

CHAPTER 514—H.F.No. 577

An act relating to termination of parental rights; clarifying the purposes of the laws on termination of parental rights; altering certain grounds and procedures for termination of parental rights; providing for a study of placement prevention and family reunification services; amending Minnesota Statutes 1986, sections 257.071, subdivisions 3 and 4; 260.011, subdivision 2; 260.012; 260.015, subdivision 10; and 260.155, subdivisions 4a and 7; and Minnesota Statutes 1987 Supplement, section 260.221.

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

Section 1. Minnesota Statutes 1986, section 257.071, subdivision 3, is amended to read:

Subd. 3. **REVIEW OF VOLUNTARY PLACEMENTS.** Subject to the provisions of ~~subdivision~~ subdivisions 3 and 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 ~~18~~ 12 months after initial placement in the residential facility, the social service agency responsible for the placement shall:

(a) Return the child to the home of the parent or parents; or

(b) File an appropriate petition pursuant to section 260.131, subdivision 1, or 260.231, and if the petition is dismissed, petition the court within two years, pursuant to section 260.131, subdivision 1a, to determine if the placement is in the best interests of the child.

Sec. 2. Minnesota Statutes 1986, section 257.071, subdivision 4, is amended to read:

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 1, 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 subdivision 3, clause (b) of this section, after the child has been in foster care for 18 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.

Sec. 3. Minnesota Statutes 1986, section 260.011, subdivision 2, is amended to read:

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Subd. 2. (a) The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated neglected or dependent and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will serve the spiritual, emotional, mental, and physical welfare of the child and the best interests of the state; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

(b) The purpose of the laws relating to termination of parental rights is to ensure that:

(1) reasonable efforts have been made by the social service agency to reunite the child with the child's parents in a placement that is safe and permanent; and

(2) if placement with the parents is not reasonably foreseeable, to secure for the child a safe and permanent placement, preferably with adoptive parents.

The paramount consideration in all proceedings for the termination of parental rights is the best interests of the child. In proceedings involving an American Indian child, as defined in section 257.351, subdivision 6, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq.

(c) The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.

(d) The laws relating to juvenile courts shall be liberally construed to carry out these purposes.

Sec. 4. Minnesota Statutes 1986, section 260.012, is amended to read:

260.012 DUTY TO ENSURE FAMILY REUNIFICATION OF JUVENILE COURT.

At all stages of juvenile court proceedings, if a child is under the court's dependency or neglect jurisdiction, the court shall ensure that reasonable efforts by the social service agency are made to reunite the child with the child's family at the earliest possible time, consistent with the best interests of the child. If a child is under the court's delinquency jurisdiction, it shall be the duty of the court to ensure that all reasonable efforts are made to reunite a the child with

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the child's family at the earliest possible time, consistent with the best interests of the child and the safety of the ~~child and the~~ public.

Sec. 5. Minnesota Statutes 1986, section 260.015, subdivision 10, is amended to read:

Subd. 10. "Neglected child" means a child:

- (a) who is abandoned by a parent, guardian, or other custodian; or
- (b) who is without proper parental care because of the faults or habits of a parent, guardian, or other custodian; or
- (c) who is without necessary subsistence, education or other care necessary for physical or mental health or morals because the parent, guardian or other custodian neglects or refuses to provide it; or
- (d) who is without the special care made necessary by a physical or mental condition because the parent, guardian, or other custodian neglects or refuses to provide it; or
- (e) who is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
 - (1) the infant is chronically and irreversibly comatose;
 - (2) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
 - (3) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane; or
- (f) whose occupation, behavior, condition, environment or associations are such as to be injurious or dangerous to the child or others; or
- (g) who is living in a facility for foster care which is not licensed as required by law, unless the child is living in the facility under court order; or
- (h) whose parent, guardian, or custodian has made arrangements for the child's placement in a manner detrimental to the welfare of the child or in violation of law; or

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(i) who comes within the provisions of subdivision 5, but whose conduct results in whole or in part from parental neglect; or

(j) who is a victim of domestic child abuse as defined in section 260.015, subdivision 24.

Sec. 6. Minnesota Statutes 1986, section 260.155, subdivision 4a, is amended to read:

Subd. 4a. **EXAMINATION OF CHILD.** In any dependency, neglect, ~~or~~ neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 5.

Sec. 7. Minnesota Statutes 1986, section 260.155, subdivision 7, is amended to read:

Subd. 7. **FACTORS IN DETERMINING NEGLECT.** In determining whether a child is neglected and in foster care, the court shall consider, among other factors, the following:

(1) The length of time the child has been in foster care;

(2) The effort the parent has made to adjust circumstances, conduct, or condition to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;

(3) Whether the parent has visited the child within the ~~nine~~ three months preceding the filing of the petition, unless ~~it was physically or financially impossible for the parent to visit or~~ extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;

(4) The maintenance of regular contact or communication with the agency or person temporarily responsible for the child;

(5) The appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;

(6) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time; and

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(7) The nature of the effort made by the responsible social service agency to rehabilitate and reunite the family.

Sec. 8. Minnesota Statutes 1987 Supplement, section 260.221, is amended to read:

260.221 GROUNDS FOR TERMINATION OF PARENTAL RIGHTS.

Subdivision 1. VOLUNTARY AND INVOLUNTARY. The juvenile court may upon petition, terminate all rights of a parent to a child in the following cases:

(a) With the written consent of a parent who for good cause desires to terminate parental rights; or

(b) If it finds that one or more of the following conditions exist:

(1) That the parent has abandoned the child. Abandonment is presumed when:

(i) the parent has had no contact or merely incidental contact with the child for six months in the case of a child under six years of age, or for 12 months in the case of a child ages six to 11; and

(ii) the social service agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from making contact with the child. This presumption does not apply to children whose custody has been determined under chapter 257 or 518. The court is not prohibited from finding abandonment in the absence of this presumption; or

(2) That the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and reasonable efforts by the social service agency have failed to correct the conditions that formed the basis of the petition; or

(3) That a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth; or

(4) That a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child

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or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be ~~permanently detrimental to the physical or mental health of the child of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child;~~ or

(5) That following upon a determination of neglect or dependency, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child under the age of 12 has resided out of the parental home under court order for more than one year following an adjudication of dependency, neglect or neglected and in foster care, and an order for disposition under section 260.191, including adoption of the case plan required by section 257.071;

(ii) conditions leading to the determination will not be corrected within the reasonably foreseeable future; and

(iii) reasonable efforts have been made by the social service agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year after a child has been placed out of the home; or

(6) That in the case 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 the person is not entitled to notice of an adoption hearing under section 259.26 and either the person has not filed a notice of intent to retain parental rights under section 259.261 or that the notice has been successfully challenged; or

(7) That the child is neglected and in foster care.

Subd. 2. ADOPTIVE PARENT. For purposes of subdivision 1, clause (a), an adoptive parent may not terminate parental rights to an adopted child for a reason that would not apply to a birth parent seeking termination of parental rights to a child under subdivision 1, clause (a).

Subd. 3. WHEN PRIOR FINDING REQUIRED. For purposes of subdivision 1, clause (b), no prior judicial finding of dependency, neglect, or neglected and in foster care is required, except as provided in subdivision 1, clause (b), item (5).

Subd. 4. BEST INTERESTS OF CHILD PARAMOUNT. In any proceeding under this section, the best interests of the child must be the paramount consideration, provided that the conditions in subdivision 1, clause (a), or at least one condition in subdivision 1, clause (b), are found by the court. In proceedings involving an American Indian child, as defined in section 257.351, subdivision 6, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section

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1901, et seq. Where the interests of parent and child conflict, the interests of the child are paramount.

Subd. 5. FINDINGS REGARDING REASONABLE EFFORTS. In any proceeding under this section, the court shall make specific findings regarding the nature and extent of efforts made by the social service agency to rehabilitate the parent and reunite the family.

Sec. 9. STUDY.

By January 1, 1989, the commissioner of human services shall study and make recommendations to the legislature on what constitutes reasonable efforts by the social service agency to provide families with placement prevention and family reunification services and under what circumstances information and notice should be provided to parents. The commissioner shall consult with community-based family advocacy organizations, representatives of minority communities, groups representing mentally or physically disabled children and their families, representatives of public and private social service agencies, members of the judiciary, and attorneys who represent all parties in juvenile protection proceedings.

Sec. 10. EFFECTIVE DATE; APPLICATION.

This act is effective August 1, 1988, and applies to petitions for termination of parental rights filed and placements begun on and after that date.

Approved April 14, 1988

CHAPTER 515—H.F.No. 1111

An act relating to crimes; providing that it is a prima facie case for reference for prosecution as an adult if a child is alleged to have committed an aggravated felony against the person as a member of an organized gang; making it a crime for an alleged or adjudicated juvenile delinquent who is 18 years old to escape from lawful custody; providing for custody of minors; amending Minnesota Statutes 1986, sections 260.125, subdivision 3; 609.485, subdivisions 2 and 4; and 636.07; and Minnesota Statutes 1987 Supplement, section 641.14.

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

Section 1. Minnesota Statutes 1986, section 260.125, subdivision 3, is amended to read:

Subd. 3. A prima facie case that the public safety is not served or that the child is not suitable for treatment shall have been established if the child was at least 16 years of age at the time of the alleged offense and:

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