

## CHAPTER 257

## CHILDREN; CUSTODY, LEGITIMACY

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**257.02 SURRENDER OF PARENTAL RIGHTS.**

No person other than the parents or relatives may assume the permanent care and custody of a child under 14 years of age unless authorized so to do by an order or decree of court. However, if a parent of a child who is being cared for by a relative dies, or if the parent is not or cannot fulfill parental duties with respect to the child, the relative may bring a petition under section 260.131. Except in proceedings for adoption or by a consent decree entered under section 257.0215, no parent may assign or otherwise transfer to another parental rights or duties with respect to the permanent care and custody of a child under 14 years of age. Any such transfer shall be void.

**History:** 1997 c 112 s 1

**257.0215 CUSTODY CONSENT DECREE.**

A parent may transfer legal and physical custody of a child to a relative by a consent decree entered under this section. The court may approve a proposed consent decree if the custody arrangement is in the best interests of the child and all parties to the decree agree to it after being fully informed of its contents. A consent decree under this section must:

(1) transfer legal and physical custody of the child to a named relative and state that this includes the ability to determine the child's residence; make decisions regarding the child's education, religious training, and health care; and obtain information and public services on behalf of the child in the same manner as a parent;

(2) indicate whether the transfer of custody is temporary or permanent; and

(3) include an order for child support in the guidelines amount and an allocation of child care costs as provided by section 518.551, subject to income withholding under section 518.6111 and including an order for medical support under section 518.171.

Either a parent or a relative who is party to a consent decree under this section may file a motion to modify or terminate the consent decree at any time. A party who has custody of a child under this section must seek modification of the consent decree before transferring physical or legal custody of the child to anyone.

For purposes of this section, "relative" means an adult who is a stepparent, grandparent, brother, sister, uncle, aunt, or other extended family member of a minor by blood, marriage, or adoption.

**History:** 1997 c 112 s 2; 1997 c 203 art 6 s 92

**257.022 RIGHTS OF VISITATION TO UNMARRIED PERSONS.**

[For text of subd 1, see M.S.1996]

**Subd. 2. Family court proceedings.** (a) In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after the commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the

child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that: (1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

(b) If a motion for grandparent visitation has been heard and denied, unless agreed to in writing by the parties, no subsequent motion may be filed within six months after disposition of a prior motion on its merits.

*[For text of subs 2a to 3, see M.S.1996]*

**Subd. 3a. Grandparent visitation with an adopted child.** (a) A grandparent of a child adopted by a stepparent may petition and a court may grant an order setting visitation with the child if:

(1) the grandparent is the parent of:

(i) a deceased parent of the child; or

(ii) a parent of the child whose parental relationship was terminated by a decree of adoption according to section 259.57, subdivision 1; and

(2) the court determines that the requested visitation:

(i) is in the best interests of the child; and

(ii) would not interfere with the parent and child relationship.

(b) Failure to comply with the terms of an order for visitation granted under this subdivision is not a basis for revoking, setting aside, or otherwise challenging the validity of a consent, relinquishment, or adoption of a child.

*[For text of subs 4 and 5, see M.S.1996]*

**History:** 1997 c 177 s 2,3

## **257.069 INFORMATION FOR CHILD PLACEMENT.**

**Subdivision 1. Agency with placement authority.** An agency with legal responsibility for the placement of a child may request and shall receive all information pertaining to the child that it considers necessary to appropriately carry out its duties. That information must include educational, medical, psychological, psychiatric, and social or family history data retained in any form by any individual or entity. The agency may gather appropriate data regarding the child's parents in order to develop and implement a case plan required by section 257.071. Upon request of the court responsible for overseeing the provision of services to the child and family and for implementing orders that are in the best interest of the child, the responsible local social service agency or tribal social service agency shall provide appropriate written or oral reports from any individual or entity that has provided services to the child or family. The reports must include the nature of the services being provided the child or family; the reason for the services; the nature, extent, and quality of the child's or parent's participation in the services, where appropriate; and recommendations for continued services, where appropriate. The individual or entity shall report all observations and information upon which it bases its report as well as its conclusions. If necessary to facilitate the receipt of the reports, the court may issue appropriate orders.

**Subd. 2. Access to specific data.** A social service agency responsible for the residential placement of a child under this section and the residential facility in which the child is placed shall have access to the following data on the child:

(1) medical data under section 13.42;

(2) corrections and detention data under section 13.85;

(3) juvenile court data under section 260.161; and

(4) health records under section 144.335.

**History:** 1997 c 239 art 6 s 2

**257.071 CHILDREN IN FOSTER HOMES; PLACEMENT; REVIEW.**

*[For text of subd 1, see M.S.1996]*

**Subd. 1a. Placement decisions based on best interest of the child.** (a) The policy of the state of Minnesota is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed. The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends consistent with section 260.181, subdivision 3.

(b) Among the factors the agency shall consider in determining the needs of the child are those specified under section 260.181, subdivision 3, paragraph (b).

(c) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child. Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a sibling.

*[For text of subd 1b, see M.S.1996]*

**Subd. 1c. Notice before voluntary placement.** The local social service agency shall inform a parent considering voluntary placement of a child who is not developmentally disabled or emotionally handicapped of the following:

(1) the parent and the child each has a right to separate legal counsel before signing a voluntary placement agreement, but not to counsel appointed at public expense;

(2) the parent is not required to agree to the voluntary placement, and a parent who enters a voluntary placement agreement may at any time request that the agency return the child. If the parent so requests, the child must be returned within 24 hours of the receipt of the request;

(3) evidence gathered during the time the child is voluntarily placed may be used at a later time as the basis for a petition alleging that the child is in need of protection or services or as the basis for a petition seeking termination of parental rights;

(4) if the local social service agency files a petition alleging that the child is in need of protection or services or a petition seeking the termination of parental rights, the parent would have the right to appointment of separate legal counsel and the child would have a right to the appointment of counsel and a guardian ad litem as provided by law, and that counsel will be appointed at public expense if they are unable to afford counsel; and

(5) the timelines and procedures for review of voluntary placements under subdivision 3, and the effect the time spent in voluntary placement on the scheduling of a permanent placement determination hearing under section 260.191, subdivision 3b.

**Subd. 1d. Relative search; nature.** (a) Within six months after a child is initially placed in a residential facility, the local social service agency shall identify any relatives of the child and notify them of the possibility of a permanent out-of-home placement of the child, and that a decision not to be a placement resource at the beginning of the case may affect the relative's right to have the child placed with that relative later. The relatives must be notified that they must keep the local social service agency informed of their current address in order to receive notice of any permanent placement hearing. A relative who fails to provide a current address to the local social service agency forfeits the right to notice of permanent placement.

(b) When the agency determines that it is necessary to prepare for the permanent placement determination hearing, or in anticipation of filing a termination of parental rights petition, the agency shall send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The notice must contain an advisory that if the relative chooses not to be a placement resource at the beginning of the case, this may affect the relative's rights to have the child placed with that relative permanently later on.

**Subd. 1e. Change in placement.** If a child is removed from a permanent placement disposition authorized under section 260.191, subdivision 3b, within one year after the placement was made:

(1) the child must be returned to the residential facility where the child was placed immediately preceding the permanent placement; or

(2) the court shall hold a hearing within ten days after the child is taken into custody to determine where the child is to be placed. A guardian ad litem must be appointed for the child for this hearing.

**Subd. 2. Six-month review of placements.** There shall be an administrative review of the case plan of each child placed in a residential facility no later than 180 days after the initial placement of the child in a residential facility and at least every six months thereafter if the child is not returned to the home of the parent or parents within that time. The case plan must be monitored and updated at each administrative review. As an alternative to the administrative review, the social service agency responsible for the placement may bring a petition as provided in section 260.131, subdivision 1a, to the court for review of the foster care to determine if placement is in the best interests of the child. This petition must be brought to the court within the applicable six months and is not in lieu of the requirements contained in subdivision 3 or 4. A court review conducted pursuant to section 260.191, subdivision 3b, shall satisfy the requirement for an administrative review so long as the other requirements of this section are met.

**Subd. 3. Review of voluntary placements.** Except as provided in subdivision 4, if the child has been placed in a residential facility pursuant to a voluntary release by the parent or parents, and is not returned home within 90 days after initial placement in the residential facility, the social service agency responsible for the placement shall:

(1) return the child to the home of the parent or parents; or

(2) file a petition to extend the placement for 90 days.

The case plan must be updated when a petition is filed and must include a specific plan for permanency.

If the court approves the extension, at the end of the second 90-day period, the child must be returned to the parent's home, unless a petition is filed for a child in need of protection or services.

**Subd. 4. Review of developmentally disabled and emotionally handicapped child placements.** If a developmentally disabled child, as that term is defined in United States Code, title 42, section 6001 (7), as amended through December 31, 1979, or a child diagnosed with an emotional handicap as defined in section 252.27, subdivision 1a, has been placed in a residential facility pursuant to a voluntary release by the child's parent or parents because of the child's handicapping conditions or need for long-term residential treatment or supervision, the social service agency responsible for the placement shall bring a petition for review of the child's foster care status, pursuant to section 260.131, subdivision 1a, rather than a petition as required by section 260.191, subdivision 3b, after the child has been in foster care for six months or, in the case of a child with an emotional handicap, after the child has been in a residential facility for six months. Whenever a petition for review is brought pursuant to this subdivision, a guardian ad litem shall be appointed for the child.

*[For text of subd 5, see M.S.1996]*

**Subd. 7. Rules.** The commissioner shall revise Minnesota Rules, parts 9545.0010 to 9545.0260, the rules setting standards for family and group family foster care. The commissioner shall:

(1) require that, as a condition of licensure, foster care providers attend training on understanding and validating the cultural heritage of all children in their care, and on the importance of the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 257.35 to 257.3579; and

(2) review and, where necessary, revise foster care rules to reflect sensitivity to cultural diversity and differing lifestyles. Specifically, the commissioner shall examine whether space and other requirements discriminate against single-parent, minority, or low-income

families who may be able to provide quality foster care reflecting the values of their own respective cultures.

[For text of subs 8 to 10, see M.S.1996]

**History:** 1997 c 86 s 1,2; 1997 c 107 s 14; 1997 c 239 art 6 s 3-7

## 257.072 WELFARE OF CHILDREN.

**Subdivision 1. Recruitment of foster families.** Each authorized child-placing agency shall make special efforts to recruit a foster family from among the child's relatives, except as authorized in section 260.181, subdivision 3. In recruiting placements for each child, the agency must focus on that child's particular needs and the capacities of the particular prospective foster parents to meet those needs. Each agency shall provide for diligent recruitment of potential foster families that reflect the ethnic and racial diversity of the children in the state for whom foster homes are needed. Special efforts include contacting and working with community organizations and religious organizations and may include contracting with these organizations, utilizing local media and other local resources, conducting outreach activities, and increasing the number of minority recruitment staff employed by the agency. The requirement of special efforts to locate relatives in this section is satisfied on the earlier of the following occasions:

(1) when the child is placed with a relative who is interested in providing a permanent placement for the child; or

(2) when the responsible child-placing agency has made special efforts for six months following the child's placement in a residential facility and the court approves the agency's efforts pursuant to section 260.191, subdivision 3a. The agency may accept any gifts, grants, offers of services, and other contributions to use in making special recruitment efforts.

**Subd. 2. Duties of commissioner.** The commissioner of human services shall:

(1) in cooperation with child-placing agencies, develop a cost-effective campaign using radio and television to recruit adoptive and foster families that reflect the ethnic and racial diversity of children in the state for whom adoptive and foster homes are needed; and

(2) require that agency staff people who work in the area of adoption and foster family recruitment participate in cultural competency training.

**Subd. 3. Recruitment specialist.** The commissioner shall designate a permanent professional staff position for recruitment of foster and adoptive families. The recruitment specialist shall provide services to child-placing agencies seeking to recruit adoptive and foster care families and qualified professional staff. The recruitment specialist shall:

(1) develop materials for use by the agencies in training staff;

(2) conduct in-service workshops for agency personnel;

(3) provide consultation, technical assistance, and other appropriate services to agencies to strengthen and improve service delivery to diverse populations; and

(4) conduct workshops for foster care and adoption recruiters to evaluate the effectiveness of techniques for recruiting foster and adoptive families; and

(5) perform other duties as assigned by the commissioner to implement the Minnesota Indian Family Preservation Act, sections 257.35 to 257.3579.

The commissioner may contract for portions of these services.

**Subd. 4. Consultation with representatives.** The commissioner of human services, after seeking and considering advice from representatives reflecting diverse populations from the councils established under sections 3.922, 3.9223, 3.9225, and 3.9226, and other state, local, and community organizations shall:

(1) review, and where necessary, revise the department of human services social service manual and practice guide to reflect federal and state policy direction on placement of children;

(2) develop criteria for determining whether a prospective adoptive or foster family has the ability to understand and validate the child's cultural background;

(3) develop a standardized training curriculum for adoption and foster care workers, family-based providers, and administrators who work with children. Training must address the following objectives:

- (a) developing and maintaining sensitivity to all cultures;
- (b) assessing values and their cultural implications; and
- (c) making individualized decisions that advance the best interests of a particular child under section 257.071, subdivision 1a;
- (4) develop a training curriculum for family and extended family members of adoptive and foster children. The curriculum must address issues relating to cross-cultural placements as well as issues that arise after a foster or adoptive placement is made; and
- (5) develop and provide to agencies an assessment tool to be used in combination with group interviews and other preplacement activities to evaluate prospective adoptive and foster families. The tool must assess problem-solving skills; identify parenting skills; and evaluate the degree to which the prospective family has the ability to understand and validate the child's cultural background.

**Subd. 5. Placement reports.** Beginning December 1, 1996, the commissioner shall provide to the Indian affairs council, the council on affairs of Chicano/Latino people, the council on Black Minnesotans, and the council on Asian-Pacific Minnesotans the annual report required under section 257.0725.

**Subd. 7. Duties of child-placing agencies.** (a) Each authorized child-placing agency must:

(1) develop and follow procedures for implementing the requirements of section 260.181, subdivision 3, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923;

(2) have a written plan for recruiting adoptive and foster families that reflect the ethnic and racial diversity of children who are in need of foster and adoptive homes. The plan must include (a) strategies for using existing resources in diverse communities, (b) use of diverse outreach staff wherever possible, (c) use of diverse 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;

(4) have a written plan for employing staff in adoption and foster care who have the capacity to assess the foster and adoptive parents' ability to understand and validate a child's cultural needs, and to advance the best interests of the child. The plan must include staffing goals and objectives;

(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.

(b) In implementing the requirement to consider relatives for placement, 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

(c) In determining the suitability of a proposed placement 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;

*[For text of subd 8, see M.S.1996]*

**Subd. 9. Rules.** The commissioner of human services shall adopt rules to establish standards for conducting relative searches, recruiting foster and adoptive families, evaluating the role of relative status in the reconsideration of disqualifications under section 245A.04, sub-

division 3b, and granting variances of licensing requirements under section 245A.04, subdivision 9, in licensing or approving an individual related to a child.

**History:** 1997 c 7 art 3 s 6; 1997 c 86 s 3–8; 1997 c 239 art 6 s 8

### **257.0755 OFFICE OF OMBUDSPERSON; CREATION; QUALIFICATIONS; FUNCTION.**

Subdivision 1. **Creation.** One ombudsperson shall operate independently from but in collaboration with each of the following groups: the Indian affairs council, the council on affairs of Chicano/Latino people, the council on Black Minnesotans, and the council on Asian–Pacific Minnesotans.

*[For text of subs 2 and 3, see M.S.1996]*

**History:** 1997 c 7 art 3 s 7

### **257.0768 COMMUNITY–SPECIFIC BOARDS.**

Subdivision 1. **Membership.** Four community–specific boards are created. Each board consists of five members. The chair of each of the following groups shall appoint the board for the community represented by the group: the Indian affairs council; the council on affairs of Chicano/Latino people; the council on Black Minnesotans; and the council on Asian–Pacific Minnesotans. In making appointments, the chair must consult with other members of the council.

*[For text of subs 2 to 6, see M.S.1996]*

**History:** 1997 c 7 art 3 s 8

### **257.0769 FUNDING FOR THE OMBUDSPERSON PROGRAM.**

(a) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Indian affairs council for the purposes of sections 257.0755 to 257.0768.

(b) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the council on affairs of Chicano/Latino people for the purposes of sections 257.0755 to 257.0768.

(c) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Council of Black Minnesotans for the purposes of sections 257.0755 to 257.0768.

(d) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Council on Asian–Pacific Minnesotans for the purposes of sections 257.0755 to 257.0768.

**History:** 1997 c 7 art 3 s 9

### **257.352 SOCIAL SERVICE AGENCY AND PRIVATE LICENSED CHILD–PLACING AGENCY NOTICE TO TRIBES.**

*[For text of subs 1 and 2, see M.S.1996]*

Subd. 3. **Notice of potential preadoptive or adoptive placement.** In any voluntary adoptive or preadoptive placement proceeding in which a local social service agency, private child–placing agency, petitioner in the adoption, or any other party has reason to believe that a child who is the subject of an adoptive or preadoptive placement proceeding is or may be an “Indian child,” as defined in section 257.351, subdivision 6, and United States Code, title 25, section 1903(4), the agency or person shall notify the Indian child’s tribal social service agency by registered mail with return receipt requested of the pending proceeding and of the right of intervention under subdivision 3c. If the identity or location of the child’s tribe cannot be determined, the notice must be given to the United States secretary of interior in like manner, who will have 15 days after receipt of the notice to provide the requisite notice to the

tribe. No preadoptive or adoptive placement proceeding may be held until at least ten days after receipt of the notice by the tribe or secretary. Upon request, the tribe must be granted up to 20 additional days to prepare for the proceeding. The agency or notifying party shall include in the notice the identity of the birth parents and child absent written objection by the birth parents. The private child-placing agency shall inform the birth parents of the Indian child of any services available to the Indian child through the child's tribal social service agency, including child placement services, and shall additionally provide the birth parents of the Indian child with all information sent from the tribal social service agency in response to the notice.

**Subd. 3a. Unknown father.** If the local social service agency, private child-placing agency, the court, petitioner, or any other party has reason to believe that a child who is the subject of an adoptive placement proceeding is or may be an Indian child but the father of the child is unknown and has not registered with the putative fathers' adoption registry pursuant to section 259.52, the agency or person shall provide to the tribe believed to be the Indian child's tribe information sufficient to enable the tribe to determine the child's eligibility for membership in the tribe, including, but not limited to, the legal and maiden name of the birth mother, her date of birth, the names and dates of birth of her parents and grandparents, and, if available, information pertaining to the possible identity, tribal affiliation, or location of the birth father.

**Subd. 3b. Proof of service of notice upon tribe or secretary.** In cases where an agency or party to an adoptive placement knows or has reason to believe that a child is or may be an Indian child, proof of service upon the child's tribe or the secretary of interior must be filed with the adoption petition.

**Subd. 3c. Indian tribe's right of intervention.** In any state court proceeding for the voluntary adoptive or preadoptive placement of an Indian child, the Indian child's tribe shall have a right to intervene at any point in the proceeding.

*[For text of subd 4, see M.S.1996]*

**History:** 1997 c 218 s 2-5

## 257.3573 ELIGIBLE SERVICES.

*[For text of subd 1, see M.S.1996]*

**Subd. 2. Inappropriate expenditures.** Indian child welfare grant money must not be used for:

- (1) child day care necessary solely because of employment or training for employment of a parent or other relative with whom the child is living;
- (2) foster care maintenance or difficulty of care payments;
- (3) residential facility payments;
- (4) adoption assistance payments;
- (5) public assistance payments for aid to families with dependent children, Minnesota family investment program—statewide, supplemental aid, medical assistance, general assistance, general assistance medical care, or community health services authorized by sections 145A.01 to 145A.14; or
- (6) administrative costs for income maintenance staff.

*[For text of subd 3, see M.S.1996]*

**History:** 1997 c 85 art 4 s 22

## 257.41 FINANCIAL RESPONSIBILITY.

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article 5 thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of sections 518C.101 to 518C.902 also may be invoked.

**History:** 1997 c 7 art 1 s 102

**257.58 LIMITATION OF ACTIONS; EXCEPTIONS.**

Subdivision 1. **Actions for children without a presumed father.** Except as otherwise provided in section 259.52, an action to determine the existence of the father and child relationship as to a child who has no presumed father under section 257.55 is not barred until one year after the child reaches the age of majority.

*[For text of subd 2, see M.S.1996]*

**History:** 1997 c 218 s 6

**257.62 BLOOD AND GENETIC TESTS.**

Subdivision 1. **Blood or genetic tests required.** (a) The court or public authority may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood or genetic tests. A mother or alleged father requesting the tests shall file with the court an affidavit either alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the requisite sexual contact between the parties.

(b) A copy of the test results must be served on each party by first class mail to the party's last known address. Any objection to the results of blood or genetic tests must be made in writing no later than 30 days after service of the results. Test results served upon a party must include notice of this right to object.

(c) 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.

Subd. 2. Unless otherwise agreed by the parties, a party wanting additional testing must first contest the original tests in subdivision 1, paragraph (b), and must pay in advance for the additional testing. The additional testing must be performed by another qualified expert.

*[For text of subds 3 to 6, see M.S.1996]*

**History:** 1997 c 203 art 6 s 21,22

**257.66 JUDGMENT OR ORDER.**

*[For text of subds 1 and 2, see M.S.1996]*

Subd. 3. **Judgment; order.** The judgment or order shall contain provisions concerning the duty of support, the custody of the child, the name of the child, the social security number of the mother, father, and child, if known at the time of adjudication, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Custody and visitation and all subsequent motions related to them shall proceed and be determined under section 257.541. The remaining matters and all subsequent motions related to them shall proceed and be determined in accordance with chapter 518. The judgment or order may direct the appropriate party to pay all or a proportion of the reasonable expenses of the mother's pregnancy and confinement, after consideration of the relevant facts, including the relative financial means of the parents; the earning ability of each parent; and any health insurance policies held by either parent, or by a spouse or parent of the parent, which would provide benefits for the expenses incurred by the mother during her pregnancy and confinement. Pregnancy and confinement expenses and genetic testing costs, submitted by the public authority, are admissible as evidence without third-party foundation testimony and constitute prima facie evidence of the amounts in-

curred for those services or for the genetic testing. Remedies available for the collection and enforcement of child support apply to confinement costs and are considered additional child support.

*[For text of subs 4 and 5, see M.S.1996]*

**Subd. 6. Required information.** Upon entry of judgment or order, each parent who is a party in a paternity proceeding shall:

(1) file with the public authority responsible for child support enforcement the party's social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of any employer if the party is receiving services from the public authority or begins receiving services from the public authority;

(2) file the information in clause (1) with the district court; and

(3) notify the court and, if applicable, the public authority responsible for child support enforcement of any change in the information required under this section within ten days of the change.

**History:** 1997 c 203 art 6 s 23,24

## **257.70 HEARINGS AND RECORDS; CONFIDENTIALITY.**

(a) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under sections 257.51 to 257.74 shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the state department of human services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(b) In all actions under this chapter in which public assistance is assigned under section 256.741 or the public authority provides services to a party or parties to the action, notwithstanding statutory or other authorization for the public authority to release private data on the location of a party to the action, information on the location of one party may not be released by the public authority to the other party if:

(1) the public authority has knowledge that a protective order with respect to the other party has been entered; or

(2) the public authority has reason to believe that the release of the information may result in physical or emotional harm to the other party.

**History:** 1997 c 203 art 6 s 25

## **257.73 BIRTH RECORDS.**

Subdivision 1. Upon compliance with the provisions of section 257.55, subdivision 1, paragraph (e), 257.75, or upon order of a court of this state or upon request of a court of another state, the state or local registrar of vital statistics shall prepare a replacement certificate of birth consistent with the acknowledgment or the findings of the court and shall substitute the replacement certificate for the original certificate of birth.

Subd. 2. The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the replacement certificate but the actual place and date of birth shall be shown.

Subd. 3. The evidence upon which the replacement certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

**History:** 1997 c 205 s 31

## **257.75 RECOGNITION OF PARENTAGE.**

*[For text of subd 1, see M.S.1996]*

**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 the joinder must be 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. A joinder without a corresponding recognition of parentage has no legal effect.

**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 the earlier of 30 days after the recognition is executed or the date of an administrative or judicial hearing relating to the child in which the revoking party is a party to the related action. 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. Once a recognition has been properly executed and filed with the state registrar of vital statistics, if there are no competing presumptions of paternity, a judicial or administrative court may not allow further action to determine parentage regarding the signator of the recognition. 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.** (a) 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. An action to vacate a recognition of parentage may be brought by the public authority. 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.

(b) The burden of proof in an action to vacate the recognition is on the moving party. The moving party must request the vacation on the basis of fraud, duress, or material mistake of fact. The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.

**Subd. 5. Recognition form.** The commissioner of human services shall prepare a form for the recognition of parentage under this section. In preparing the form, the commissioner shall consult with the individuals specified in subdivision 6. The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition and the revocation procedure under subdivision 2. The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the commissioner of human services describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.

*[For text of subd 6, see M.S.1996]*

**Subd. 7. Hospital and department of health distribution of educational materials; recognition form.** Hospitals that provide obstetric services and the state registrar of vital statistics shall distribute the educational materials and recognition of parentage forms prepared by the commissioner of human services to new parents and shall assist parents in understanding the recognition of parentage form, including following the provisions for notice under subdivision 5. On and after January 1, 1994, hospitals may not distribute the declaration of parentage forms.

*[For text of subs 8 and 9, see M.S.1996]*

**History:** 1997 c 203 art 6 s 26-30; 1997 c 245 art 1 s 11; art 3 s 8

## 257.85 RELATIVE CUSTODY ASSISTANCE.

**Subdivision 1. Citation.** This section may be cited as the "Relative Custody Assistance Act."

**Subd. 2. Scope.** The provisions of this section apply to those situations in which the legal and physical custody of a child is established with a relative according to section 260.191, subdivision 3b, by a court order issued on or after July 1, 1997.

**Subd. 3. Definitions.** For purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "AFDC or MFIP standard" means the monthly standard of need used to calculate assistance under the AFDC program, the transitional standard used to calculate assistance under the MFIP-S program, or, if neither of those is applicable, the analogous transitional standard used to calculate assistance under the MFIP or MFIP-R programs.

(b) "Local agency" means the local social service agency with legal custody of a child prior to the transfer of permanent legal and physical custody to a relative.

(c) "Permanent legal and physical custody" means permanent legal and physical custody ordered by a Minnesota juvenile court under section 260.191, subdivision 3b.

(d) "Relative" means an individual, other than a parent, who is related to a child by blood, marriage, or adoption.

(e) "Relative custodian" means a relative of a child for whom the relative has permanent legal and physical custody.

(f) "Relative custody assistance agreement" means an agreement entered into between a local agency and the relative of a child who has been or will be awarded permanent legal and physical custody of the child.

(g) "Relative custody assistance payment" means a monthly cash grant made to a relative custodian pursuant to a relative custody assistance agreement and in an amount calculated under subdivision 7.

(h) "Remains in the physical custody of the relative custodian" means that the relative custodian is providing day-to-day care for the child and that the child lives with the relative custodian; absence from the relative custodian's home for a period of more than 120 days raises a presumption that the child no longer remains in the physical custody of the relative custodian.

**Subd. 4. Duties of local agency.** (a) When a local agency seeks a court order under section 260.191, subdivision 3b, to establish permanent legal and physical custody of a child with a relative, or if such an order is issued by the court, the local agency shall perform the duties in this subdivision.

(b) As soon as possible after the local agency determines that it will seek to establish permanent legal and physical custody of the child with a relative or, if the agency did not seek to establish custody, as soon as possible after the issuance of the court order establishing custody, the local agency shall inform the relative about the relative custody assistance program, including eligibility criteria and payment levels. Anytime prior to, but not later than seven days after, the date the court issues the order establishing permanent legal and physical custody of the child with a relative, the local agency shall determine whether the eligibility criteria in subdivision 6 are met to allow the relative to receive relative custody assistance. Not later than seven days after determining whether the eligibility criteria are met, the local agency shall inform the relative custodian of its determination and of the process for appealing that determination under subdivision 9.

(c) If the local agency determines that the relative custodian is eligible to receive relative custody assistance, the local agency shall prepare the relative custody assistance agreement and ensure that it meets the criteria of subdivision 6.

(d) The local agency shall make monthly payments to the relative as set forth in the relative custody assistance agreement. On a quarterly basis and on a form to be provided by the commissioner, the local agency shall make claims for reimbursement from the commissioner for relative custody assistance payments made.

(e) For a relative custody assistance agreement that is in place for longer than one year, and as long as the agreement remains in effect, the local agency shall send an annual affidavit form to the relative custodian of the eligible child within the month before the anniversary date of the agreement. The local agency shall monitor whether the annual affidavit is returned by the relative custodian within 30 days following the anniversary date of the agreement. The local agency shall review the affidavit and any other information in its possession to ensure continuing eligibility for relative custody assistance and that the amount of payment made according to the agreement is correct.

(f) When the local agency determines that a relative custody assistance agreement should be terminated or modified, it shall provide notice of the proposed termination or modification to the relative custodian at least ten days before the proposed action along with information about the process for appealing the proposed action.

**Subd. 5. Relative custody assistance agreement.** (a) A relative custody assistance agreement will not be effective, unless it is signed by the local agency and the relative custodian no later than 30 days after the date of the order establishing permanent legal and physical custody with the relative, except that a local agency may enter into a relative custody assistance agreement with a relative custodian more than 30 days after the date of the order if it certifies that the delay in entering the agreement was through no fault of the relative custodian. There must be a separate agreement for each child for whom the relative custodian is receiving relative custody assistance.

(b) Regardless of when the relative custody assistance agreement is signed by the local agency and relative custodian, the effective date of the agreement shall be the first day of the month following the date of the order establishing permanent legal and physical custody or the date that the last party signs the agreement, whichever occurs later.

(c) If MFIP-S is not the applicable program for a child at the time that a relative custody assistance agreement is entered on behalf of the child, when MFIP-S becomes the applicable program, if the relative custodian had been receiving custody assistance payments calculated based upon a different program, the amount of relative custody assistance payment under subdivision 7 shall be recalculated under the MFIP-S program.

(d) The relative custody assistance agreement shall be in a form specified by the commissioner and shall include provisions relating to the following:

(1) the responsibilities of all parties to the agreement;

(2) the payment terms, including the financial circumstances of the relative custodian, the needs of the child, the amount and calculation of the relative custody assistance payments, and that the amount of the payments shall be reevaluated annually;

(3) the effective date of the agreement, which shall also be the anniversary date for the purpose of submitting the annual affidavit under subdivision 8;

(4) that failure to submit the affidavit as required by subdivision 8 will be grounds for terminating the agreement;

(5) the agreement's expected duration, which shall not extend beyond the child's eighteenth birthday;

(6) any specific known circumstances that could cause the agreement or payments to be modified, reduced, or terminated and the relative custodian's appeal rights under subdivision 9;

(7) that the relative custodian must notify the local agency within 30 days of any of the following:

(i) a change in the child's status;

(ii) a change in the relationship between the relative custodian and the child;

(iii) a change in composition or level of income of the relative custodian's family;

(iv) a change in eligibility or receipt of benefits under AFDC, MFIP-S, or other assistance program; and

(v) any other change that could affect eligibility for or amount of relative custody assistance;

(8) that failure to provide notice of a change as required by clause (7) will be grounds for terminating the agreement;

(9) that the amount of relative custody assistance is subject to the availability of state funds to reimburse the local agency making the payments;

(10) that the relative custodian may choose to temporarily stop receiving payments under the agreement at any time by providing 30 days' notice to the local agency and may choose to begin receiving payments again by providing the same notice but any payments the relative custodian chooses not to receive are forfeit; and

(11) that the local agency will continue to be responsible for making relative custody assistance payments under the agreement regardless of the relative custodian's place of residence.

**Subd. 6. Eligibility criteria.** A local agency shall enter into a relative custody assistance agreement under subdivision 5 if it certifies that the following criteria are met:

(1) the juvenile court has determined or is expected to determine that the child, under the former or current custody of the local agency, cannot return to the home of the child's parents;

(2) the court, upon determining that it is in the child's best interests, has issued or is expected to issue an order transferring permanent legal and physical custody of the child to the relative; and

(3) the child either:

(i) is a member of a sibling group to be placed together; or

(ii) has a physical, mental, emotional, or behavioral disability that will require financial support.

When the local agency bases its certification that the criteria in clause (1) or (2) are met upon the expectation that the juvenile court will take a certain action, the relative custody assistance agreement does not become effective until and unless the court acts as expected.

**Subd. 7. Amount of relative custody assistance payments.** (a) The amount of a monthly relative custody assistance payment shall be determined according to the provisions of this paragraph.

(1) The total maximum assistance rate is equal to the base assistance rate plus, if applicable, the supplemental assistance rate.

(i) The base assistance rate is equal to the maximum amount that could be received as basic maintenance for a child of the same age under the adoption assistance program.

(ii) The local agency shall determine whether the child has physical, mental, emotional, or behavioral disabilities that require care, supervision, or structure beyond that ordinarily provided in a family setting to children of the same age such that the child would be eligible for supplemental maintenance payments under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. If the local agency determines that the child has such a disability, the supplemental assistance rate shall be the maximum amount of monthly supplemental maintenance payment that could be received on behalf of a child of the same age, disabilities, and circumstances under the adoption assistance program.

(2) The net maximum assistance rate is equal to the total maximum assistance rate from clause (1) less the following offsets:

(i) if the child is or will be part of an assistance unit receiving an AFDC, MFIP-S, or other MFIP grant, the portion of the AFDC or MFIP standard relating to the child;

(ii) Supplemental Security Income payments received by or on behalf of the child;

(iii) veteran's benefits received by or on behalf of the child; and

(iv) any other income of the child, including child support payments made on behalf of the child.

(3) The relative custody assistance payment to be made to the relative custodian shall be a percentage of the net maximum assistance rate calculated in clause (2) based upon the gross income of the relative custodian's family, including the child for whom the relative has permanent legal and physical custody. In no case shall the amount of the relative custody assistance payment exceed that which the child could qualify for under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. The relative custody assistance payment shall be calculated as follows:

(i) if the relative custodian's gross family income is less than or equal to 200 percent of federal poverty guidelines, the relative custody assistance payment shall be the full amount of the net maximum assistance rate;

(ii) if the relative custodian's gross family income is greater than 200 percent and less than or equal to 225 percent of federal poverty guidelines, the relative custody assistance payment shall be 80 percent of the net maximum assistance rate;

(iii) if the relative custodian's gross family income is greater than 225 percent and less than or equal to 250 percent of federal poverty guidelines, the relative custody assistance payment shall be 60 percent of the net maximum assistance rate;

(iv) if the relative custodian's gross family income is greater than 250 percent and less than or equal to 275 percent of federal poverty guidelines, the relative custody assistance payment shall be 40 percent of the net maximum assistance rate;

(v) if the relative custodian's gross family income is greater than 275 percent and less than or equal to 300 percent of federal poverty guidelines, the relative custody assistance payment shall be 20 percent of the net maximum assistance rate; or

(vi) if the relative custodian's gross family income is greater than 300 percent of federal poverty guidelines, no relative custody assistance payment shall be made.

(b) This paragraph specifies the provisions pertaining to the relationship between relative custody assistance and AFDC, MFIP-S, or other MFIP programs:

(1) the relative custodian of a child for whom the relative is receiving relative custody assistance is expected to seek whatever assistance is available for the child through the AFDC, MFIP-S, or other MFIP programs. If a relative custodian fails to apply for assistance through AFDC, MFIP-S, or other MFIP program for which the child is eligible, the child's portion of the AFDC or MFIP standard will be calculated as if application had been made and assistance received;

(2) the portion of the AFDC or MFIP standard relating to each child for whom relative custody assistance is being received shall be calculated as follows:

(i) determine the total AFDC or MFIP standard for the assistance unit;

(ii) determine the amount that the AFDC or MFIP standard would have been if the assistance unit had not included the children for whom relative custody assistance is being received;

(iii) subtract the amount determined in item (ii) from the amount determined in item (i); and

(iv) divide the result in item (iii) by the number of children for whom relative custody assistance is being received that are part of the assistance unit; or

(3) if a child for whom relative custody assistance is being received is not eligible for assistance through the AFDC, MFIP-S, or other MFIP programs, the portion of AFDC or MFIP standard relating to that child shall be equal to zero.

**Subd. 8. Annual affidavit.** When a relative custody assistance agreement remains in effect for more than one year, the local agency shall require the relative custodian to annually submit an affidavit in a form to be specified by the commissioner. The affidavit must be submitted to the local agency each year no later than 30 days after the relative custody assistance agreement's anniversary date. The affidavit shall document the following:

(1) that the child remains in the physical custody of the relative custodian;

(2) that there is a continuing need for the relative custody assistance payments due to the child's physical, mental, emotional, or behavioral needs; and

(3) the current gross income of the relative custodian's family.

The relative custody assistance agreement may be modified based on information or documentation presented to the local agency under this requirement and as required by annual adjustments to the federal poverty guidelines.

**Subd. 9. Right of appeal.** A relative custodian who enters into a relative custody assistance agreement with a local agency has the right to appeal to the commissioner according to section 256.045 when the local agency establishes, denies, terminates, or modifies the agreement. Upon appeal, the commissioner may review only:

(1) whether the local agency has met the legal requirements imposed by this chapter for establishing, denying, terminating, or modifying the agreement;

(2) whether the amount of the relative custody assistance payment was correctly calculated under the method in subdivision 7;

(3) whether the local agency paid for correct time periods under the relative custody assistance agreement;

(4) whether the child remains in the physical custody of the relative custodian;

(5) whether the local agency correctly calculated the amount of the supplemental assistance rate based on a change in the child's physical, mental, emotional, or behavioral needs, the relative custodian's failure to document the continuing need for the supplemental assistance rate after the local agency has requested such documentation; and

(6) whether the local agency correctly calculated or terminated the amount of relative custody assistance based on the relative custodian's failure to provide documentation of the gross income of the relative custodian's family after the local agency has requested such documentation.

**Subd. 10. Child's county of residence.** For the purposes of the Unitary Residency Act under chapter 256G, time spent by a child in the custody of a relative custodian receiving payments under this section is not excluded time. A child is a resident of the county where the relative custodian is a resident.

Subd. 11. **Financial considerations.** (a) Payment of relative custody assistance under a relative custody assistance agreement is subject to the availability of state funds and payments may be reduced or suspended on order of the commissioner if insufficient funds are available.

(b) Upon receipt from a local agency of a claim for reimbursement, the commissioner shall reimburse the local agency in an amount equal to 100 percent of the relative custody assistance payments provided to relative custodians. The local agency may not seek and the commissioner shall not provide reimbursement for the administrative costs associated with performing the duties described in subdivision 4.

(c) For the purposes of determining eligibility or payment amounts under the AFDC, MFIP-S, and other MFIP programs, relative custody assistance payments shall be considered excluded income.

**History:** 1997 c 203 art 5 s 21