

CHAPTER 257C

DE FACTO CUSTODIAN AND INTERESTED
THIRD PARTY

257C.01 Definitions.
257C.04 Best interests of a child.

257C.07 Custody consent decree.

257C.01 DEFINITIONS.

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

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

(1) six months or more, which need not be consecutive, if the child is under three years of age; or

(2) one year or more, which need not be consecutive, if the child is three years of age or older.

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

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

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

(1) through a custody consent decree under section 257C.07;

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

(3) for adoption under chapter 259.

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

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

History: 2003 c 7 s 1

257C.04 BEST INTERESTS OF A CHILD.

Subdivision 1. **Custody factors.** (a) If two or more parties seek custody of a child, the court must consider and evaluate all relevant factors in determining the best interests of the child, including the following factors:

(1) the wishes of the party or parties as to custody;

(2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;

(3) the child's primary caretaker;

(4) the intimacy of the relationship between each party and the child;

(5) the interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests;

(6) the child's adjustment to home, school, and community;

(7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(8) the permanence, as a family unit, of the existing or proposed custodial home;

(9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363A.03, subdivision 12, 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 interests of the child;

(10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;

(11) the child's cultural background; and

(12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, subdivision 2, that has occurred between the parents or the parties.

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

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

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

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

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

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

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

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

257C.07 CUSTODY CONSENT DECREE.

In a proceeding under this chapter, a parent may transfer legal and physical custody of a child 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 third party 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.

A party to a consent decree under this section may file a motion to modify or terminate the consent decree at any time. Section 518.18, paragraphs (d) and (e), apply to all modifications. 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.

History: 2003 c 7 s 2