

CHAPTER 557—S.F.No. 1821

An act relating to children; changing certain provisions for placement of children; establishing a general preference for adoption by relatives; requiring continued study of out-of-home dispositions; amending Minnesota Statutes 1990, sections 257.025; 257.071, subdivision 1; 257.072, subdivision 7; 259.255; 259.28, subdivision 2; 259.455; 260.181, subdivision 3; and 518.17, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1990, section 257.025, is amended to read:

257.025 CUSTODY DISPUTES.

(a) In any proceeding where two or more parties seek custody of a child the court shall consider and evaluate all relevant factors in determining the best interests of the child, including the following factors:

- (1) the wishes of the party or parties as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each party and the child;
- (5) the interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363.01, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture, religion, or creed, if any;
- (11) the child's cultural background; and
- (12) the effect on the child of the actions of an abuser, if related to domestic

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abuse as defined in section 518B.01, that has occurred between the parents or the parties.

The court may not use one factor to the exclusion of all others. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The fact that the parents of the child are not or were never married to each other shall not be determinative of the custody of the child.

(c) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

(d) The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

(e) A person may seek custody of a child by filing a petition or motion pursuant to section 518.156.

(f) Section 518.619 applies to this section.

Sec. 2. Minnesota Statutes 1990, section 257.071, subdivision 1, is amended to read:

Subdivision 1. PLACEMENT; PLAN. A case plan shall be prepared within 30 days after any child is placed in a residential facility by court order or by the voluntary release of the child by the parent or parents.

For purposes of this section, a residential facility means any group home, family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision, or any agency thereof, to provide those services.

For the purposes of this section, a case plan means a written document which is ordered by the court or which is prepared by the social service agency responsible for the residential facility placement and is signed by the parent or parents, or other custodian, of the child, the child's legal guardian, the social service agency responsible for the residential facility placement, and, if possible, the child. The document shall be explained to all persons involved in its implementation, including the child who has signed the document, and shall set forth:

(1) The specific reasons for the placement of the child in a residential facility, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home;

(2) The specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (1), and the time period during which the actions are to be taken;

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(3) The financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the residential facility;

(4) The visitation rights and obligations of the parent or parents during the period the child is in the residential facility;

(5) The social and other supportive services to be provided to the parent or parents of the child, the child, and the residential facility during the period the child is in the residential facility;

(6) The date on which the child is expected to be returned to the home of the parent or parents;

(7) The nature of the effort to be made by the social service agency responsible for the placement to reunite the family; and

(8) Notice to the parent or parents that placement of the child in foster care may result in termination of parental rights but only after notice and a hearing as provided in chapter 260.

The parent or parents and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child. The child shall also have the right to a guardian ad litem. If unable to employ counsel from their own resources, the court shall appoint counsel upon the request of the parent or parents or the child or the child's legal guardian. The parent or parents may also receive assistance from any person or social service agency in preparation of the case plan.

After the plan has been agreed upon by the parties involved, the foster parents shall be fully informed of the provisions of the case plan.

When an agency accepts a child for placement, the agency shall determine whether the child has had a physical examination by or under the direction of a licensed physician within the 12 months immediately preceding the date when the child came into the agency's care. If there is documentation that the child has had such an examination within the last 12 months, the agency is responsible for seeing that the child has another physical examination within one year of the documented examination and annually in subsequent years. If the agency determines that the child has not had a physical examination within the 12 months immediately preceding placement, the agency shall ensure that the child has the examination within 30 days of coming into the agency's care and once a year in subsequent years.

Sec. 3. Minnesota Statutes 1990, section 257.072, subdivision 7, is amended to read:

Subd. 7. **DUTIES OF CHILD-PLACING AGENCIES.** Each authorized child-placing agency must:

(1) develop and follow procedures for implementing the order of preference

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prescribed by section 260.181, subdivision 3, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923;

(a) In implementing the order of preference, an authorized child-placing agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable placement. The agency shall disclose only data that is necessary to facilitate implementing the preference. If a parent makes an explicit request that the relative preference not be followed, the agency shall bring the matter to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives unless ordered to do so by the juvenile court; and

(b) In implementing the order of preference, the authorized child-placing agency shall develop written standards for determining the suitability of proposed placements. The standards need not meet all requirements for foster care licensing, but must ensure that the safety, health, and welfare of the child is safeguarded. In the case of an Indian child, the standards to be applied must be the prevailing social and cultural standards of the Indian child's community, and the agency shall defer to tribal judgment as to suitability of a particular home when the tribe has intervened pursuant to the Indian Child Welfare Act;

(2) have a written plan for recruiting minority adoptive and foster families. The plan must include (a) strategies for using existing resources in minority communities, (b) use of minority outreach staff wherever possible, (c) use of minority foster homes for placements after birth and before adoption, and (d) other techniques as appropriate;

(3) have a written plan for training adoptive and foster families of minority children;

(4) if located in an area with a significant minority population, have a written plan for employing minority social workers in adoption and foster care. The plan must include staffing goals and objectives; ~~and~~

(5) ensure that adoption and foster care workers attend training offered or approved by the department of human services regarding cultural diversity and the needs of special needs children; and

(6) develop and implement procedures for implementing the requirements of the Indian Child Welfare Act and the Minnesota Indian family preservation act.

Sec. 4. Minnesota Statutes 1990, section 259.255, is amended to read:

259.255 PROTECTION OF HERITAGE OR BACKGROUND.

The policy of the state of Minnesota is to ensure that the best interests of the child are met by requiring due consideration of the child's ~~minority~~ race or ~~minority~~ ethnic heritage in adoption placements. For purposes of intercountry

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adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

The authorized child placing agency shall give preference, in the absence of good cause to the contrary, to placing the child with (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, (b) a family with the same racial or ethnic heritage as the child, or, if that is not feasible, (c) a family of different racial or ethnic heritage from the child which is knowledgeable and appreciative of the child's racial or ethnic heritage.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or clauses (a) and (b) not be followed, the authorized child placing agency shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b), the agency shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available that is described in clause (a) or (b) may the agency give preference to a family described in clause (c) that meets the parent's religious preference.

Sec. 5. Minnesota Statutes 1990, section 259.28, subdivision 2, is amended to read:

Subd. 2. **PROTECTION OF HERITAGE OR BACKGROUND.** The policy of the state of Minnesota is to ensure that the best interests of children are met by requiring due consideration of the child's ~~minority~~ race or ~~minority~~ ethnic heritage in adoption placements. For purposes of intercountry adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

~~In the adoption of a child of minority racial or minority ethnic heritage,~~ In reviewing adoptive placement, the court shall consider preference, and in determining appropriate adoption, the court shall give preference, in the absence of good cause to the contrary, to (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, to (b) a family with the same racial or ethnic heritage as the child, or if that is not feasible, to (c) a family of different racial or ethnic heritage from the child that is knowledgeable and appreciative of the child's racial or ethnic heritage.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or in clauses (a) and (b) not be followed, the court shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b),

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the court shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available as described in clause (a) or (b) may the court give preference to a family described in clause (c) that meets the parent's religious preference.

Sec. 6. Minnesota Statutes 1990, section 259.455, is amended to read:

259.455 FAMILY RECRUITMENT.

Each authorized child placing agency shall make special efforts to recruit an adoptive family from among the child's relatives, except as authorized in section 259.28, subdivision 2, and among families of the same ~~minority~~ racial or ~~minority~~ ethnic heritage. Special efforts include contacting and working with community organizations and religious organizations, utilizing local media and other local resources, and conducting outreach activities. The agency may accept any gifts, grants, offers of services, and other contributions to use in making special recruitment efforts.

Sec. 7. Minnesota Statutes 1990, section 260.181, subdivision 3, is amended to read:

Subd. 3. **PROTECTION OF ~~RACIAL OR ETHNIC HERITAGE,~~ OR ~~RELIGIOUS AFFILIATION BACKGROUND.~~** The policy of the state is to ensure that the best interests of children are met by requiring due consideration of the child's ~~minority~~ race or ~~minority~~ ethnic heritage in foster care placements.

The court, in transferring legal custody of any child or appointing a guardian for the child under the laws relating to juvenile courts, shall place the child, in the following order of preference, in the absence of good cause to the contrary, in the legal custody or guardianship of an individual who (a) is the child's relative, or if that would be detrimental to the child or a relative is not available, who (b) is of the same racial or ethnic heritage as the child, or if that is not possible, who (c) is knowledgeable and appreciative of the child's racial or ethnic heritage. The court may require the county welfare agency to continue efforts to find a guardian of the child's ~~minority~~ racial or ~~minority~~ ethnic heritage when such a guardian is not immediately available. For purposes of this subdivision, "relative" includes members of a child's extended family and important friends with whom the child has resided or had significant contact.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or in clauses (a) and (b) not be followed, the court shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in a foster or adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b), the court shall order placement of the child with an individual who meets the genetic parent's religious preference. Only if no individual is available who is described in clause (a) or (b) may the court give preference to an individual described in clause (c) who meets the parent's religious preference.

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Sec. 8. Minnesota Statutes 1990, section 518.17, subdivision 1, is amended to read:

Subdivision 1. **THE BEST INTERESTS OF THE CHILD.** (a) "The best interests of the child" means all relevant factors to be considered and evaluated by the court including:

- (1) the wishes of the child's parent or parents as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each parent and the child;
- (5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363.01, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (11) the child's cultural background; and
- (12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, that has occurred between the parents.

The court may not use one factor to the exclusion of all others. The primary caretaker factor may not be used as a presumption in determining the best interests of the child. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

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Sec. 9. DISPOSITIONS STUDY.

A multidisciplinary task force shall examine issues raised by the alternative disposition recommendations made in the report prepared pursuant to Laws 1990, chapter 542, section 39. The members of the task force shall be appointed by the speaker of the house of representatives and the subcommittee on committees of the committee on rules and administration of the senate. By January 15, 1993, the task force shall report and make recommendations to the legislature on:

(1) the current practice and level of compliance with the placement preferences in Minnesota Statutes for protection of a child's heritage or background and the impact of alternative dispositions on the placement preferences;

(2) a process for ongoing monitoring of compliance with the placement preferences and possible sanctions for a failure to comply with the preferences;

(3) the need for establishing standards for social work practices for implementing the placement preferences;

(4) licensing and funding requirements that affect alternative disposition placements, the impact of disparate payment rates between foster care and other potential caretakers, and alternatives for establishing subsidized permanent placements without ongoing case management and review; and

(5) programs and resources to facilitate early intervention and prevention of out-of-home placements.

Sec. 10. EFFECTIVE DATE.

Sections 3 to 7 and 9 are effective the day following final enactment.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:05 p.m.

CHAPTER 558—H.F.No. 1903

An act relating to public administration; authorizing spending to acquire and to better public land and buildings and other public improvements of a capital nature with certain conditions; authorizing issuance of bonds; authorizing assessments for debt service; appropriating money, with certain conditions; amending Minnesota Statutes 1990, sections 16B.24, subdivision 2; 16B.30; 16B.31, subdivision 1; and 136C.05, subdivision 5; Minnesota Statutes 1991 Supplement, sections 124.479; proposing coding for new law in Minnesota Statutes, chapters 16A; and 136; repealing Minnesota Statutes 1990, sections 136.03, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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