

Sec. 3. Minnesota Statutes 2000, section 308A.635, subdivision 4, is amended to read:

Subd. 4. **VOTING METHOD.** A member's vote at a members' meeting must be in person or by mail if a mail vote is authorized by the board, or by electronic means if an electronic vote is authorized by the board, and not by proxy except as provided in subdivisions 2 and 5.

Sec. 4. Minnesota Statutes 2000, section 308A.635, subdivision 6, is amended to read:

Subd. 6. **ABSENTEE BALLOTS.** (a) A member who is absent from a members' meeting may vote by mail or by electronic means on the ballot prescribed in this subdivision on any motion, resolution, or amendment that the board submits for vote by mail to the members.

(b) The ballot shall be in the form prescribed by the board and contain:

(1) the exact text of the proposed motion, resolution, or amendment to be acted on at the meeting; and

(2) spaces opposite the text of the motion, resolution, or amendment in which the member may indicate an affirmative or negative vote.

(c) If the vote is by mail, the member shall express a choice by marking an "X" in the appropriate space on the ballot and mail or deliver the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name.

(d) The member may vote by electronic means if the cooperative is able to authenticate that it is the cooperative member who is casting the vote.

(e) A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

Presented to the governor March 26, 2002

Signed by the governor March 27, 2002, 3:36 p.m.

CHAPTER 304—S.F.No. 2673

An act relating to family law; providing for custody of children by de facto custodians and third parties; making related technical changes; providing for hearings on petitions for orders of protection; providing for notice to law enforcement agencies of continuance of order for protection; amending Minnesota Statutes 2000, sections 518.156, subdivision 1; 518B.01, subdivisions 5, 7, 13; Minnesota Statutes 2001 Supplement, section 260C.201, subdivision 11; proposing coding for new law as Minnesota Statutes, chapter 257C; repealing Minnesota Statutes 2000, section 518.158.

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

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Section 1. **[257C.01] DEFINITIONS.**

Subdivision 1. SCOPE. The definitions in this section apply to this chapter.

Subd. 2. DE FACTO CUSTODIAN. (a) "De facto custodian" means an individual who has been the primary caretaker for a child who has, within the 24 months immediately preceding the filing of the petition, resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of:

(1) six months or more if the child is under three years of age; or

(2) one year or more if the child is three years of age or older.

(b) For purposes of the definition in this subdivision, any period of time after a legal proceeding has been commenced and filed must not be included in determining whether the child has resided with the individual for the required minimum period.

(c) For purposes of the definition in this subdivision, "lack of demonstrated consistent participation" by a parent means refusal or neglect to comply with the duties imposed upon the parent by the parent-child relationship, including, but not limited to, providing the child necessary food, clothing, shelter, health care, education, creating a nurturing and consistent relationship, and other care and control necessary for the child's physical, mental, or emotional health and development.

(d) "De facto custodian" does not include an individual who has a child placed in the individual's care:

(1) through a custody consent decree under section 257.0215;

(2) through a court order or voluntary placement agreement under chapter 260C;

or

(3) for adoption under chapter 259.

(e) A standby custody designation under chapter 257B is not a designation of de facto custody unless that intent is indicated within the standby custody designation.

Subd. 3. INTERESTED THIRD PARTY. (a) "Interested third party" means an individual who is not a de facto custodian but who can prove that at least one of the factors in section 257C.03, subdivision 7, paragraph (a) is met.

(b) "Interested third party" does not include an individual who has a child placed in the individual's care:

(1) through a custody consent decree under section 257.0215;

(2) through a court order or voluntary placement under chapter 260C; or

(3) for adoption under chapter 259.

Sec. 2. **[257C.02] APPLICATION OF OTHER LAW; CONSTRUCTION.**

(a) Chapters 256, 257, and 518 and section 525.551 apply to third-party and de facto custody proceedings unless otherwise specified in this chapter. De facto or

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third-party child custody proceedings concerning an Indian child are child custody proceedings governed by the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1963; the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835; and by this chapter when not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

(b) Nothing in this chapter relieves a parent of a duty to support the parent's child. A preexisting child support order is not suspended or terminated when a third party takes custody of a child unless otherwise provided by court order. A de facto or third-party custodian has a cause of action against a parent for child support under section 256.87, subdivision 5, and the public authority has a cause of action against a parent for child support under section 256.87, subdivision 1.

(c) Nothing in this chapter prohibits the establishment of parentage under chapter 257.

Sec. 3. [257C.03] PROCEDURE.

Subdivision 1. COMMENCEMENT OF PROCEEDINGS. (a) In a court of this state with jurisdiction to decide child custody matters, a de facto or third-party child custody proceeding may be brought by an individual other than a parent by filing a petition seeking custody in the county where:

(1) the child is permanently a resident, the child is found, or an earlier order for custody of the child has been entered; or

(2) the court has jurisdiction over the matter under chapter 518D.

(b) The proceeding is commenced by personal service of the summons and petition.

(c) An individual other than a parent who seeks visitation under this section must qualify under one of the provisions of section 257.022, and must comply with the provisions of this subdivision to commence the proceeding.

Subd. 2. REQUISITES OF PETITION OR MOTION. (a) A petition for custody filed under this section must state and allege:

(1) the name and address of the petitioner and any prior or other name used by the petitioner;

(2) the name and, if known, the address and social security number of the respondent mother and father or guardian and any prior or other name used by the respondent and known to the petitioner;

(3) the name and date of birth of each child for whom custody is sought;

(4) the relationship of the petitioner to each child for whom custody is sought;

(5) the petitioner or petitioners' basis for jurisdiction under section 257C.01, subdivision 2 or 3;

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(6) the current legal and physical custodial status of each child for whom custody is sought and a list of all prior orders of custody, if known to the petitioner;

(7) whether any party is a member of the armed services;

(8) the length of time each child has resided with the petitioner and has resided in the state of Minnesota;

(9) whether a separate proceeding for dissolution, legal separation, or custody is pending in a court in this state or elsewhere;

(10) whether a permanent or temporary standby custody designation has been executed or filed in a court in this state or elsewhere;

(11) whether a permanent or temporary standby custody designee differs in identity from the de facto custodian and reasons why the proposed de facto custodian should have custodial priority over a designated standby custodian;

(12) whether parenting time should be granted to the respondents;

(13) any temporary or permanent child support, attorney fees, costs, and disbursements;

(14) whether an order of protection under chapter 518B or a similar law of another state that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered; and

(15) that it is in the best interests of the child under section 257C.04 that the petitioner have custody of the child.

(b) The petition must be verified by the petitioner or petitioners and its allegations established by competent evidence.

Subd. 3. WRITTEN NOTICE. (a) Written notice of a hearing on a petition to establish de facto or third-party custody of a child must be given to:

(1) the parent of the child, if:

(i) the person's name appears on the child's birth certificate as a parent;

(ii) the person has substantially supported the child;

(iii) the person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;

(iv) the person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both;

(v) the person has been adjudicated the child's parent;

(vi) the person has filed a paternity action within 30 days after the child's birth and the action is still pending; or

(vii) the person and the mother of the child signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked, or a

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recognition of parentage under section 257.75 which has not been revoked or vacated;

(2) the guardian or legal custodian, if any, of the child; and

(3) the child's tribe pursuant to section 260.761, subdivision 3, if the child is an Indian child.

(b) Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated.

(c) Written notice of a hearing on a petition to establish de facto or third-party custody of a child must be given to the public authority if either parent receives public assistance, the petitioner receives public assistance on behalf of the child, or either parent receives child support enforcement services from the public authority or applies for public assistance or child support enforcement services from the public authority after a petition under this section is filed. Notice to the public authority must include a copy of the petition.

Subd. 4. APPROVAL WITHOUT HEARING. (a) Approval of an order under this section without a hearing is permitted if both parents consent by stipulation or agreement that it is in the best interests of the child to be in the custody of the de facto custodian or interested third party.

(b) If either parent receives public assistance, the petitioner receives public assistance on behalf of the child, or either parent receives child support enforcement services from the public authority, the petitioner must notify the public authority of the stipulation or agreement under this subdivision.

Subd. 5. EMERGENCY OR TEMPORARY HEARINGS. (a) The court must be guided by the factors set forth in sections 518.131, concerning temporary orders and restraining orders; 518.551, concerning child support; 518.17 to 518.175, concerning custody and parenting time; and 518.14, concerning costs and attorney fees, in making temporary orders and restraining orders.

(b) The court may grant ex parte relief only if requested by a motion with a properly executed supporting affidavit. The affidavit must outline specific supporting facts as to why the case needs to be expedited.

(c) The court shall grant ex parte or temporary relief if the petitioner and situation fit the factors outlined for de facto custodian or third-party custodian under section 257C.01, subdivisions 2 and 3; and subdivisions 6 and 7 of this section.

(d) If the court orders temporary custody under this subdivision, the de facto custodian or interested third party shall seek temporary or permanent custody of the child pursuant to a petition under this chapter and the other standards of this chapter apply.

Subd. 6. DE FACTO CUSTODIAN; BURDEN OF PROOF; FACTORS. (a) To establish that an individual is a de facto custodian, the individual must:

(1) show by clear and convincing evidence that the individual satisfies the provisions of section 257C.01, subdivision 2; and

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(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian.

(b) The following factors must be considered by the court in determining a parent's lack of demonstrated consistent participation for purposes of section 257C.01, subdivision 2:

(1) the intent of the parent or parents in placing the child with the de facto custodian;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the facts and circumstances of the parent's absence;

(4) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(5) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence; and

(6) whether a sibling of the child is already in the petitioner's care.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

Subd. 7. INTERESTED THIRD PARTY; BURDEN OF PROOF; FACTORS.

(a) To establish that an individual is an interested third party, the individual must:

(1) show by clear and convincing evidence that one of the following factors exist:

(i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;

(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or

(iii) other extraordinary circumstances; and

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party.

(b) The following factors must be considered by the court in determining an interested third party's petition:

(1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the presence or involvement of other interested third parties;

(4) the facts and circumstances of the parent's absence;

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(5) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence;

(7) whether a sibling of the child is already in the care of the interested third party; and

(8) the existence of a standby custody designation under chapter 257B.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

Subd. 8. DISMISSAL OF PETITION. (a) The court must dismiss a petition for custody if the court finds that:

(1) the petitioner is not a de facto custodian as set forth in section 257C.01, subdivision 2;

(2) the petitioner does not establish at least one of the factors in subdivision 7, paragraph (a); or

(3) placement of the child with the petitioner is not in the best interests of the child.

(b) If the court finds that a party cannot establish factors for visitation under section 257.022, the court must dismiss a petition for visitation.

Sec. 4. [257C.04] BEST INTERESTS OF A CHILD.

Subdivision 1. CUSTODY FACTORS. (a) If two or more parties seek custody of a child, the court must 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, subdivision 13, of a proposed custodian or the

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child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interests 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, subdivision 2, that has occurred between the parents or the parties.

(b) 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.

(c) The court must not give preference to a party over the de facto custodian or interested third party solely because the party is a parent of the child.

(d) The court must not prefer a parent over the de facto custodian or third party custodian solely on the basis of the gender of the parent, de facto custodian, or third party.

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

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

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

(h) Section 518.619 applies to actions under this section.

Subd. 2. FACTORS WHEN JOINT CUSTODY IS SOUGHT. (a) In addition to the factors listed in subdivision 1, if either joint legal or joint physical custody is contemplated or sought, the court must consider the following relevant factors:

(1) the ability of the parties to cooperate in the rearing of the child;

(2) methods for resolving disputes regarding any major decision concerning the life of the child and the parties' willingness to use those methods;

(3) whether it would be detrimental to the child if one party were to have sole authority over the child's upbringing; and

(4) whether domestic abuse, as defined in section 518B.01, subdivision 2, has occurred between the parties.

(b) If the court awards joint legal or physical custody over the objection of a party, the court must make detailed findings on each of the factors in this subdivision and explain how the factors led to its determination that joint custody would be in the best interests of the child.

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Sec. 5. [257C.05] DE FACTO AND THIRD PARTY CUSTODY ORDERS.

Subdivision 1. **CUSTODY ORDER.** In a child custody proceeding under this chapter, the court must make any additional order it considers just and proper concerning:

- (1) the legal custody of a minor child, whether sole or joint;
- (2) the child's physical custody and residence;
- (3) the quality and duration of parenting time and whether it is supervised or unsupervised;
- (4) child support as determined under section 518.551; and
- (5) other matters reasonably affecting the best interests of the child.

Subd. 2. ATTACHMENTS TO CUSTODY ORDER. All de facto and interested third party custody orders must include Form 3: Appendix A under the Appendix of Forms in the Family Court Procedure in General Rules of Practice. The court may also notify the parties of the availability and uses of mediation.

Sec. 6. [257C.06] MODIFICATION.

The procedures in section 518.18 for modification of a custody order also govern modification of an order under this chapter.

Sec. 7. Minnesota Statutes 2001 Supplement, section 260C.201, subdivision 11, is amended to read:

Subd. 11. REVIEW OF COURT ORDERED PLACEMENTS; PERMANENT PLACEMENT DETERMINATION. (a) Except for cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, and where custody has not been transferred to the responsible social services agency, and the court finds compelling reasons under section 260C.007, subdivision 8, the court shall conduct a hearing to determine the permanent status of a child not later than 12 months after the child is placed out of the home of the parent.

For purposes of this subdivision, the date of the child's placement out of the home of the parent is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed out of the home.

For purposes of this subdivision, 12 months is calculated as follows:

- (1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated;
- (2) if a child has been placed out of the home of the parent within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed out of the home within the previous five years are cumulated. If a child under this clause has been out of the home for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may

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extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.

(b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to this hearing, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152. If a termination of parental rights petition is filed before the date required for the permanency planning determination and there is a trial under section 260C.163 scheduled on that petition within 90 days of the filing of the petition, no hearing need be conducted under this subdivision.

(c) At the conclusion of the hearing, the court shall order the child returned to the care of the parent or guardian from whom the child was removed or order a permanent placement in the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated. Transfer of permanent legal and physical custody, termination of parental rights, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.

(d) If the child is not returned to the home, the court must order one of the following dispositions:

(1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

(i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;

(ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards and procedures applicable under this chapter and chapter 260, chapters 260 and 518, and the procedures set out in the juvenile court rules;

(iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may petition on behalf of the proposed custodian bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; and

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(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights according to the following conditions:

(i) unless the social services agency has already filed a petition for termination of parental rights under section 260C.307, the court may order such a petition filed and all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests; and

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and reasonable efforts by the responsible social services agency have failed to locate an adoptive family for the child; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; or

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24;

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(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;

(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner; and

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.

(f) Once a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if:

(1) the placement is long-term foster care or foster care for a specified period of time;

(2) the court orders further hearings because it has retained jurisdiction of a transfer of permanent legal and physical custody matter;

(3) an adoption has not yet been finalized; or

(4) there is a disruption of the permanent or long-term placement.

(g) Court reviews of an order for long-term foster care, whether under this section or section 260C.317, subdivision 3, paragraph (d), or foster care for a specified period of time must be conducted at least yearly and must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

(1) identify a specific long-term foster home for the child or a specific foster home for the time the child is specified to be out of the care of the parent, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of long-term foster care or foster care for a specified period of time;

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(4) plan for the child's independence upon the child's leaving long-term foster care living as required under section 260C.212, subdivision 1; and

(5) where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

(h) An order under this subdivision must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or parents;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) whether the conditions which led to the out-of-home placement have been corrected so that the child can return home.

(i) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(j) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

Sec. 8. Minnesota Statutes 2000, section 518.156, subdivision 1, is amended to read:

Subdivision 1. **PROCEDURE.** In a court of this state which has jurisdiction to decide child custody matters, a child custody proceeding is commenced:

~~(a)~~ by a parent:

(1) by filing a petition for dissolution or legal separation; or

(2) where a decree of dissolution or legal separation has been entered or where none is sought, or when paternity has been recognized under section 257.75, by filing a petition or motion seeking custody or parenting time with the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered; ~~or~~.

~~(b) by a person other than a parent, where a decree of dissolution or legal separation has been entered or where none is sought by filing a petition or motion seeking custody or visitation of the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered. A person seeking visitation pursuant to this paragraph must qualify~~

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under one of the provisions of section ~~257.022~~.

Sec. 9. Minnesota Statutes 2000, section 518B.01, subdivision 5, is amended to read:

Subd. 5. **HEARING ON APPLICATION; NOTICE.** (a) Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order for hearing unless an ex parte order is issued.

(b) If an ex parte order has been issued under subdivision 7 and a hearing requested, the time periods under subdivision 7 for holding a hearing apply. If a hearing was requested by the petitioner, the petitioner seeks only the relief under subdivision 7, paragraph (a), a hearing is not required unless:

(1) the court declines to order the requested relief; or

(2) one of the parties requests a hearing.

(c) If an ex parte order has been issued under subdivision 7 and the petitioner seeks relief beyond that specified in subdivision 7, paragraph (a), or if the court declines to order relief requested by the petitioner, a hearing must be held within seven days. Personal service of the ex parte order may be made upon the respondent at any time up to 12 hours prior to the time set for the hearing, provided that the respondent at the hearing may request a continuance of up to five days if served fewer than five days prior to the hearing which continuance shall be granted unless there are compelling reasons not to. If the hearing was requested by the respondent after issuance of an ex parte order under subdivision 7,

(d) If an ex parte order has been issued only granting relief under subdivision 7, paragraph (a), and the respondent requests a hearing, the hearing shall be held within ten days of the court's receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of hearing upon the petitioner by mail in the manner provided in the rules of civil procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this paragraph subdivision, the court may set a new hearing date no more than five days later.

(e) If for good cause shown either party is unable to proceed at the initial hearing and requests a continuance and the court finds that a continuance is appropriate, the hearing may be continued. Unless otherwise agreed by the parties and approved by the court, the continuance shall be for no more than five days. If the court grants the requested continuance, the court shall also issue a written order continuing all provisions of the ex parte order pending the issuance of an order after the hearing.

(b) (f) Notwithstanding the preceding provisions of paragraph (a) this subdivision, service on the respondent may be made by one week published notice, as provided under section 645.11, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff or other law enforcement or

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corrections officer was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under paragraph ~~(a)~~ (d).

Sec. 10. Minnesota Statutes 2000, section 518B.01, subdivision 7, is amended to read:

Subd. 7. **EX PARTE ORDER.** (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

- (1) restraining the abusing party from committing acts of domestic abuse;
- (2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;
- (3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and
- (4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. Upon request, a full hearing, as provided by this section, shall be set ~~for not later than seven days from the issuance of the ex parte order, if a hearing is requested by the petitioner, or not later than ten days or earlier than eight days from receipt by the court of a request for a hearing by the respondent.~~ Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this subdivision must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request

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a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Sec. 11. Minnesota Statutes 2000, section 518B.01, subdivision 13, is amended to read:

Subd. 13. COPY TO LAW ENFORCEMENT AGENCY. (a) An order for protection and any continuance of an order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.

(b) If the applicant notifies the court administrator of a change in the applicant's residence so that a different local law enforcement agency has jurisdiction over the residence, the order for protection and any continuance of an order for protection must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. If the applicant notifies the new law enforcement agency that an order for protection has been issued under this section and the applicant has established a new residence within that agency's jurisdiction, within 24 hours the local law enforcement agency shall request a copy of the order for protection from the court administrator in the county that issued the order.

(c) When an order for protection is granted, the applicant for an order for protection must be told by the court that:

(1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the applicant;

(2) the reason for notification of a change in residence is to forward an order for protection to the proper law enforcement agency; and

(3) the order for protection must be forwarded to the law enforcement agency having jurisdiction over the new residence within 24 hours of notification of a change in residence, whether notification is given to the court administrator or to the local law enforcement agency having jurisdiction over the applicant's new residence.

An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

Sec. 12. REPEALER.

Minnesota Statutes 2000, section 518.158, is repealed.

Sec. 13. INSTRUCTION TO THE REVISOR.

(a) The revisor shall renumber Minnesota Statutes, section 257.0215 to be 257C.07 and correct all references to that section in Minnesota Statutes and Minnesota Rules.

(b) The revisor shall renumber Minnesota Statutes, section 257.022 to be 257C.08 and correct all references to that section in Minnesota Statutes and Minnesota Rules.

Presented to the governor March 26, 2002

Signed by the governor March 27, 2002, 3:39 p.m.

CHAPTER 305—S.F.No. 3278

An act relating to drivers' licenses; requiring commissioner of public safety to adopt rules requiring education in organ donation as part of driver education programs; requiring commissioner to include information on organ and tissue donation in the driver's manual; amending Minnesota Statutes 2000, section 171.13, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 171.

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

Section 1. [171.0701] DRIVER EDUCATION; ORGAN AND TISSUE DONATION.

The commissioner shall adopt rules requiring instruction relating to organ and tissue donations and the provisions of section 171.07, subdivision 5, for persons enrolled in driver education programs offered at public schools, private schools, and commercial driver training schools.

Sec. 2. Minnesota Statutes 2000, section 171.13, is amended by adding a subdivision to read:

Subd. 1h. DRIVER'S MANUAL; ORGAN AND TISSUE DONATION. The commissioner shall include in each edition of the driver's manual published by the department after August 1, 2002, a section that includes information on the shortage of organs and tissues for transplant, basic facts about donation, use of the driver's license as an indication of donation intent, and the importance of informing family members of the driver's decision.

Presented to the governor March 26, 2002

Signed by the governor March 27, 2002, 3:35 p.m.

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