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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 373

01/24/2019 Authored by Franson, Poston, Heinrich, Miller, Rarick and others
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division
01/31/2019 By motion, recalled and re-referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy Division

1.1 A bill for an act
1.2 relating to public safety; expanding the crime of female genital mutilation; updating
1.3 requirements for education and outreach; expanding the definition of egregious
1.4 harm; amending Minnesota Statutes 2018, sections 144.3872; 260.012; 260C.007,
1.5 subdivision 14; 260C.175, subdivision 1; 609.2245, subdivision 1, by adding a
1.6 subdivision.

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

1.8 Section 1. Minnesota Statutes 2018, section 144.3872, is amended to read:

1.9 144.3872 FEMALE GENITAL MUTILATION; EDUCATION AND OUTREACH.

1.10 The commissioner of health shall carry out appropriate education, prevention, and
1.11 outreach activities in communities that traditionally practice female circumcision, excision,
1.12 or infibulation to inform people in those communities about the health risks and emotional
1.13 trauma inflicted by those practices and to inform them and the medical community of the
1.14 criminal penalties and potential loss of custody of a child contained in section 609.2245.

1.15 The commissioner shall work with culturally appropriate groups to obtain private funds to
1.16 help finance these prevention and outreach activities.

1.17 Sec. 2. Minnesota Statutes 2018, section 260.012, is amended to read:

1.18 260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY
1.19 REUNIFICATION; REASONABLE EFFORTS.

1.20 (a) Once a child alleged to be in need of protection or services is under the court's
1.21 jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate
1.22 services, by the social services agency are made to prevent placement or to eliminate the
1.23 need for removal and to reunite the child with the child's family at the earliest possible time,

2.1 and the court must ensure that the responsible social services agency makes reasonable
2.2 efforts to finalize an alternative permanent plan for the child as provided in paragraph (e).
2.3 In determining reasonable efforts to be made with respect to a child and in making those
2.4 reasonable efforts, the child's best interests, health, and safety must be of paramount concern.
2.5 Reasonable efforts to prevent placement and for rehabilitation and reunification are always
2.6 required except upon a determination by the court that a petition has been filed stating a
2.7 prima facie case that:

2.8 (1) the parent has subjected a child to egregious harm as defined in section 260C.007,
2.9 subdivision 14;

2.10 (2) the parental rights of the parent to another child have been terminated involuntarily;

2.11 (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph
2.12 (a), clause (2);

2.13 (4) the parent's custodial rights to another child have been involuntarily transferred to a
2.14 relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d),
2.15 clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;

2.16 (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2,
2.17 against the child or another child of the parent;

2.18 (6) the parent has committed an offense that requires registration as a predatory offender
2.19 under section 243.166, subdivision 1b, paragraph (a) or (b); or

2.20 (7) the provision of services or further services for the purpose of reunification is futile
2.21 and therefore unreasonable under the circumstances.

2.22 (b) When the court makes one of the prima facie determinations under paragraph (a),
2.23 either permanency pleadings under section 260C.505, or a termination of parental rights
2.24 petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under
2.25 sections 260C.503 to 260C.521 must be held within 30 days of this determination.

2.26 (c) In the case of an Indian child, in proceedings under sections 260B.178, 260C.178,
2.27 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, the juvenile court
2.28 must make findings and conclusions consistent with the Indian Child Welfare Act of 1978,
2.29 United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In
2.30 cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section
2.31 1901, the responsible social services agency must provide active efforts as required under
2.32 United States Code, title 25, section 1911(d).

2.33 (d) "Reasonable efforts to prevent placement" means:

3.1 (1) the agency has made reasonable efforts to prevent the placement of the child in foster
3.2 care by working with the family to develop and implement a safety plan; or

3.3 (2) given the particular circumstances of the child and family at the time of the child's
3.4 removal, there are no services or efforts available which could allow the child to safely
3.5 remain in the home.

3.6 (e) "Reasonable efforts to finalize a permanent plan for the child" means due diligence
3.7 by the responsible social services agency to:

3.8 (1) reunify the child with the parent or guardian from whom the child was removed;

3.9 (2) assess a noncustodial parent's ability to provide day-to-day care for the child and,
3.10 where appropriate, provide services necessary to enable the noncustodial parent to safely
3.11 provide the care, as required by section 260C.219;

3.12 (3) conduct a relative search to identify and provide notice to adult relatives as required
3.13 under section 260C.221;

3.14 (4) place siblings removed from their home in the same home for foster care or adoption,
3.15 or transfer permanent legal and physical custody to a relative. Visitation between siblings
3.16 who are not in the same foster care, adoption, or custodial placement or facility shall be
3.17 consistent with section 260C.212, subdivision 2; and

3.18 (5) when the child cannot return to the parent or guardian from whom the child was
3.19 removed, to plan for and finalize a safe and legally permanent alternative home for the child,
3.20 and considers permanent alternative homes for the child inside or outside of the state,
3.21 preferably through adoption or transfer of permanent legal and physical custody of the child.

3.22 (f) Reasonable efforts are made upon the exercise of due diligence by the responsible
3.23 social services agency to use culturally appropriate and available services to meet the needs
3.24 of the child and the child's family. Services may include those provided by the responsible
3.25 social services agency and other culturally appropriate services available in the community.
3.26 At each stage of the proceedings where the court is required to review the appropriateness
3.27 of the responsible social services agency's reasonable efforts as described in paragraphs (a),
3.28 (d), and (e), the social services agency has the burden of demonstrating that:

3.29 (1) it has made reasonable efforts to prevent placement of the child in foster care;

3.30 (2) it has made reasonable efforts to eliminate the need for removal of the child from
3.31 the child's home and to reunify the child with the child's family at the earliest possible time;

4.1 (3) it has made reasonable efforts to finalize an alternative permanent home for the child,
 4.2 and considers permanent alternative homes for the child inside or outside of the state; or

4.3 (4) reasonable efforts to prevent placement and to reunify the child with the parent or
 4.4 guardian are not required. The agency may meet this burden by stating facts in a sworn
 4.5 petition filed under section 260C.141, by filing an affidavit summarizing the agency's
 4.6 reasonable efforts or facts the agency believes demonstrate there is no need for reasonable
 4.7 efforts to reunify the parent and child, or through testimony or a certified report required
 4.8 under juvenile court rules.

4.9 (g) Once the court determines that reasonable efforts for reunification are not required
 4.10 because the court has made one of the prima facie determinations under paragraph (a), the
 4.11 court may only require reasonable efforts for reunification after a hearing according to
 4.12 section 260C.163, where the court finds there is not clear and convincing evidence of the
 4.13 facts upon which the court based its prima facie determination. In this case when there is
 4.14 clear and convincing evidence that the child is in need of protection or services, the court
 4.15 may find the child in need of protection or services and order any of the dispositions available
 4.16 under section 260C.201, subdivision 1. Reunification of a child with a parent is not required
 4.17 if the parent has been convicted of:

4.18 (1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185
 4.19 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

4.20 (2) a violation of section 609.222, subdivision 2; ~~or 609.223;~~ or 609.2245, subdivision
 4.21 1, clause (2), in regard to the child;

4.22 (3) a violation of, or an attempt or conspiracy to commit a violation of, United States
 4.23 Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent;

4.24 (4) committing sexual abuse as defined in section 626.556, subdivision 2, against the
 4.25 child or another child of the parent; or

4.26 (5) an offense that requires registration as a predatory offender under section 243.166,
 4.27 subdivision 1b, paragraph (a) or (b).

4.28 (h) The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201,
 4.29 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and
 4.30 conclusions as to the provision of reasonable efforts. When determining whether reasonable
 4.31 efforts have been made, the court shall consider whether services to the child and family
 4.32 were:

4.33 (1) relevant to the safety and protection of the child;

- 5.1 (2) adequate to meet the needs of the child and family;
- 5.2 (3) culturally appropriate;
- 5.3 (4) available and accessible;
- 5.4 (5) consistent and timely; and
- 5.5 (6) realistic under the circumstances.

5.6 In the alternative, the court may determine that provision of services or further services
5.7 for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances
5.8 or that reasonable efforts are not required as provided in paragraph (a).

5.9 (i) This section does not prevent out-of-home placement for treatment of a child with a
5.10 mental disability when it is determined to be medically necessary as a result of the child's
5.11 diagnostic assessment or individual treatment plan indicates that appropriate and necessary
5.12 treatment cannot be effectively provided outside of a residential or inpatient treatment
5.13 program and the level or intensity of supervision and treatment cannot be effectively and
5.14 safely provided in the child's home or community and it is determined that a residential
5.15 treatment setting is the least restrictive setting that is appropriate to the needs of the child.

5.16 (j) If continuation of reasonable efforts to prevent placement or reunify the child with
5.17 the parent or guardian from whom the child was removed is determined by the court to be
5.18 inconsistent with the permanent plan for the child or upon the court making one of the prima
5.19 facie determinations under paragraph (a), reasonable efforts must be made to place the child
5.20 in a timely manner in a safe and permanent home and to complete whatever steps are
5.21 necessary to legally finalize the permanent placement of the child.

5.22 (k) Reasonable efforts to place a child for adoption or in another permanent placement
5.23 may be made concurrently with reasonable efforts to prevent placement or to reunify the
5.24 child with the parent or guardian from whom the child was removed. When the responsible
5.25 social services agency decides to concurrently make reasonable efforts for both reunification
5.26 and permanent placement away from the parent under paragraph (a), the agency shall disclose
5.27 its decision and both plans for concurrent reasonable efforts to all parties and the court.
5.28 When the agency discloses its decision to proceed on both plans for reunification and
5.29 permanent placement away from the parent, the court's review of the agency's reasonable
5.30 efforts shall include the agency's efforts under both plans.

6.1 Sec. 3. Minnesota Statutes 2018, section 260C.007, subdivision 14, is amended to read:

6.2 Subd. 14. **Egregious harm.** "Egregious harm" means the infliction of bodily harm to a
6.3 child or neglect of a child which demonstrates a grossly inadequate ability to provide
6.4 minimally adequate parental care. The egregious harm need not have occurred in the state
6.5 or in the county where a termination of parental rights action is otherwise properly venued.
6.6 Egregious harm includes, but is not limited to:

6.7 (1) conduct towards a child that constitutes a violation of sections 609.185 to 609.2114,
6.8 609.222, subdivision 2, 609.223, 609.2245, subdivision 1, or any other similar law of any
6.9 other state;

6.10 (2) the infliction of "substantial bodily harm" to a child, as defined in section 609.02,
6.11 subdivision 7a;

6.12 (3) conduct towards a child that constitutes felony malicious punishment of a child under
6.13 section 609.377;

6.14 (4) conduct towards a child that constitutes felony unreasonable restraint of a child under
6.15 section 609.255, subdivision 3;

6.16 (5) conduct towards a child that constitutes felony neglect or endangerment of a child
6.17 under section 609.378;

6.18 (6) conduct towards a child that constitutes assault under section 609.221, 609.222, or
6.19 609.223;

6.20 (7) conduct towards a child that constitutes solicitation, inducement, or promotion of,
6.21 or receiving profit derived from prostitution under section 609.322;

6.22 (8) conduct towards a child that constitutes murder or voluntary manslaughter as defined
6.23 by United States Code, title 18, section 1111(a) or 1112(a);

6.24 (9) conduct towards a child that constitutes aiding or abetting, attempting, conspiring,
6.25 or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of
6.26 United States Code, title 18, section 1111(a) or 1112(a); or

6.27 (10) conduct toward a child that constitutes criminal sexual conduct under sections
6.28 609.342 to 609.345.

6.29 Sec. 4. Minnesota Statutes 2018, section 260C.175, subdivision 1, is amended to read:

6.30 Subdivision 1. **Immediate custody.** No child may be taken into immediate custody
6.31 except:

7.1 (1) with an order issued by the court in accordance with the provisions of section
 7.2 260C.151, subdivision 6, or Laws 1997, chapter 239, article 10, section 10, paragraph (a),
 7.3 clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the
 7.4 provisions of section 260C.154;

7.5 (2) by a peace officer:

7.6 (i) when a child has run away from a parent, guardian, or custodian, or when the peace
 7.7 officer reasonably believes the child has run away from a parent, guardian, or custodian,
 7.8 but only for the purpose of transporting the child home, to the home of a relative, or to
 7.9 another safe place, which may include a shelter care facility; ~~or~~

7.10 (ii) when a child is found in surroundings or conditions which endanger the child's health
 7.11 or welfare or which such peace officer reasonably believes will endanger the child's health
 7.12 or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation
 7.13 but temporarily located off the reservation, the taking of the child into custody under this
 7.14 clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code,
 7.15 title 25, section 1922; or

7.16 (iii) when the peace officer has probable cause to believe that a violation of, or attempt
 7.17 to violate, section 609.2245, subdivision 1, clause (2), occurred;

7.18 (3) by a peace officer or probation or parole officer when it is reasonably believed that
 7.19 the child has violated the terms of probation, parole, or other field supervision; or

7.20 (4) by a peace officer or probation officer under section 260C.143, subdivision 1 or 4.

7.21 Sec. 5. Minnesota Statutes 2018, section 609.2245, subdivision 1, is amended to read:

7.22 Subdivision 1. **Crime.** Except as otherwise permitted in subdivision 2, the following
 7.23 individuals are guilty of a felony:

7.24 (1) whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia
 7.25 majora, labia minora, or clitoris of another is guilty of a felony. Consent to the procedure
 7.26 by a minor on whom it is performed or by the minor's parent is not a defense to a violation
 7.27 of this subdivision; or

7.28 (2) the parent, guardian, or other person legally responsible or charged with the care or
 7.29 custody of a minor who knowingly allows the circumcision, excision, or infibulation, in
 7.30 whole or in part, of the labia majora, labia minora, or clitoris of the minor.

7.31 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to violations
 7.32 committed on or after that date.

8.1 Sec. 6. Minnesota Statutes 2018, section 609.2245, is amended by adding a subdivision
8.2 to read:

8.3 Subd. 3. **Custody of child.** A violation of, or attempt to violate subdivision 1, clause
8.4 (2), is a condition that endangers a child's health or welfare and justifies taking the child
8.5 into custody pursuant to section 260C.175, subdivision 1.

8.6 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to violations
8.7 committed on or after that date.