

## CHAPTER 257

## CHILDREN; CUSTODY, LEGITIMACY

257.025	Custody disputes.	257.0762	Duties and powers.
257.035	Emergency.	257.0769	Funding for the ombudsperson program.
257.05	Importation.	257.69	Right to counsel; costs; free transcript on appeal.
257.0651	Compliance with Indian Child Welfare Act.		

**257.025 CUSTODY DISPUTES.**

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

- (1) the wishes of the party or parties as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each party and the child;
- (5) the interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363A.03, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture, religion, or creed, if any;
- (11) the child's cultural background; and
- (12) the effect on the child of the actions of an abuser, if related to domestic abuse as defined in section 518B.01, that has occurred between the parents or the parties.

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

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

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

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

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

(f) Section 518.619 applies to this section.

**257.035 EMERGENCY.**

A relative who acts to protect a child in an emergency or when a parent dies is not a custodian as defined under section 260C.007. If the relative is unable or unwilling to provide for the ongoing care, custody, and control of the child, the child may be considered a child in need of protection or services under section 260C.007. The relative may report the death or emergency to the local social service agency. Upon

receiving the report, the local social service agency shall assess the circumstances and the needs of the child. The agency may place the child in foster care with a relative who meets the licensing standards under chapters 245A and 245C, and may pursue court action on behalf of the child.

**History:** 2003 c 15 art 1 s 33

### 257.05 IMPORTATION.

Subdivision 1. **Notification and duties of commissioner.** No person, except as provided by subdivisions 2 and 3, shall bring or send into the state any child for the purpose of placing the child out or procuring the child's adoption without first obtaining the consent of the commissioner of human services, and such person shall conform to all rules of the commissioner of human services and laws of the state of Minnesota relating to protection of children in foster care. Before any child shall be brought or sent into the state for the purpose of being placed in foster care, the person bringing or sending the child into the state shall first notify the commissioner of human services of the person's intention, and shall obtain from the commissioner of human services a certificate stating that the home in which the child is to be placed is, in the opinion of the commissioner of human services, a suitable adoptive home for the child if legal adoption is contemplated or that the home meets the commissioner's requirements for licensing of foster homes if legal adoption is not contemplated. The commissioner is responsible for protecting the child's interests so long as the child remains within the state and until the child reaches the age of 18 or is legally adopted. Notice to the commissioner shall state the name, age, and personal description of the child, and the name and address of the person with whom the child is to be placed, and such other information about the child and the foster home as may be required by the commissioner.

Subd. 2. **Exempt relatives.** A parent, stepparent, grandparent, brother, sister and aunt or uncle in the first degree of the minor child who bring a child into the state for placement within their own home shall be exempt from the provisions of subdivision 1. This relationship may be by blood or marriage.

Subd. 3. **International adoptions.** Subject to state and federal laws and rules, adoption agencies licensed under chapter 245A and Minnesota Rules, parts 9545.0755 to 9545.0845, and county social services agencies are authorized to certify that the prospective adoptive home of a child brought into the state from another country for the purpose of adoption is a suitable home, or that the home meets the commissioner's requirements for licensing of foster homes if legal adoption is not contemplated.

**History:** 1Sp2003 c 14 art 4 s 12

### 257.0651 COMPLIANCE WITH INDIAN CHILD WELFARE ACT.

Sections 257.03 to 257.0725 and 260C.208 to 260C.215 must be construed consistently with the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

**History:** 1Sp2003 c 14 art 11 s 11

257.075 [Repealed, 1Sp2003 c 14 art 11 s 12]

### 257.0762 DUTIES AND POWERS.

Subdivision 1. **Duties.** (a) Each ombudsperson shall monitor agency compliance with all laws governing child protection and placement, as they impact on children of color. In particular, the ombudsperson shall monitor agency compliance with sections 260C.215; 260.751 to 260.835; and 260C.193, subdivision 3.

(b) The ombudsperson shall work with local state courts to ensure that:

(1) court officials, public policy makers, and service providers are trained in cultural diversity. The ombudsperson shall document and monitor court activities in order to heighten awareness of diverse belief systems and family relationships;

(2) experts from the appropriate community of color including tribal advocates are used as court advocates and are consulted in placement decisions that involve children of color;

(3) guardians ad litem and other individuals from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color; and

(4) training programs for bilingual workers are provided.

*[For text of subd 2, see M.S.2002]*

**History:** *1Sp2003 c 14 art 11 s 11*

**257.0769 FUNDING FOR THE OMBUDSPERSON PROGRAM.**

Subdivision 1. **Appropriations.** (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.

Subd. 2. **Title IV-E reimbursement.** The commissioner shall obtain federal title IV-E financial participation for eligible activity by the ombudsperson for families under section 257.0755. The ombudsperson for families shall maintain and transmit to the Department of Human Services documentation that is necessary in order to obtain federal funds.

**History:** *1Sp2003 c 14 art 6 s 52*

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

*[For text of subd 1, see M.S.2002]*

Subd. 2. **Guardian; legal fees.** (a) 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.

(b) In each fiscal year, the commissioner of finance shall deposit guardian ad litem reimbursements in the general fund and credit them to a separate account with the trial courts. The balance of this account is appropriated to the trial courts and does not cancel but is available until expended. Expenditures by the state court administrator's office from this account must be based on the amount of the guardian ad litem reimbursements received by the state from the courts in each judicial district.

*[For text of subd 3, see M.S.2002]*

**History:** *2003 c 112 art 2 s 50*

**257.81** [Repealed, 1Sp2003 c 14 art 11 s 12]