

GIVE ME BACK MY KIDS!



TRAINING GOALS



After this training, you should be able to...

- Identify the rights and responsibilities of parents with regards to their children
- Identify options to resolve disputes
- Assist individuals with drafting a complaint for Declaratory Judgment

I. Introduction

II. Court Ordered Parenting Time

- Contempt
- Request for Parenting Time Assistance
- Modification
- Pick up Orders
- Order for Protection

III. No Court Ordered Parenting Time

- Advocate Tools
- Order for Protection
- Petition to Establish Custody & Parenting Time/Third Party Custody
- Declaratory Judgment

IV. Writ of Mandamus

OVERVIEW

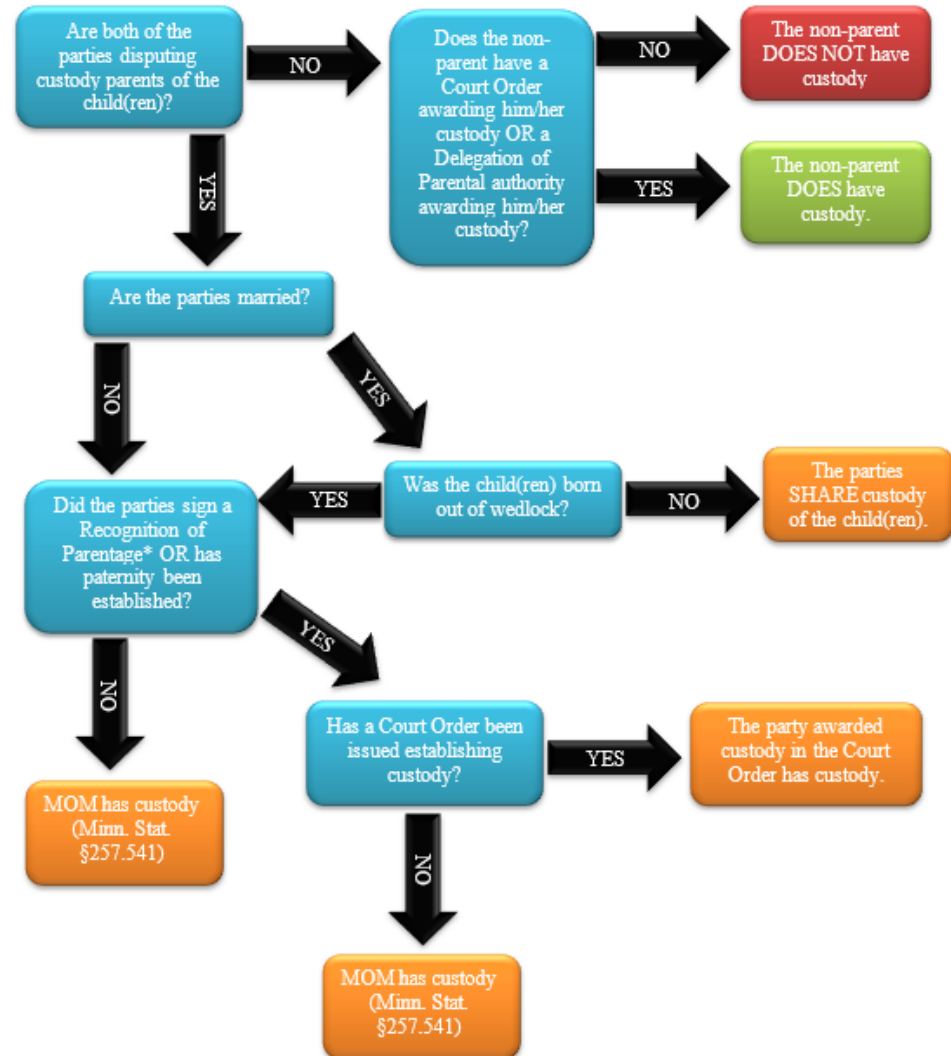


SOUND
FAMILIAR?

WE SAY... ABSOLUTELY NOT!



Child Custody Flow Chart | Who Has Custody?



* A Recognition of Parentage (ROP) is a statement of paternity. It does not give the father any right to custody or to parenting time.

HOW COULD THAT HAPPEN?



A COURT ORDER WITH A PARENTING TIME SCHEDULE EXISTS

SHOULD BE SIMPLE RIGHT....

CHILDREN ARE NOT RETURNED

Establish Goals

- Ex. Efficiency, Safety, Corrective, or Clarifying

Obligations/Consequences

- Clear or Unclear
- Existent/Non-Existent

Alternative Dispute Resolution Provisions

Seek assistance from Law Enforcement/Report a crime (see later slides)

ENFORCING OR MODIFYING EXISTING ORDERS

File for Contempt – See Minn. Rule of General Practice 309

File for Parenting Time Assistance

- A court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time. See Minn. Stat. § 518.175 Subd. 1 (d)
- No Set Schedule – See Minn. Stat. § 518.175 Subd. 1 (e)

Request to Restrict Parenting Time
– See Minn. Stat. § 518.175 Subd.
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Modify Custody – See Minn. Stat. § 518.175 Subd. 6 (h) and 518.18

Request A Warrant to Take Physical Custody of a Child – See Minn. Stat. § 518.D.311

File a Violation (Order for Protection)



THERE IS NO ORDER
ESTABLISHING
A PARENTING TIME
SCHEDULE

CHILDREN ARE NOT RETURNED

Establish Goals

- Ex. Efficiency, Safety, Corrective, or Clarifying

Seek assistance from Law Enforcement/Report a Crime

Petition to Establish Parenting Time

Other Options: Protective Order or Declaratory Judgment

OPTIONS - [INSERT LEGAL DISCLAIMER]

Play Nice..... but Be Ready for Plans B - Z

- Document all efforts taken to resolve the matter prior to involving a third party.

Report a Crime/Seek Assistance from Law Enforcement - See Sample Letters

- [Insert Legal Disclaimer]

Deprivation of Parental Rights - Minn. Stat § 609.26 Subd. 1 (3)

Missing Person - Minn. Stat. § 299C.53

Order for Protection

ADVOCACY CHANGES LIVES



BE THE CHANGE



System Change

- Enlist Allies
- Request a letter from a judge or county attorney

Victim Empowerment

- Letter
- Print Statutes (257.541, subdivision 1; 257.75, subdivision 3; 609.26)

Crime Victim Reparations Board

WORKING WITH LAW ENFORCEMENT

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- Peace Officers generally are charged with the “prevention and detection of crime and the enforcement of the general criminal laws...”
 - Board of Peace Officer Standards and Training – *See* Minn. Stat. § 626.84
 - Minnesota Criminal Code of 1963 – Minn. Stat. § 609
 - Purpose: “promote justice” and “protect the public safety and welfare by preventing the commission of crime.”
 - A “crime” is conduct prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.
 - Crime Victim Have Additional Rights – Minn. Stat. § 611A

PROFESSIONAL STANDARDS OF CONDUCT

Minnesota Rules Chapter 6700 contains the rules governing the licensing, training, and standards for peace officers.

Standards of conduct are established for the “public to have confidence in the integrity and ability of law enforcement, it is paramount that peace officer demonstrate that they are capable of self-regulation.” *See* Minn. Rule 6700.1500

It is a crime for a peace officer to intentionally fail or refuse to perform a known mandatory duty of the office. *See* Minn. Stat. § 609.43

KNOW THE PROCEDURES IN YOUR COMMUNITY

- Chief law enforcement officer is required to have written procedures for unprofessional conduct and governing the investigation and resolution of misconduct.
- Violations of standards of conduct may be grounds for disciplinary actions or a crime. See Minn. Stat. § 609.43
- Failure to process complaints according to written procedure is grounds for disciplinary action against the chief law enforcement officer.
- Copies of current written procedures must be made available to the public on request.



DECLARATORY JUDGEMENTS

MINNESOTA CHAPTER 555



- This packet is for specific case circumstances and not legal advice
- Not common in many counties – May need to educate court administration and the Judge
- Case is filed in civil court not family court
- These are not state approved forms (yet)

GENERAL OVERVIEW

The purpose of a declaratory judgment is to define the legal relationships between the parties and to determine the rights of the parties.

- Ex. Unmarried mother has sole custody until a court order states otherwise.

They have the full force and effect of a final Judgment

When used properly an action for declaratory judgment can prevent costly litigation.

Drafting

Filing

Serving

Hearing

Order

Enforcement

PROCESS

DECLARATORY JUDGMENT TOOL KIT

-
- Instructions
 - Civil Summons
 - Civil Cover Sheet
 - Complaint for Declaratory Judgment
 - Notice of Motion and Motion for Ex Parte Temporary Restraining Order
 - Affidavit of Plaintiff for Ex Parte Temporary Restraining Order
 - Proposed Ex Parte Temporary Restraining Order
 - Affidavit for In Forma Pauperis (aka Fee Waiver)
 - Affidavit of Attorney (if there is one)



WRIT OF MANDAMUS

MINN. STAT. § 586.01

WHEN NOTHING ELSE WORKS

A Writ commands the performance of a required duty.

- “Official duty” is defined by case law as the “existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy.” *Day v. Wright County*, 391 N.W.2d 32, 34 (Minn. Ct. App. 1986)

It can require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

Not an option where there is a plain, speedy, and adequate remedy.



QUESTIONS

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