

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 749

02/28/2011 Authored by Smith, Holberg, Lesch, Champion, Hayden and others
The bill was read for the first time and referred to the Committee on Civil Law
04/26/2011 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Policy and Finance
03/21/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
1.2 relating to children; creating the Family Reunification Act of 2012; amending
1.3 Minnesota Statutes 2010, section 260C.101, subdivision 2; proposing coding for
1.4 new law in Minnesota Statutes, chapter 260C.

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

1.6 Section 1. Minnesota Statutes 2010, section 260C.101, subdivision 2, is amended to
1.7 read:

1.8 Subd. 2. **Other matters relating to children.** Except as provided in clause (4), the
1.9 juvenile court has original and exclusive jurisdiction in proceedings concerning:

1.10 (1) the termination of parental rights to a child in accordance with the provisions of
1.11 sections 260C.301 to 260C.328;

1.12 (2) the appointment and removal of a juvenile court guardian for a child, where
1.13 parental rights have been terminated under the provisions of sections 260C.301 to
1.14 260C.328;

1.15 (3) judicial consent to the marriage of a child when required by law;

1.16 (4) the juvenile court in those counties in which the judge of the probate-juvenile
1.17 court has been admitted to the practice of law in this state shall proceed under the laws
1.18 relating to adoptions in all adoption matters. In those counties in which the judge of the
1.19 probate-juvenile court has not been admitted to the practice of law in this state the district
1.20 court shall proceed under the laws relating to adoptions in all adoption matters;

1.21 (5) the review of the placement of a child who is in foster care pursuant to a
1.22 voluntary placement agreement between the child's parent or parents and the responsible
1.23 social services agency under section 260C.212, subdivision 8;

2.1 (6) the review of voluntary foster care placement of a child for treatment under
2.2 chapter 260D according to the review requirements of that chapter; and

2.3 (7) the reestablishment of a legal parent and child relationship under section
2.4 260C.329.

2.5 Sec. 2. **260C.329] REESTABLISHMENT OF THE LEGAL PARENT AND**
2.6 **CHILD RELATIONSHIP.**

2.7 Subdivision 1. Citation. This section may be cited as the "Family Reunification
2.8 Act of 2012."

2.9 Subd. 2. Definitions. (a) As used in this section, the following terms have the
2.10 meanings given.

2.11 (b) "Eligible child" means a minor who is:

2.12 (1) at least ten years of age;

2.13 (2) younger than ten years of age, provided that a sibling who is at least ten years
2.14 of age is a party to the proceeding involving the reestablishment of the legal parent and
2.15 child relationship;

2.16 (3) younger than ten years of age only if the county attorney and the responsible
2.17 social services agency agree; or

2.18 (4) an Indian child, as that term is defined in section 260C.007, subdivision 21.

2.19 (c) "Reestablishment of the legal parent and child relationship" means the physical
2.20 reunification of a child and a previously terminated birth parent and restoration of all
2.21 rights, powers, privileges, immunities, duties, and obligations that were severed and
2.22 terminated by the court under section 260C.317.

2.23 Subd. 3. Process for minors; who may motion. (a) Any of the following parties
2.24 may bring a motion for reestablishment of the legal parent and child relationship:

2.25 (1) an eligible child who is the subject of a guardianship and transfer of legal
2.26 custody order under section 260C.325;

2.27 (2) a parent of an eligible child whose parental rights have been terminated under
2.28 section 260C.317, other than a parent:

2.29 (i) whose parental rights were terminated based on a finding in a legal proceeding of
2.30 sexual abuse or conduct that resulted in the death of a minor; or

2.31 (ii) who has been convicted of any crime enumerated under section 260C.007,
2.32 subdivision 14;

2.33 (3) the eligible child's guardian ad litem;

2.34 (4) the tribe of an eligible Indian child; or

2.35 (5) the responsible social services agency for an eligible child.

3.1 (b) A motion for reestablishment of the legal parent and child relationship may
3.2 not be brought:

3.3 (1) if a prior motion for reestablishment of the legal parent and child relationship has
3.4 been brought within the previous two years;

3.5 (2) if fewer than 36 months have elapsed since a final order terminating parental
3.6 rights and freeing the eligible child for adoption and the child remains in foster care;

3.7 (3) if the eligible child has been adopted, at least one adoptive parent is living, and
3.8 that adoptive parent's parental rights have not been voluntarily or involuntarily terminated;

3.9 (4) if the eligible child is the subject of a written adoption placement agreement
3.10 between the responsible social services agency and the prospective adoptive parent, as
3.11 required under Minnesota Rules, part 9560.0060, subpart 2; or

3.12 (5) by any party other than the eligible child, if a motion for reestablishment of the
3.13 legal parent and child relationship has been brought at any previous time and the child did
3.14 not agree to the reestablishment.

3.15 Subd. 4. **Process for minors; timing, jurisdiction, and content of motion.** The
3.16 motion for reestablishment of the legal parent and child relationship must:

3.17 (1) be brought before the eligible child's 18th birthday;

3.18 (2) be brought before the court that issued the order for guardianship and legal
3.19 custody and conducts the reviews required under section 260C.317, subdivision 3,
3.20 paragraph (b) or (c);

3.21 (3) state the factual basis for the request for reestablishment of the legal parent and
3.22 child relationship;

3.23 (4) contain the names, addresses, telephone numbers, and other contact information
3.24 for any person or agency entitled under this section to notice of the motion; and

3.25 (5) contain or attach documentary evidence showing the basis for reestablishment
3.26 of the legal parent and child relationship.

3.27 Subd. 5. **Process for minors; service on parties of motion.** The motion for
3.28 reestablishment of the legal parent and child relationship and notice of hearing on the
3.29 motion must be served on:

3.30 (1) the eligible child's foster parent; and

3.31 (2) all persons or entities having standing to bring a motion under this section,
3.32 provided that a parent whose rights have been terminated and who is not the subject of the
3.33 motion is not entitled to notice of the hearing.

3.34 Subd. 6. **Process for minors; preliminary hearing on motion.** (a) A preliminary
3.35 hearing on the motion must be conducted during a regularly scheduled review hearing.

3.36 (b) The court must determine whether the motion states a prima facie case that:

4.1 (1) the parent is fit to safely provide the day-to-day care of the eligible child, which
4.2 includes meeting the child's developmental and emotional needs, and can plan and provide
4.3 for the child's long-term needs; and

4.4 (2) the conditions that led to either an adjudication that the eligible child was in need
4.5 of protection or services or to an order terminating parental rights have been corrected
4.6 or ameliorated.

4.7 (c) The person filing the motion has the burden of proof. The court may not shift the
4.8 burden to any other party.

4.9 (d) The court must deny the motion and the matter may not proceed with the
4.10 evidentiary hearing if the court finds that the motion does not state the prima facie case
4.11 required under paragraph (b).

4.12 **Subd. 7. Process for minors; guardian ad litem report; opportunity for minor**
4.13 **testimony.** (a) The responsible social services agency and the child's guardian ad litem,
4.14 unless a moving party, must file with the court the report required under the Minnesota
4.15 Rules of Juvenile Protection for hearings conducted under section 260C.317, subdivision
4.16 3, paragraphs (b) and (c), at least five days prior to the hearing. The report must support or
4.17 oppose the motion for reestablishment of the legal parent and child relationship, and must
4.18 include the facts and evidence upon which support or opposition is based. The responsible
4.19 social services agency's report must include an assessment of whether the parent's home
4.20 constitutes a safe environment for the eligible child.

4.21 (b) Prior to the evidentiary hearing as provided in subdivision 8, the court may
4.22 accept testimony voluntarily offered by an eligible child who is the petitioner or subject
4.23 of the petition. The testimony may be provided informally under section 260C.163,
4.24 subdivision 6.

4.25 **Subd. 8. Process for minors; evidentiary hearing.** The court may grant the motion
4.26 ordering reestablishment of the legal parent and child relationship between the child and a
4.27 parent who had a previous legal relationship if:

4.28 (1) the eligible child is not currently the legal child of an adoptive parent who is
4.29 living;

4.30 (2) the eligible child is not the subject of a written adoption placement agreement
4.31 between the responsible social services agency and the prospective adoptive parent, as
4.32 required under Minnesota Rules, part 9560.0060, subpart 2;

4.33 (3) at least 36 months have elapsed following a final order terminating parental
4.34 rights and freeing the child for adoption and the child remains in foster care; and

5.1 (4) the court makes detailed and individualized findings that there is clear and
5.2 convincing evidence that reestablishment of the legal parent and child relationship is in
5.3 the child's best interests including:

5.4 (i) that the conditions that led to either an adjudication that the eligible child was in
5.5 need of protection or services or an order terminating parental rights have been corrected
5.6 or ameliorated;

5.7 (ii) that there is agreement by the eligible child to reestablishment of the legal parent
5.8 and child relationship;

5.9 (iii) that reestablishment of the legal parent and child relationship achieves the
5.10 physical reunification of the parent and eligible child as a family unit;

5.11 (iv) that the parent is presently fit to safely maintain the day-to-day care of the
5.12 eligible child; and

5.13 (v) any other factor the court considers relevant to the best interests of the eligible
5.14 child, including the legal and actual effect reestablishment of the legal parent and child
5.15 relationship will have on the child's relationship with the child's siblings, especially
5.16 siblings in the same foster home as the child.

5.17 In making the determination of whether to grant the motion ordering reestablishment
5.18 of the legal parent and child relationship, the court must consider as the paramount
5.19 determinant whether the order is in the eligible child's best interests.

5.20 Subd. 9. **Process for minors; service of order.** The court administrator must serve:

5.21 (1) a copy of the final court order granting or denying the motion for reestablishment
5.22 of the legal parent and child relationship on all persons or entities entitled under
5.23 subdivision 5 to bring a motion for reestablishment; and

5.24 (2) a certified copy of any order for reestablishment of the legal parent and child
5.25 relationship on the commissioner of human services.

5.26 Subd. 10. **Process for persons over 18 years of age.** (a) Notwithstanding
5.27 subdivision 4, the following parties may bring a motion for reestablishment of the legal
5.28 parent and child relationship:

5.29 (1) a person at least 18 years of age who was the subject of a guardianship and
5.30 transfer of legal custody order under section 260C.325 and who is not currently the legal
5.31 child of an adoptive parent who is living; or

5.32 (2) a parent whose rights have been terminated under section 260C.317 regarding
5.33 the person described in clause (1).

5.34 (b) The motion must be filed in the county and before the court that issued the order
5.35 terminating parental rights, and must contain:

6.1 (1) a statement that the person and the parent whose rights have been terminated
6.2 both agree to reestablishment of the legal parent and child relationship;

6.3 (2) a statement that both the person and the parent whose rights have been terminated
6.4 are competent to agree to reestablishment of the legal parent and child relationship;

6.5 (3) the facts showing that it is in the person's interest to reestablish the legal parent
6.6 and child relationship; and

6.7 (4) the names and addresses of any natural person or agency entitled to notice of
6.8 the motion under paragraph (c).

6.9 (c) The court must set a time for hearing the motion, and serve notice of the time
6.10 of the hearing together with a copy of the motion upon:

6.11 (1) the person whose legal relationship with the parent would be reestablished;

6.12 (2) the previously terminated birth parent who is the movant or the subject of the
6.13 person's motion;

6.14 (3) any guardian, as that term is defined under section 524.1-201;

6.15 (4) the responsible social services agency if the person had been under guardianship
6.16 of the commissioner and remains in foster care under the legal responsibility of the agency;

6.17 (5) the person's foster parent if the person had been under the guardianship of the
6.18 commissioner and remains in foster care under the legal responsibility of the agency; and

6.19 (6) if the person is an Indian, the person's tribe.

6.20 (d) Upon motion and hearing, the court must grant the motion ordering the
6.21 reestablishment of the legal parent and child relationship if:

6.22 (1) the person understands and agrees to the order, provided that the agreement of
6.23 the person is invalid if the person is either considered to be a vulnerable adult under
6.24 section 626.5572, subdivision 21, or determined not to be competent to give consent;

6.25 (2) the person, if under age 21, has been informed by the court and understands that
6.26 reestablishment of the parent and child relationship terminates any entitlement to benefits
6.27 otherwise available to a child in foster care;

6.28 (3) the person's previously terminated birth parent agrees to the order;

6.29 (4) the person has not been adopted; and

6.30 (5) if the person has been or currently is under guardianship, the court finds that
6.31 order to be in the best interests of the person.

6.32 (e) The order granting or denying the motion for reestablishment of the legal parent
6.33 and child relationship must be served on:

6.34 (1) the person;

6.35 (2) the previously terminated birth parent;

6.36 (3) any guardian, as that term is defined under section 524.1-201;

7.1 (4) the responsible social services agency if the former ward continues in foster
7.2 care; and

7.3 (5) if applicable, the person's tribe.

7.4 Subd. 11. **No right to appointed counsel.** A motion for reestablishment of the legal
7.5 parent and child relationship made under this chapter does not provide a right to the
7.6 appointment of counsel to the parent under section 260C.163, subdivision 3, or the Rules
7.7 of Juvenile Protection Procedure, rule 25.02, subdivision 2. Nothing in this subdivision
7.8 affects the representation of a child with appointed counsel under subdivision 2 or 3.

7.9 Subd. 12. **Effect of order.** (a) As of the effective date of a court order providing
7.10 reestablishment of the legal parent and child relationship:

7.11 (1) the child or person is the legal child of the parent;

7.12 (2) the parent whose rights were terminated under a previous order of the court as the
7.13 legal parent of the child or person is the legal parent of the child or person and all rights,
7.14 powers, privileges, immunities, duties, and obligations that were severed and terminated
7.15 by the court under section 260C.317 are restored;

7.16 (3) if applicable, guardianship and legal custody of the commissioner of human
7.17 services is dismissed; and

7.18 (4) with respect to a minor child, permanent legal and physical custody of the child
7.19 is awarded to the parent.

7.20 (b) An order providing reestablishment of the legal parent and child relationship as
7.21 to one parent of the child has no effect on:

7.22 (1) the legal rights of any other parent whose rights to the child have been terminated
7.23 by the court; or

7.24 (2) the legal sibling relationship between the child or person and any other children
7.25 of the parent.

7.26 (c) Where a child is a minor, the reestablishment of the legal parent and child
7.27 relationship:

7.28 (1) removes the presumption of palpable unfitness under section 260C.301,
7.29 subdivision 1, paragraph (b), clause (4), that otherwise would have arisen due to any
7.30 involuntary termination of parental rights order and the subsequent birth of another child
7.31 of the parent; and

7.32 (2) eliminates the requirement that the county attorney file a termination of parental
7.33 rights or child in need of protection or services petition due to an involuntary termination
7.34 of parental rights order and subsequent birth of a child to the parent that would have
7.35 otherwise arisen under section 260C.301, subdivision 3, paragraph (a), and 260C.007,

- 8.1 subdivision 6, paragraph (16), and rebuts the presumption under section 260C.301,
- 8.2 subdivision 1, paragraph (b), clause (4), in the event such a petition is filed.