

CHAPTER 257

CHILDREN; CUSTODY; LEGITIMACY

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257.34 DECLARATION OF PARENTAGE.

[For text of subs 1 and 3, see M.S.1994]

Subd. 4. **Expiration of authority for declarations.** No acknowledgment of parentage shall be entered into on or after August 1, 1995, under this section. The mother and father of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born may before, on, or after August 1, 1995, sign a recognition of parentage under section 257.75.

History: 1995 c 257 art 4 s 3

257.3571 INDIAN CHILD WELFARE GRANTS.

Subdivision 1. **Primary support grants.** The commissioner shall establish direct grants to Indian tribes, Indian organizations, and tribal social service agency programs located off-reservation that serve Indian children and their families to provide primary support for Indian child welfare programs to implement the Indian family preservation act.

[For text of subs 2 to 3, see M.S.1994]

History: 1995 c 207 art 4 s 39

257.3572 GRANT APPLICATIONS.

A tribe, Indian organization, or tribal social service agency program located off-reservation may apply for primary support grants under section 257.3571, subdivision 1. A local social service agency, tribe, Indian organization, or other social service organization may apply for special focus grants under section 257.3571, subdivision 2. Civil legal service organizations eligible for grants under section 257.3571, subdivision 2a, may apply for grants under that section. Application may be made alone or in combination with other tribes or Indian organizations.

History: 1995 c 207 art 4 s 40

257.3577 GRANT FORMULA.

Subdivision 1. **Primary support grants.** (a) The amount available for grants established under section 257.3571, subdivision 1, to tribes, Indian organizations, and tribal social service agency programs located off-reservation is four-fifths of the total annual appropriation for Indian child welfare grants.

(b) The commissioner shall award tribes at least 70 percent of the amount set in paragraph (a) for primary support grants. Each tribe shall be awarded a base amount of five percent of the total amount set in this paragraph. In addition, each tribe shall be allocated a proportion of the balance of the amount set in this paragraph, less the total base amounts for all reservations. This proportion must equal the ratio of the tribe's on-reservation population to the state's total on-reservation population. Population data must be based on the most recent federal census data according to the state demographer's office.

(c) The commissioner shall award Indian organizations and tribal social service agency programs located off-reservation that serve Indian children and families up to 30 percent of the amount set in paragraph (a) for primary support grants. A maximum of four multiservice Indian organizations and tribal social service agency programs located off-reservation may be awarded grants under this paragraph. "Multiservice Indian organizations" means Indian organizations recognized by the Indian community as providing a broad continuum of social, educational, or cultural services, including Indian child welfare services designed to meet the unique needs of the Indian communities in Minneapolis, St. Paul, and Duluth. Grants may be awarded to programs that submit acceptable proposals, comply with the goals and the application process of the program, and have budgets that reflect appropriate and efficient use of funds. To maintain continuity of service in Indian communities, primary support grants awarded under this paragraph which meet the grant criteria and have demonstrated satisfactory performance as established by the commissioner may be awarded on a noncompetitive basis. The commissioner may revoke or deny funding for Indian organizations or tribal social service agencies failing to meet the grant criteria established by the commissioner, and the commissioner may request new proposals from Indian organizations or tribal social service agencies to the extent that funding is available.

[For text of subd 2, see M.S.1994]

History: 1995 c 207 art 4 s 41

257.55 PRESUMPTION OF PATERNITY.

Subdivision 1. Presumption. A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(b) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth certificate; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child;

(e) He and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under section 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) Evidence of statistical probability of paternity based on blood or genetic testing establishes the likelihood that he is the father of the child, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater;

(g) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision;

(h) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75; or

(i) He and the child's biological mother executed a recognition of parentage in accordance with section 257.75 when either or both of the signatories were less than 18 years of age.

[For text of subd 2, see M.S.1994]

History: 1995 c 207 art 10 s 7; 1995 c 216 s 1; 1995 c 257 art 4 s 4

NOTE: Subdivision 1 was amended by Laws 1995, chapter 216, section 1. Applicability of amendments and transition language are established in Laws 1995, chapter 216, section 7, paragraph (b).

257.57 DETERMINATION OF FATHER AND CHILD RELATIONSHIP; WHO MAY BRING ACTION; WHEN ACTION MAY BE BROUGHT.

[For text of subd 1, see M.S.1994]

Subd. 2. The child, the mother, or personal representative of the child, the public authority chargeable by law with the support of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor may bring an action:

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (d), (e), (f), (g), or (h), or the nonexistence of the father and child relationship presumed under clause (d) of that subdivision;

(2) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (e) or (g), only if the action is brought within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the presumed father is not the father of the child;

(3) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (f), only if the action is brought within three years after the party bringing the action, or the party's attorney of record, has been provided the blood or genetic test results; or

(4) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.75, subdivision 9, only if the action is brought by the minor signatory within six months after the minor signatory reaches the age of 18. In the case of a recognition of parentage executed by two minor signatories, the action to declare the nonexistence of the father and child relationship must be brought within six months after the youngest signatory reaches the age of 18.

[For text of subs 3 to 6, see M.S.1994]

History: 1995 c 207 art 10 s 8; 1995 c 216 s 2; 1995 c 257 art 4 s 5

NOTE: Subdivision 2 was amended by Laws 1995, chapter 216, section 2. Applicability of amendments and transition language are established in Laws 1995, chapter 216, section 7, paragraph (a).

257.60 PARTIES.

The child may be made a party to the action. If the child is a minor and is made a party, a general guardian or a guardian ad litem shall be appointed by the court to represent the child. The child's mother or father may not represent the child as guardian or otherwise. The biological mother, each man presumed to be the father under section 257.55, and each man alleged to be the biological father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be given an opportunity to be heard. The public agency responsible for support enforcement is

joined as a party in each case in which rights are assigned under section 256.74, subdivision 5, and in each case in which the public agency is providing services pursuant to an application for child support services. A person who may bring an action under section 257.57 may be made a party to the action. The court may align the parties. The child shall be made a party whenever:

(1) the child is a minor and the case involves a compromise under section 257.64, subdivision 1, or a lump sum payment under section 257.66, subdivision 4, in which case the commissioner of human services shall also be made a party subject to department of human services rules relating to paternity suit settlements; or

(2) the child is a minor and the action is to declare the nonexistence of the father and child relationship; or

(3) an action to declare the existence of the father and child relationship is brought by a man presumed to be the father under section 257.55, or a man who alleges to be the father, and the mother of the child denies the existence of the father and child relationship.

History: 1995 c 257 art 4 s 6

257.62 BLOOD AND GENETIC TESTS.

Subdivision 1. **Blood or genetic tests required.** The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood or genetic tests. A copy of the test results must be served on the parties as provided in section 543.20. Any objection to the results of blood or genetic tests must be made in writing no later than 15 days prior to a hearing at which time those test results may be introduced into evidence. Test results served upon a party must include notice of this right to object. If the alleged father is dead, the court may, and upon request of a party shall, require the decedent's parents or brothers and sisters or both to submit to blood or genetic tests. However, in a case involving these relatives of an alleged father, who is deceased, the court may refuse to order blood or genetic tests if the court makes an express finding that submitting to the tests presents a danger to the health of one or more of these relatives that outweighs the child's interest in having the tests performed. Unless the person gives consent to the use, the results of any blood or genetic tests of the decedent's parents, brothers, or sisters may be used only to establish the right of the child to public assistance including but not limited to social security and veterans' benefits. The tests shall be performed by a qualified expert appointed by the court.

[For text of subs 2 and 3, see M.S.1994]

Subd. 5. **Positive test results.** (a) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that the likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 92 percent or greater, upon motion the court shall order the alleged father to pay temporary child support determined according to chapter 518. The alleged father shall pay the support money into court pursuant to the rules of civil procedure to await the results of the paternity proceedings.

(b) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater, the alleged father is presumed to be the parent and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.

Subd. 6. **Tests, evidence admissible.** In any hearing brought under subdivision 5, a certified report of the facts and results of a laboratory analysis or examination of blood or genetic tests, that is performed in a laboratory accredited to meet the Standards for Parentage Testing of the American Association of Blood Banks and is prepared and attested by a qualified expert appointed by the court, shall be admissible in evidence without proof of the seal, signature, or official character of the person whose name is signed to it. If no objection is made, the blood or genetic test results are admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

History: 1995 c 207 art 10 s 9-11

257.64 PRETRIAL ORDERS AND RECOMMENDATIONS.

[For text of subs 1 and 2, see M.S.1994]

Subd. 3. If a party refuses to accept a recommendation made under subdivision 1 and blood or genetic tests have not been taken, the court shall require the parties to submit to blood or genetic tests. Any objection to blood or genetic testing results must be made in writing no later than 15 days before any hearing at which time the results may be introduced into evidence. Test results served upon a party must include a notice of this right to object. Thereafter the court shall make an appropriate final recommendation. If a party refuses to accept the final recommendation the action shall be set for trial.

[For text of subs 4 and 5, see M.S.1994]

History: 1995 c 207 art 10 s 12

257.651 DEFAULT ORDER OF PARENTAGE.

In an action to determine the existence of the father and child relationship under sections 257.51 to 257.74, if the alleged father fails to appear at a hearing after service duly made and proved, the court shall enter a default judgment or order of paternity.

History: 1995 c 257 art 4 s 7

257.66 JUDGMENT OR ORDER.

[For text of subs 1 to 3, see M.S.1994]

Subd. 4. **Statute of limitations.** Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment may be ordered in lieu of periodic payments of support. The court shall limit the parent's liability for past support of the child to the proportion of the expenses that the court deems just, which were incurred in the two years immediately preceding the commencement of the action. In determining the amount of the parent's liability for past support, the court may deviate downward from the guidelines if:

(1) the child for whom child support is sought is more than five years old and the obligor discovered or was informed of the existence of the parent and child relationship within one year of commencement of the action seeking child support;

(2) the obligor is a custodian for or pays support for other children; and

(3) the obligor's family income is less than 175 percent of the federal poverty level.

[For text of subd 5, see M.S.1994]

History: 1995 c 257 art 1 s 18

257.67 ENFORCEMENT OF JUDGMENT OR ORDER.

Subdivision 1. If existence of the parent and child relationship is declared, or parentage or a duty of support has been acknowledged or adjudicated under sections 257.51 to 257.74 or under prior law, the obligation of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent that person has furnished or is furnishing these expenses. Full faith and credit shall be given to a determination of paternity made by another state, whether established through voluntary acknowledgment or through administrative or judicial processes.

[For text of subs 2 and 3, see M.S.1994]

History: 1995 c 257 art 4 s 8

257.69 RIGHT TO COUNSEL; COSTS; FREE TRANSCRIPT ON APPEAL.

Subdivision 1. **Representation by counsel.** In all proceedings under sections 257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the

public authority. The court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under sections 257.51 to 257.74.

Subd. 2. Guardian; legal fees. The court may order expert witness and guardian ad litem fees and other costs of the trial and pretrial proceedings, including appropriate tests, to be paid by the parties in proportions and at times determined by the court. The court shall require a party to pay part of the fees of court-appointed counsel according to the party's ability to pay, but if counsel has been appointed the appropriate agency shall pay the party's proportion of all other fees and costs. The agency responsible for child support enforcement shall pay the fees and costs for blood or genetic tests in a proceeding in which it is a party, is the real party in interest, or is acting on behalf of the child. However, at the close of a proceeding in which paternity has been established under sections 257.51 to 257.74, the court shall order the adjudicated father to reimburse the public agency, if the court finds he has sufficient resources to pay the costs of the blood or genetic tests. When a party bringing an action is represented by the county attorney, no filing fee shall be paid to the court administrator.

[For text of subd 3, see M.S.1994]

History: 1995 c 207 art 10 s 13,14

NOTE: The amendment to subdivision 2 by Laws 1995, chapter 207, article 10, section 14, is effective retroactive to August 10, 1993. See Laws 1995, chapter 207, article 10, section 26.

257.75 RECOGNITION OF PARENTAGE.

Subdivision 1. Recognition by parents. The mother and father of a child born to a mother who was not married to the child's father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the state registrar of vital statistics, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents. The recognition must be in the form prepared by the commissioner of human services under subdivision 5, except that it may also include the joinder in recognition provisions under subdivision 1a. The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under subdivision 1a.

Subd. 1a. Joinder in recognition by husband. A man who is a presumed father under section 257.55, subdivision 1, paragraph (a), may join in a recognition of parentage that recognizes that another man is the child's biological father. The man who is the presumed father under section 257.55, subdivision 1, paragraph (a), must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under section 257.55, subdivision 1, paragraph (a), and recognizing that the father who is executing the recognition under subdivision 1 is the biological father of the child. A joinder in a recognition under this subdivision must be executed within one year after the child's birth and at the same time as the recognition under subdivision 1 or within ten days following execution of the recognition. The joinder must be included in the recognition form or incorporated by reference within the recognition and attached to the form when it is filed with the state registrar of vital statistics. The joinder must be on a form prepared by the commissioner of human services. Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under subdivision 1.

Subd. 2. Revocation of recognition. A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the state registrar of vital statistics within 30 days after the recognition is executed. A joinder in a recognition may be revoked in a writing signed by the man who executed the joinder and filed with the state registrar of vital statistics within 30 days after the joinder is executed. Upon receipt of a revocation of the recognition of parentage or joinder in a recognition, the state registrar of vital statistics shall forward a copy of the revocation to the nonrevoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition.

Subd. 3. Effect of recognition. Subject to subdivision 2 and section 257.55, subdivision 1, paragraph (g) or (h), the recognition has the force and effect of a judgment or order determining the existence of the parent and child relationship under section 257.66. If the conditions in section 257.55, subdivision 1, paragraph (g) or (h), exist, the recognition

creates only a presumption of paternity for purposes of sections 257.51 to 257.74. Until an order is entered granting custody to another, the mother has sole custody. The recognition is:

(1) a basis for bringing an action to award custody or visitation rights to either parent, establishing a child support obligation which may include up to the two years immediately preceding the commencement of the action, ordering a contribution by a parent under section 256.87, or ordering a contribution to the reasonable expenses of the mother's pregnancy and confinement, as provided under section 257.66, subdivision 3, or ordering reimbursement for the costs of blood or genetic testing, as provided under section 257.69, subdivision 2;

(2) determinative for all other purposes related to the existence of the parent and child relationship; and

(3) entitled to full faith and credit in other jurisdictions.

Subd. 4. Action to vacate recognition. An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, or the child. A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the man who executed the recognition is not the father of the child. A child must bring an action to vacate within six months after the child obtains the result of blood or genetic tests that indicate that the man who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later. If the court finds a prima facie basis for vacating the recognition, the court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood tests. If the court issues an order for the taking of blood tests, the court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood tests. If the party fails to pay for the costs of the blood tests, the court shall dismiss the action to vacate with prejudice. The court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney fees, costs, and disbursements. If the results of the blood tests establish that the man who executed the recognition is not the father, the court shall vacate the recognition. If a recognition is vacated, any joinder in the recognition under subdivision 1a is also vacated. The court shall terminate the obligation of a party to pay ongoing child support based on the recognition. A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.

[For text of subs 5 to 8, see M.S.1994]

Subd. 9. Execution by a minor parent. A recognition of parentage executed and filed in accordance with this section by a minor parent creates a presumption of paternity for the purposes of sections 257.51 to 257.74.

History: 1995 c 216 s 3-6; 1995 c 257 art 4 s 9,10

257.803 DISBURSEMENT OF FUNDS FOR CHILD ABUSE PREVENTION.

[For text of subd 1, see M.S.1994]

Subd. 2. Advisory council. An advisory council of 19 members is established under section 15.059. The commissioners of human services, public safety, health, children, families, and learning, and corrections shall each appoint one member. The subcommittee on committees of the senate and the speaker of the house of representatives shall each appoint two members of their respective bodies, one from each caucus. The governor shall appoint an additional ten members who shall demonstrate knowledge in the area of child abuse and shall represent the demographic and geographic composition of the state, and to the extent possible, represent the following groups: local government, parents, racial and ethnic minority communities, the religious community, professional providers of child abuse prevention and treatment services, and volunteers in child abuse prevention and treatment services. The council shall advise and assist the commissioner in carrying out sections 257.80 to 257.806. The council does not expire as provided by section 15.059, subdivision 5.

[For text of subs 3 and 4, see M.S.1994]

History: 1Sp1995 c 3 art 16 s 13

257.81 TRAINING FOR INTERVIEWERS OF MALTREATED CHILDREN; COMMISSIONER OF HUMAN SERVICES DUTIES.

The commissioner of human services shall develop training programs designed to provide specialized interviewer training to persons who interview allegedly maltreated children. The training must include information on interviewing adolescents and address the best methods of so doing. All training shall be presented within a child development model framework and include information on working with children of color and children with special needs. To accomplish this objective, the commissioner shall:

- (1) establish criteria for adequately trained interviewers;
- (2) determine the number of trained interviewers and evaluate the extent of the need for interviewer training;
- (3) offer forums and tuition to county professionals for specialized interviewer training where the need exists; and
- (4) encourage counties to assess local needs and assist counties in making interviewer training available to meet those needs.

History: 1995 c 226 art 7 s 1