.38*

**CHILD RESTRAINT
SEATS
(Petty Misdemeanor)**

A parent or guardian of a child under four years of age must install a federally-approved child restraint seat and transport the child in it while using the parent's or guardian's motor vehicle. *M.S. 160.685*

Drug Related Laws

DRUG DISTRIBUTION TO PERSONS UNDER 18 (Felony or Gross Misdemeanor)

An adult who distributes a prohibited drug to a person under the age of 18, or uses a person under the age of 18 to sell or distribute such a drug, is subject to double the applicable felony or gross misdemeanor penalty for drug distribution. *M.S. 152.15, subd. 1, clause (3)-(5)*

DRUG POSSESSION ON SCHOOL PROPERTY (Felony or Gross Misdemeanor)

An adult who possess prohibited drugs on school property (excluding post-secondary schools) is subject to double the applicable felony or gross misdemeanor penalty for drug possession. *M.S. 152.15, subd. 4a*

DRUG PARAPHERNALIA SALES (Gross Misdemeanor)

An adult may not knowingly deliver drug paraphernalia to a minor who is at least three years his or her junior. *M.S. 152.094*

Miscellaneous Child Protection Laws

SALE OF ALCOHOLIC BEVERAGES (Misdemeanor)

No one may sell or give alcoholic beverages to a person under 21 years of age. *M.S. 340A.503 (2) and 340A.702*

DANCE HALLS (Misdemeanor)

A public dance hall operator may not admit any unmarried person under 16, unless accompanied by a parent or guardian, or any unmarried person between 16 and 18, unless he or she is either accompanied by a parent or guardian or has the parent's or guardian's written consent. *M.S. 624.49*

PAWNBROKERS AND JUNKDEALERS (Misdemeanor)

No pawnbroker, junkdealer or second-hand dealer is allowed to make a loan or pledge to, or purchase property from a minor, without the written consent of the minor's parent or guardian. *M.S. 609.81 and 609.815*

**ABDUCTION FOR
MARRIAGE
(Gross Misdemeanor)**

No person may take a minor for the purpose of marriage without the consent of the minor's parents or legal custodian. *M.S. 609.265*

**CONTRIBUTING
TO DELINQUENCY
(Misdemeanor)**

It is a misdemeanor for any person to encourage, cause or contribute (1) to the need for protective services or delinquency of a minor or (2) to the commission of status offenses by the minor. *M.S. 260.315*

MISCELLANEOUS AGE PROVISIONS

This section describes rights granted on the basis of age, in addition to those covered in other sections of the guide.

Access to Government Records	42
Driver's License	42
Fishing and Hunting Licenses	42
Office Holding	42
Voting	42

**ACCESS TO
GOVERNMENT
RECORDS**

A minor and his or her parent or guardian may examine government data on the minor classified as either public or private, with two exceptions:

- Parental financial data filed with a school is not available to a minor
- At the minor's request, data will be withheld from a parent or guardian if the government agency determines that withholding is in the minor's best interest. *M.S. 13.02, subd. 8; 13.32, subd. 4*

**DRIVER'S
LICENSE**

A minor aged 15 or 16, and otherwise qualified to hold a driver's license, may get a restricted license for farm work or personal or family medical reasons. *M.S. 171.041; 171.042*

Minors aged 16 and 17 may be issued driver's licenses only after passing an approved course in driver education. The license application must be approved by either parent when both reside with the minor, or by the custodial parent or guardian. *M.S. 171.04(1)*

A minor may not drive a vehicle that carries passengers for hire. *M.S. 171.322*

**FISHING AND
HUNTING
LICENSES**

Residents under 16 may fish without a license. *M.S. 97A.451, subd. 2*

Residents under 13 may hunt small game without a license. Residents aged 13 to 15 may hunt small game without a license if they have a valid firearm safety certificate. Residents under 14 must be accompanied by a parent or guardian while hunting. No hunting license may be issued to any resident under 16, except those under 16 who have a firearms safety certificate may purchase a big game license. *M.S. 97A.0451, subds. 3 and 4*

OFFICE HOLDING

An individual must be 21 in order to hold state or local office. *Minn. Const., Art. VII, Sec. 6*

VOTING

An individual may vote at age 18. *Minn. Const., Art. VII, Sec. 1*

Part II.

The Courts

Minnesota Law makes distinctions between adults and minors not only with regard to substantive rights and responsibilities, as described in Part I, but also with respect to the type of court procedures under which these rights and responsibilities are judicially decided. Part II explains these court procedures in three sections.

Section 1--*Civil Adult Court* describes procedures applicable to minors who are parties or witnesses to civil lawsuits in adult court.

Section 2--*Criminal Adult Court* describes procedures applicable to minors who are involved in criminal cases in adult court as witnesses or parties. It also explains certain procedural protections pertaining to the care and custody of minors found to have committed criminal acts.

Finally, Section 3--*Juvenile Court* describes the purposes and procedures of the juvenile court, which hears most cases involving criminal acts committed by minors and cases involving children in need of protection or care by the state.

CIVIL ADULT COURT

This section describes the rights and restrictions affecting minors as parties or witnesses in civil lawsuits in adult court.

Parental Liability for Children's Torts and Contracts	46
Parents' Liability to Children	46
Injury to Minors	46
Statute of Limitations	46
Minors as Witnesses	46

**PARENTAL
LIABILITY FOR
CHILDREN'S
TORTS AND
CONTRACTS**

The parent or guardian of a minor who willfully causes personal injury or property damage is liable for up to \$500 damage. *M.S. 540.18*

There is no Minnesota law indicating whether parents are liable for a minor's contracts.

**PARENTS'
LIABILITY TO
CHILDREN**

Children may sue their parents for torts. Parents are held by case law to a "reasonable parent" standard in determining whether they are negligent. Anderson v. Stream, 295 N.W.2d 595, 601 (Minn. 1980).

**INJURY TO
MINORS**

A parent may bring suit to recover for injury done to a minor child. *M.S. 540.08*

**STATUTE OF
LIMITATIONS**

The statute of limitations does not run while a person is a minor, so a minor with a legal right of action has until he or she is 19 to file suit if parents do not do so, with one exception. The statute stops running in a medical malpractice case either seven years after the action arises or when the plaintiff turns 19, whichever is first. *M.S. 541.15*

**MINORS AS
WITNESSES**

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. *M.S. 595.02, subd. 1(1)*.

CRIMINAL ADULT COURT

This section describes procedures applicable to minors who are parties or witnesses in criminal cases in adult court, or who are confined in a correctional facility.

Criminal Responsibility	48
Admissibility of a Child's Hearsay Statements in Child Abuse Cases	48
Testimony by Closed Circuit TV or VideoTape	48
Minors as Witnesses	48
Child Sex Abuse Victims	48
Exclusion of Public from Trials Involving Children	48
Exclusion of Children from Criminal and Scandalous Trials	48
Care and Custody of Juvenile Offenders	49

**CRIMINAL
RESPONSIBILITY**

Children under the age of 14 are considered legally incapable of committing crimes. *M.S. 609.055*

Children between the ages of 14 and 18 accused of criminal acts may be referred for adult criminal prosecution in the manner provided in the juvenile code.

**ADMISSIBILITY OF
A CHILD'S
HEARSAY
STATEMENTS IN
CHILD ABUSE
CASES**

Hearsay statements made by a child sex or physical abuse victim under ten years of age may be admitted into evidence in abuse cases if (a) the statement is shown to be reliable, and (b) the child either testifies in person or is unavailable as a witness and there is corroboration of the abuse. *M.S. 595.02, subd. 3*

**TESTIMONY BY
CLOSED CIRCUIT
TV OR VIDEOTAPE**

Child abuse victims under ten years old may be allowed to give their testimony over closed-circuit TV or on videotape, if the court decides that use of these devices is necessary to allow the child to testify without undue psychological trauma. *M.S. 595.02, subd. 4*

**MINORS AS
WITNESSES**

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. *M.S. 595.02, subd. 1(1).*

**CHILD SEX ABUSE
VICTIMS**

No data in records or reports relating to criminal child sex abuse complaints or indictments that specifically identify the child are accessible to the public, except by court order. *M.S. 609.3471* Furthermore, when a child abuse victim is interviewed by the government, a record must be made of the time, place and substance of the interview. *M.S. 626.561*

**EXCLUSION OF
PUBLIC FROM
TRIALS
INVOLVING
CHILDREN**

The public may be barred from the courtroom by the judge during all or part of a child sex abuse trial if necessary to ensure fairness or protect the child. *M.S. 631.045*

**EXCLUSION OF
CHILDREN FROM
CRIMINAL AND
SCANDALOUS
TRIALS**

No person under age 17 may be present at a criminal prosecution unless involved or directly interested in the case. *M.S. 631.04*

The court is permitted to exclude minors whose presence is not necessary, if a trial involves obscene or scandalous matters. *M.S. 546.37*

**CARE AND
CUSTODY OF
JUVENILE
OFFENDERS**

Minors may not be detained or confined in the same area as adult prisoners while in jail or lockup unless the minor has been certified for trial as an adult or convicted of a crime as an adult. *M.S. 636.07 and 641.14*

The Commissioner of Corrections is prohibited from placing in a penal institution any juvenile referred by the juvenile court. *M.S. 242.14*

It is a misdemeanor for any person to abduct, conceal or improperly interfere with any juvenile inmate in a juvenile correctional facility. *M.S. 242.47*

JUVENILE COURT

This section provides a general overview of the juvenile justice system in Minnesota. First, the purpose and jurisdiction of the juvenile courts is described with an explanation of key terms and concepts necessary for understanding the function of the court. Next, the juvenile court process is explained: first, for delinquency and other offenses; second, for CHIPS cases.

All of the statutory provisions discussed in this chapter are contained in Minnesota Statutes, Chapter 260. Other provisions are found in the Juvenile Court Rules.

PURPOSE AND JURISDICTION OF JUVENILE COURT

Juveniles Who Commit Unlawful Acts	53
Referral for Adult Prosecution	53
Juvenile Court Dispositions	53
CHIPS Cases	54
Types of Dispositions	55

COURT PROCESS FOR DELINQUENCY AND OTHER OFFENSES

Apprehension	55
Pretrial Detention	55
Filing of Petition or Citation	55
Arraignment Hearing	56
Reference for Adult Prosecution	56
Adjudicatory Hearing	56
Disposition Hearing	56
Major Constitutional Rights of a Child in Juvenile Court	57

COURT PROCESS FOR CHIPS CASES

Pre-Adjudication Detention	58
Filing of Petition or Citation	58
First Appearance	59
Adjudicatory Hearing	59
Disposition Hearing	59

Purpose and Jurisdiction of Juvenile Court

The juvenile court in Minnesota is authorized to hear and decide two main categories of cases:

- those involving juveniles ten years old or older who commit unlawful acts, and
- those involving children who, for a variety of reasons, are in need of protection or services by or from the juvenile court.

In addition, the juvenile court is responsible for the following legal actions:

- *terminations of parental rights* to a child. Parental rights may be terminated by the court either (a) for good cause with parental consent, or (b) if the child has been abandoned, continuously neglected, or if the parent's conduct shows a clear unwillingness or unfitness to be a parent;
- juvenile *marriages*;
- *adoptions*;
- *waivers of parental notification* sought by minor women wishing to terminate a pregnancy;
- *persons* (including adults) alleged to be *contributing to the neglect or delinquency of a minor*. All juvenile courts may order relief of a civil or injunctive nature, but only in counties having over 200,000 in population may the juvenile court hear and decide a misdemeanor criminal charge in these cases;
- appointments and removals of *guardians* for minors; and
- periodic review of a child's *foster care status*.

Records of juvenile court actions are accessible to the minor and his or her parents or guardian, but may be seen by others in most cases only with a court order. All proceedings conducted by the juvenile court are closed to the public with one exception: hearings and court records involving minors 16 years old or older who are accused of a felony offense are open to the public.

JUVENILES WHO COMMIT UNLAWFUL ACTS

As mentioned earlier, one important type of case generally assigned to the juvenile court involves minors who engage in unlawful conduct. In contrast to the adult courts, the juvenile proceeding in this context is not a criminal proceeding designed to fix criminal responsibility and punishment but, rather, is a civil proceeding designed to protect the child from the consequences of his or her own conduct, rehabilitate him or her and, at the same time, promote the public safety.

Juveniles committing unlawful acts fall into one of the following categories, depending on the nature of the conduct involved:

- *Delinquents*: children ten years old or older who commit acts which would be unlawful if committed by an adult;*
- *Petty offenders*: children who engage in conduct which is unlawful for them, but not unlawful for adults, such as violating curfew, drinking and smoking;
- *Juvenile traffic offenders*: children who violate traffic laws. In certain cases, depending on the age of the child and the nature of the traffic offense, the matter may be handled exclusively by the adult court rather than the juvenile court.

REFERRAL FOR ADULT PROSECUTION

In some cases, the juvenile court may decide that a child over the age of 14 who is accused of a particularly dangerous offense and/or has engaged in criminal conduct in the past would be handled more appropriately in the adult court. These alleged delinquents may be "referred for adult prosecution" upon motion by the prosecutor if the juvenile court finds, after a hearing, that there is probable cause to believe the child committed the offense and that there is clear and convincing evidence that the child is not suitably treated or the public safety is not served by handling the case in juvenile court. Once a child has been referred to the adult court for prosecution he or she may be prosecuted, convicted and sentenced as if he or she were an adult.

JUVENILE COURT DISPOSITIONS

Assuming the juvenile court retains jurisdiction over the alleged juvenile offender, and, after a hearing, determines that the child did engage in the unlawful conduct, the court has available to it a variety of dispositions, including: fines, probation, counseling, placement out of the home, loss of driver's license, restitution or community service, and (for delinquents only) commitment to the commissioner of corrections for placement in a juvenile correctional facility.

* However, under Minnesota law, children who commit traffic offenses are not labelled as delinquents, even if the conduct would have been unlawful if committed by an adult. Similarly, children found in possession of a small amount of marijuana are classified as petty offenders rather than delinquents.

CHIPS CASES

The other major category of cases the juvenile court hears are those involving children in need of protection or services (CHIPS) by or from the juvenile court. Grounds for invoking the juvenile court's "CHIPS" jurisdiction include the following:

1. abandonment of the child;
2. physical or sexual abuse of the child;
3. the child needs necessary food, shelter, or other care;
4. the child needs special care due to a physical, mental, or emotional condition;
5. the child is a medically-neglected infant within the statute's definition;
6. the child's parent or guardian desires, for good reason, to be relieved of the child's care and custody;
7. the child is in an illegal adoptive or foster care placement;
8. the child's parent or guardian is unable to provide care due to disability or immaturity;
9. the child is in dangerous surroundings;
10. the child has committed a delinquent act before becoming ten years old;
11. the child is a runaway from home; or
12. the child is an habitual truant from school.

In CHIPS cases, the juvenile court is directed by law to secure for each child the care and guidance that will best serve the child's welfare and the interests of the state. In so doing, the court must observe the following policies wherever possible:

- to maintain the child in his or her own home;
- to provide judicial procedures that protect the welfare of the child;
- to remove the child from parental custody only when his or her welfare or safety cannot otherwise be adequately safeguarded; and
- when the child is placed out of the home, to secure care and discipline for him or her similar to that which should have been given by the parents.

TYPES OF DISPOSITIONS

The types of dispositions available to the court to achieve these purposes are: placing the child under protective supervision while permitting the child to remain at home; placing the child out of the home in a foster care setting or, under certain limited circumstances, in an independent living arrangement; ordering the abuser out of the home in cases of domestic child abuse; or ordering that the child receive special treatment for his or her mental or physical health. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment, if such an order is in the child's best interest. Dispositional orders are for a fixed period of time not to exceed one year and may be renewed or modified by the court.

If the child is in need of protection or services due to truancy or running away from home, the court may also order counseling, probation, fine the child, or order a correctional group home placement.

Court Process for Delinquency and Other Offenses

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to have committed unlawful acts.

APPREHENSION

A child may be apprehended and taken into immediate custody by the police or a probation or parole officer before any court papers are filed, if the child is:

- found in dangerous surroundings,
- the subject of an arrest warrant,
- subject to arrest, or
- a parole/probation violator.

PRETRIAL DETENTION

No child taken into custody may be held for longer than 24 hours without a court order unless he or she was found in dangerous surroundings or apprehended pursuant to a warrant. In those situations, an alleged delinquent can be held up to 36 hours in a secure or shelter care facility, and others can be held up to 72 hours in a shelter care facility. In order to detain children longer than these time periods, the court must hold a detention hearing and find that pretrial detention is necessary. Then, it must review the propriety of this continued detention every eight days until the child's case is heard and decided.

FILING OF PETITION OR CITATION

The juvenile court process is begun officially by the filing of a petition or citation with the court. Delinquency petitions are prepared and filed by the county attorney; citations for petty offenses may be filed by a peace officer.

ARRAIGNMENT HEARING

At the arraignment hearing, *the child is given the opportunity to admit or deny the allegations contained in the petition.* This hearing must be held within 20 days of the date on which the petition is served or, if the child is in detention, within five days of the time he or she was taken into custody.

If the child denies the allegations in the petition or if the court refuses to accept the child's admission, an adjudicatory hearing is scheduled to take place within 30 or 60 days, depending on whether or not the child is in detention. If the child admits to the allegations and the court accepts the admission, the court will schedule a disposition hearing.

REFERENCE FOR ADULT PROSECUTION

As was mentioned earlier, *a hearing may be held by the juvenile court judge, upon motion by the prosecutor, as to whether or not a particular alleged delinquent over the age of 14 should be referred to the adult court for criminal prosecution.* In ordering the reference, the court must find that there is probable cause that the child committed the charged offense and that there is clear and convincing evidence that the child is not amenable to treatment or that the public safety would not be served by handling the case in the juvenile system.

ADJUDICATORY HEARING

This hearing is the equivalent of a trial in adult court. At the conclusion of the hearing the court has between 15 and 30 days to decide whether or not the allegations in the petition have been proven beyond a reasonable doubt. If the allegations have not been proven the court must dismiss the petition. If they have been proven, the court may either (1) adjudicate the child as a delinquent or an offender and schedule a disposition hearing or (2) withhold adjudication for up to 180 days pending examination or counseling of the child or pending probationary supervision.

DISPOSITION HEARING

This hearing is similar to a sentencing hearing in adult court. It is designed to be informal and to allow all participants the opportunity to be heard. Based on the information received, the judge may order any one of the dispositions summarized above.

MAJOR
CONSTITUTIONAL
RIGHTS OF A
CHILD IN
JUVENILE COURT

Until fairly recently, children who come before the juvenile court on charges of delinquency were not accorded the same constitutional rights as adults charged with criminal offenses. The rationale for this distinction was that the juvenile delinquency process was not designed to fix criminal responsibility, guilt and punishment but, rather, was designed to protect and rehabilitate the child.

Since 1966, however, the U. S. Supreme Court has recognized that juvenile court proceedings can and do affect the rights of children to "life, liberty and the pursuit of happiness" and, therefore, that juvenile court hearings and procedures must measure up to the essentials of due process and fair treatment.

Thus, during the late 1960's and early 1970's, the U. S. Supreme Court found, in a series of cases, that alleged delinquents have the following constitutional rights in juvenile adjudicatory hearings:

- right to *written advance notice* of the adjudicatory hearing, allowing adequate time to prepare for it
- *right to counsel*
- *privilege against self-incrimination*
- right to *cross-examine witnesses*. In re Gault, 387 U.S. 1 (1967)
- findings of delinquency must be based on *proof beyond a reasonable doubt* if the offense is one that would be unlawful if committed by an adult. In re Winship, 397 U.S. 358 (1970).
- the *double jeopardy* clause of the Fifth Amendment prohibits prosecution in adult court of a juvenile if an adjudicatory hearing has been held on the same matter in juvenile court. Breed v. Jones, 421 U.S. 519 (1975).

In contrast, however, the U.S. Supreme Court held in McKeiver v. Pennsylvania, 403 U.S. 528 (1971) that a *jury trial* is not constitutionally required in the adjudicative phase of a juvenile court proceeding, because juries are not essential to fundamental fairness in fact-finding procedures. Several states (not including Minnesota) have extended the right to trial by jury in some or all juvenile cases, however.

Additionally, the Court held in Schall v. Martin, 467 U.S. 253 (1984) that pretrial detention of an alleged delinquent, based on the risk of his committing additional crimes prior to trial, does not violate the child's due process rights. It held that, given the protective rather than punitive objectives of the juvenile justice system, pretrial detention of alleged delinquents is compatible with the fundamental fairness requirement of the due process clause of the Fifth Amendment.

Court Process for CHIPS Cases

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to be in need of protection or services, and terminations of parental rights to children.

PRE- ADJUDICATION DETENTION

As explained more fully on page 55 above, *under certain circumstances a child may be taken into immediate custody by a peace officer or by order of the court prior to the juvenile court hearing.* In child protection cases, the usual reasons for doing so would be because the child is a runaway, to ensure the child's presence at the hearing, or to remove the child from surroundings or conditions which endanger or reasonably appear to endanger the child's health or welfare. Such a child may be held in a shelter care facility for no longer than 72 hours, unless a petition has been filed and the judge determines after a detention hearing that the child should remain in custody. In addition, upon the request of a party, the court will hold the adjudicatory hearing on the petition within 60 days of the detention hearing, unless another party shows good cause why the hearing should not be held. The detention order must be reviewed informally by the judge every eight days until the case is decided. The detention order must include rules for parental visitation unless visitation would endanger the child's physical or emotional well-being.

Children who are detained because they are alleged child abuse victims cannot be given mental health treatment for the effects of the abuse until the court finds probable cause to believe the abuse occurred or unless treatment is agreed to by the child's parent or guardian.

FILING OF PETITION OR CITATION

Any reputable person, including any agent of the commissioner of human services, may file a CHIPS petition in juvenile court. Any reputable person may likewise petition the juvenile court to terminate the rights of a parent to his or her child if he or she has knowledge of circumstances that support such a petition. Additionally, the social service agency responsible for the placement of a child in voluntary foster care may petition the court to review the child's foster care status. All petitions are drafted by the county attorney and verified by the petitioner.

A peace officer may issue a citation to a child believed to be a runaway, and a school attendance officer may issue a citation to an alleged truant. A citation filed with the court has the legal effect of a petition.

FIRST APPEARANCE

This is a hearing at which the child and the child's parents and guardian are required to admit or deny the allegations of the petition. This hearing must be held within ten days after a child has been placed in pre-adjudication detention, or 20 days after the child is served with the petition or citation if he or she is not in detention. If the allegations contained in the petition are admitted, the court will schedule a disposition hearing. If denied, the court will schedule an adjudicatory hearing within 90 or 120 days, depending on whether or not the child is in detention.

ADJUDICATORY HEARING

The adjudicatory hearing is held to determine if the allegations of the petition are proved. In contrast to the delinquency or offender adjudicatory hearing, proof of the allegations need not be made "beyond a reasonable doubt" but only by "clear and convincing evidence," which is a lesser standard. If the court finds the allegations of the petition are proven, it may either withhold adjudication for up to 180 days, or adjudicate the child as being in need of protection or services, or neglected and in foster care, and schedule a disposition hearing.

Where the petition is one to terminate parental rights and the allegations are proven, the court will terminate parental rights and transfer custody of the child in a disposition hearing. Even where the allegations have not been proven, the court may still determine that the child is in need of protection or services, or that the child is neglected and in foster care. In such a case the court will adjudicate the child accordingly and will schedule a disposition hearing.

DISPOSITION HEARING

If the court finds that a child is in need of protection or services, it may order the dispositions summarized on page 55 above. Where the court terminates the parental rights of both parents or of the only known living parent, guardianship and legal custody of the child will be transferred to the commissioner of human services, a licensed child placing agency or a willing individual capable of assuming parental duties.