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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1688

02/13/2023

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The bill was read for the first time and referred to the Committee on Children and Families Finance and Policy

1.1 A bill for an act

1.2 relating to child protection; modifying termination of parental rights, emergency

1.3 removals, and family reunification requirements; modifying the definition of

1.4 threatened sexual abuse; amending Minnesota Statutes 2022, sections 260.012;

1.5 260C.178, subdivision 1; 260C.503, subdivision 2; 260E.03, subdivision 20.

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

1.7 Section 1. Minnesota Statutes 2022, section 260.012, is amended to read:

1.8 **260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY**

1.9 **REUNIFICATION; REASONABLE EFFORTS.**

1.10 (a) Once a child alleged to be in need of protection or services is under the court's

1.11 jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate

1.12 services and practices, by the social services agency are made to prevent placement or to

1.13 eliminate the need for removal and to reunite the child with the child's family at the earliest

1.14 possible time, and the court must ensure that the responsible social services agency makes

1.15 reasonable efforts to finalize an alternative permanent plan for the child as provided in

1.16 paragraph (e). In determining reasonable efforts to be made with respect to a child and in

1.17 making those reasonable efforts, the child's best interests, health, and safety must be of

1.18 paramount concern. Reasonable efforts to prevent placement and for rehabilitation and

1.19 reunification are always required except upon a determination by the court that a petition

1.20 has been filed stating a prima facie case that one or more of the following circumstances

1.21 apply and a safety or health risk to the child exists:

1.22 (1) the parent has subjected a child to egregious harm as defined in section 260C.007,

1.23 subdivision 14;

- 2.1 (2) the parental rights of the parent to another child have been terminated involuntarily;
- 2.2 (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph
- 2.3 (a), clause (2);
- 2.4 (4) the parent's custodial rights to another child have been involuntarily transferred to a
- 2.5 relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d),
- 2.6 clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;
- 2.7 (5) the parent has committed sexual abuse as defined in section 260E.03, against the
- 2.8 child or another child of the parent;
- 2.9 (6) the parent has committed an offense that requires registration as a predatory offender
- 2.10 under section 243.166, subdivision 1b, paragraph (a) or (b); or
- 2.11 (7) the provision of services or further services for the purpose of reunification is futile
- 2.12 and therefore unreasonable under the circumstances.
- 2.13 (b) When the court makes one of the prima facie determinations under paragraph (a),
- 2.14 either permanency pleadings under section 260C.505, or a termination of parental rights
- 2.15 petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under
- 2.16 sections 260C.503 to 260C.521 must be held within 30 days of this determination.
- 2.17 (c) In the case of an Indian child, in proceedings under sections 260B.178, 260C.178,
- 2.18 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, the juvenile court
- 2.19 must make findings and conclusions consistent with the Indian Child Welfare Act of 1978,
- 2.20 United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In
- 2.21 cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section
- 2.22 1901, the responsible social services agency must provide active efforts as required under
- 2.23 United States Code, title 25, section 1911(d).
- 2.24 (d) "Reasonable efforts to prevent placement" means:
- 2.25 (1) the agency has made reasonable efforts to prevent the placement of the child in foster
- 2.26 care by working with the family to develop and implement a safety plan that is individualized
- 2.27 to the needs of the child and the child's family and may include support persons from the
- 2.28 child's extended family, kin network, and community; or
- 2.29 (2) the agency has demonstrated to the court that, given the particular circumstances of
- 2.30 the child and family at the time of the child's removal, there are no services or efforts
- 2.31 available that could allow the child to safely remain in the home.

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

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

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

3.7 (3) conduct a relative search to identify and provide notice to adult relatives, and engage  
3.8 relatives in case planning and permanency planning, as required under section 260C.221;

3.9 (4) consider placing the child with relatives in the order specified in section 260C.212,  
3.10 subdivision 2, paragraph (a);

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

3.15 (6) when the child cannot return to the parent or guardian from whom the child was  
3.16 removed, to plan for and finalize a safe and legally permanent alternative home for the child,  
3.17 and considers permanent alternative homes for the child inside or outside of the state,  
3.18 preferably with a relative in the order specified in section 260C.212, subdivision 2, paragraph  
3.19 (a), through adoption or transfer of permanent legal and physical custody of the child.

3.20 (f) Reasonable efforts are made upon the exercise of due diligence by the responsible  
3.21 social services agency to use culturally appropriate and available services to meet the  
3.22 individualized needs of the child and the child's family. Services may include those provided  
3.23 by the responsible social services agency and other culturally appropriate services available  
3.24 in the community. The responsible social services agency must select services for a child  
3.25 and the child's family by collaborating with the child's family and, if appropriate, the child.  
3.26 At each stage of the proceedings when 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) the agency has made reasonable efforts to prevent placement of the child in foster  
3.30 care, including that the agency considered or established a safety plan according to paragraph  
3.31 (d), clause (1);

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

4.4 (3) the agency has made reasonable efforts to finalize a permanent plan for the child  
4.5 pursuant to paragraph (e);

4.6 (4) the agency has made reasonable efforts to finalize an alternative permanent home  
4.7 for the child, and considered permanent alternative homes for the child in or out of the state,  
4.8 preferably with a relative in the order specified in section 260C.212, subdivision 2, paragraph  
4.9 (a); or

4.10 (5) reasonable efforts to prevent placement and to reunify the child with the parent or  
4.11 guardian are not required. The agency may meet this burden by stating facts in a sworn  
4.12 petition filed under section 260C.141, by filing an affidavit summarizing the agency's  
4.13 reasonable efforts or facts that the agency believes demonstrate that there is no need for  
4.14 reasonable efforts to reunify the parent and child, or through testimony or a certified report  
4.15 required under juvenile court rules.

4.16 (g) Once the court determines that reasonable efforts for reunification are not required  
4.17 because the court has made one of the prima facie determinations under paragraph (a), the  
4.18 court may only require the agency to make reasonable efforts for reunification after a hearing  
4.19 according to section 260C.163, if the court finds that there is not clear and convincing  
4.20 evidence of the facts upon which the court based the court's prima facie determination. If  
4.21 there is clear and convincing evidence that the child is in need of protection or services, the  
4.22 court may find the child in need of protection or services and order any of the dispositions  
4.23 available under section 260C.201, subdivision 1. Reunification of a child with a parent is  
4.24 not required ~~if~~ when there is a safety or health risk to the child and the parent has been  
4.25 convicted of:

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

4.28 (2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the child;

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

4.31 (4) committing sexual abuse as defined in section 260E.03, against the child or another  
4.32 child of the parent; or

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

5.3 (h) The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201,  
5.4 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and  
5.5 conclusions as to the provision of reasonable efforts. When determining whether reasonable  
5.6 efforts have been made by the agency, the court shall consider whether services to the child  
5.7 and family were:

5.8 (1) selected in collaboration with the child's family and, if appropriate, the child;

5.9 (2) tailored to the individualized needs of the child and child's family;

5.10 (3) relevant to the safety, protection, and well-being of the child;

5.11 (4) adequate to meet the individualized needs of the child and family;

5.12 (5) culturally appropriate;

5.13 (6) available and accessible;

5.14 (7) consistent and timely; and

5.15 (8) realistic under the circumstances.

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

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

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

6.1 (k) Reasonable efforts to place a child for adoption or in another permanent placement  
6.2 may be made concurrently with reasonable efforts to prevent placement or to reunify the  
6.3 child with the parent or guardian from whom the child was removed. When the responsible  
6.4 social services agency decides to concurrently make reasonable efforts for both reunification  
6.5 and permanent placement away from the parent under paragraph (a), the agency shall disclose  
6.6 the agency's decision and both plans for concurrent reasonable efforts to all parties and the  
6.7 court. When the agency discloses the agency's decision to proceed with both plans for  
6.8 reunification and permanent placement away from the parent, the court's review of the  
6.9 agency's reasonable efforts shall include the agency's efforts under both plans.

6.10 Sec. 2. Minnesota Statutes 2022, section 260C.178, subdivision 1, is amended to read:

6.11 Subdivision 1. **Hearing and release requirements.** (a) If a child was taken into custody  
6.12 under section 260C.175, subdivision 1, clause (1) or (2), item (ii), the court shall hold a  
6.13 hearing within 72 hours of the time that the child was taken into custody, excluding  
6.14 Saturdays, Sundays, and holidays, to determine whether the child should continue to be in  
6.15 custody.

6.16 (b) Unless there is reason to believe that the child would endanger self or others or not  
6.17 return for a court hearing, or that the child's health or welfare would be immediately  
6.18 endangered, the child shall be released to the custody of a parent, guardian, custodian, or  
6.19 other suitable person, subject to reasonable conditions of release including, but not limited  
6.20 to, a requirement that the child undergo a chemical use assessment as provided in section  
6.21 260C.157, subdivision 1.

6.22 (c) If the court determines that there is reason to believe that the child would endanger  
6.23 self or others or not return for a court hearing, or that the child's health or welfare would be  
6.24 immediately endangered if returned to the care of the parent or guardian who has custody  
6.25 and from whom the child was removed, the court shall order the child:

6.26 (1) into the care of the child's noncustodial parent and order the noncustodial parent to  
6.27 comply with any conditions that the court determines appropriate to ensure the safety and  
6.28 care of the child, including requiring the noncustodial parent to cooperate with paternity  
6.29 establishment proceedings if the noncustodial parent has not been adjudicated the child's  
6.30 father; or

6.31 (2) into foster care as defined in section 260C.007, subdivision 18, under the legal  
6.32 responsibility of the responsible social services agency or responsible probation or corrections  
6.33 agency for the purposes of protective care as that term is used in the juvenile court rules.  
6.34 The court shall not give the responsible social services legal custody and order a trial home

7.1 visit at any time prior to adjudication and disposition under section 260C.201, subdivision  
7.2 1, paragraph (a), clause (3), but may order the child returned to the care of the parent or  
7.3 guardian who has custody and from whom the child was removed and order the parent or  
7.4 guardian to comply with any conditions the court determines to be appropriate to meet the  
7.5 safety, health, and welfare of the child.

7.6 (d) In determining whether the child's health or welfare would be immediately  
7.7 endangered, the court shall consider whether the child would reside with a perpetrator of  
7.8 domestic child abuse.

7.9 (e) The court, before determining whether a child should be placed in or continue in  
7.10 foster care under the protective care of the responsible agency, shall also make a  
7.11 determination, consistent with section 260.012 as to whether reasonable efforts were made  
7.12 to prevent placement or whether reasonable efforts to prevent placement are not required.  
7.13 In the case of an Indian child, the court shall determine whether active efforts, according  
7.14 to section 260.762 and the Indian Child Welfare Act of 1978, United States Code, title 25,  
7.15 section 1912(d), were made to prevent placement. The court shall enter a finding that the  
7.16 responsible social services agency has made reasonable efforts to prevent placement when  
7.17 the agency establishes either:

7.18 (1) that the agency has actually provided services or made efforts in an attempt to prevent  
7.19 the child's removal but that such services or efforts have not proven sufficient to permit the  
7.20 child to safely remain in the home; or

7.21 (2) that there are no services or other efforts that could be made at the time of the hearing  
7.22 that could safely permit the child to remain home or to return home. The court shall not  
7.23 make a reasonable efforts determination under this clause unless the court is satisfied that  
7.24 the agency has sufficiently demonstrated to the court that there were no services or other  
7.25 efforts that the agency was able to provide at the time of the hearing enabling the child to  
7.26 safely remain home or to safely return home. When reasonable efforts to prevent placement  
7.27 are required and there are services or other efforts that could be ordered that would permit  
7.28 the child to safely return home, the court shall order the child returned to the care of the  
7.29 parent or guardian and the services or efforts put in place to ensure the child's safety. When  
7.30 the court makes a prima facie determination that one of the circumstances under paragraph  
7.31 (g) exists, the court shall determine that reasonable efforts to prevent placement and to  
7.32 return the child to the care of the parent or guardian are not required.

7.33 (f) If the court finds the social services agency's preventive or reunification efforts have  
7.34 not been reasonable but further preventive or reunification efforts could not permit the child

8.1 to safely remain at home, the court may nevertheless authorize or continue the removal of  
8.2 the child.

8.3 (g) The court may not order or continue the foster care placement of the child unless the  
8.4 court makes explicit, individualized findings that continued custody of the child by the  
8.5 parent or guardian would be contrary to the welfare of the child and that placement is in the  
8.6 best interest of the child.

8.7 (h) At the emergency removal hearing, or at any time during the course of the proceeding,  
8.8 and upon notice and request of the county attorney, the court shall determine whether a  
8.9 petition has been filed stating a prima facie case that one or more of the following  
8.10 circumstances apply and a safety or health risk to the child exists:

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

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

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

8.16 (4) the parents' custodial rights to another child have been involuntarily transferred to a  
8.17 relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (e),  
8.18 clause (1); section 260C.515, subdivision 4; or a similar law of another jurisdiction;

8.19 (5) the parent has committed sexual abuse as defined in section 260E.03, against the  
8.20 child or another child of the parent;

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

8.23 (7) the provision of services or further services for the purpose of reunification is futile  
8.24 and therefore unreasonable.

8.25 (i) When a petition to terminate parental rights is required under section 260C.301,  
8.26 subdivision 4, or 260C.503, subdivision 2, but the county attorney has determined not to  
8.27 proceed with a termination of parental rights petition, and has instead filed a petition to  
8.28 transfer permanent legal and physical custody to a relative under section 260C.507, the  
8.29 court shall schedule a permanency hearing within 30 days of the filing of the petition.

8.30 (j) If the county attorney has filed a petition under section 260C.307, the court shall  
8.31 schedule a trial under section 260C.163 within 90 days of the filing of the petition except

9.1 when the county attorney determines that the criminal case shall proceed to trial first under  
9.2 section 260C.503, subdivision 2, paragraph (c).

9.3 (k) If the court determines the child should be ordered into foster care and the child's  
9.4 parent refuses to give information to the responsible social services agency regarding the  
9.5 child's father or relatives of the child, the court may order the parent to disclose the names,  
9.6 addresses, telephone numbers, and other identifying information to the responsible social  
9.7 services agency for the purpose of complying with sections 260C.150, 260C.151, 260C.212,  
9.8 260C.215, 260C.219, and 260C.221.

9.9 (l) If a child ordered into foster care has siblings, whether full, half, or step, who are  
9.10 also ordered into foster care, the court shall inquire of the responsible social services agency  
9.11 of the efforts to place the children together as required by section 260C.212, subdivision 2,  
9.12 paragraph (d), if placement together is in each child's best interests, unless a child is in  
9.13 placement for treatment or a child is placed with a previously noncustodial parent who is  
9.14 not a parent to all siblings. If the children are not placed together at the time of the hearing,  
9.15 the court shall inquire at each subsequent hearing of the agency's reasonable efforts to place  
9.16 the siblings together, as required under section 260.012. If any sibling is not placed with  
9.17 another sibling or siblings, the agency must develop a plan to facilitate visitation or ongoing  
9.18 contact among the siblings as required under section 260C.212, subdivision 1, unless it is  
9.19 contrary to the safety or well-being of any of the siblings to do so.

9.20 (m) When the court has ordered the child into the care of a noncustodial parent or in  
9.21 foster care, the court may order a chemical dependency evaluation, mental health evaluation,  
9.22 medical examination, and parenting assessment for the parent as necessary to support the  
9.23 development of a plan for reunification required under subdivision 7 and section 260C.212,  
9.24 subdivision 1, or the child protective services plan under section 260E.26, and Minnesota  
9.25 Rules, part 9560.0228.

9.26 Sec. 3. Minnesota Statutes 2022, section 260C.503, subdivision 2, is amended to read:

9.27 Subd. 2. **Termination of parental rights.** (a) The responsible social services agency  
9.28 must ask the county attorney to immediately file a termination of parental rights petition  
9.29 when there is a safety or health risk to the child and:

9.30 (1) the child has been subjected to egregious harm as defined in section 260C.007,  
9.31 subdivision 14;

9.32 (2) the child is determined to be the sibling of a child who was subjected to egregious  
9.33 harm;

10.1 (3) the child is an abandoned infant as defined in section 260C.301, subdivision 2,  
10.2 paragraph (a), clause (2);

10.3 (4) the child's parent has lost parental rights to another child through an order involuntarily  
10.4 terminating the parent's rights;

10.5 (5) the parent has committed sexual abuse as defined in section 260E.03, against the  
10.6 child or another child of the parent;

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

10.9 (7) another child of the parent is the subject of an order involuntarily transferring  
10.10 permanent legal and physical custody of the child to a relative under this chapter or a similar  
10.11 law of another jurisdiction.

10.12 ~~The county attorney shall file a termination of parental rights petition unless the conditions~~  
10.13 ~~of paragraph (d) are met.~~

10.14 (b) The county attorney may file a termination of parental rights petition under paragraph  
10.15 (a), a petition for a transfer of permanent legal and physical custody to a relative under  
10.16 sections 260C.505 and 260C.515, subdivision 4, or a petition under section 260C.141  
10.17 alleging that a child, and, where appropriate, the child's siblings, are in need of protection  
10.18 or services. The county attorney is not required to file a petition under this paragraph if the  
10.19 county attorney determines that there is no legal basis to file a petition.

10.20 ~~(b)~~ (c) When the termination of parental rights petition is filed under this subdivision,  
10.21 the responsible social services agency shall identify, recruit, and approve an adoptive family  
10.22 for the child. If a termination of parental rights petition has been filed by another party, the  
10.23 responsible social services agency shall be joined as a party to the petition.

10.24 ~~(e)~~ (d) If criminal charges have been filed against a parent arising out of the conduct  
10.25 alleged to constitute egregious harm, the county attorney shall determine which matter  
10.26 should proceed to trial first, consistent with the best interests of the child and subject to the  
10.27 defendant's right to a speedy trial.

10.28 ~~(d) The requirement of paragraph (a) does not apply if the responsible social services~~  
10.29 ~~agency and the county attorney determine and file with the court:~~

10.30 ~~(1) a petition for transfer of permanent legal and physical custody to a relative under~~  
10.31 ~~sections 260C.505 and 260C.515, subdivision 4, including a determination that adoption is~~  
10.32 ~~not in the child's best interests and that transfer of permanent legal and physical custody is~~  
10.33 ~~in the child's best interests; or~~

11.1 ~~(2) a petition under section 260C.141 alleging the child, and where appropriate, the~~  
11.2 ~~child's siblings, to be in need of protection or services accompanied by a case plan prepared~~  
11.3 ~~by the responsible social services agency documenting a compelling reason why filing a~~  
11.4 ~~termination of parental rights petition would not be in the best interests of the child.~~

11.5 Sec. 4. Minnesota Statutes 2022, section 260E.03, subdivision 20, is amended to read:

11.6 Subd. 20. **Sexual abuse.** "Sexual abuse" means the subjection of a child by a person  
11.7 responsible for the child's care, by a person who has a significant relationship to the child,  
11.8 or by a person in a current or recent position of authority, to any act that constitutes a  
11.9 violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal  
11.10 sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree),  
11.11 609.345 (criminal sexual conduct in the fourth degree), 609.3451 (criminal sexual conduct  
11.12 in the fifth degree), 609.3458 (sexual extortion), or 609.352 (solicitation of children to  
11.13 engage in sexual conduct; communication of sexually explicit materials to children). Sexual  
11.14 abuse also includes any act involving a child that constitutes a violation of prostitution  
11.15 offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes all reports  
11.16 of known or suspected child sex trafficking involving a child who is identified as a victim  
11.17 of sex trafficking. Sexual abuse includes child sex trafficking as defined in section 609.321,  
11.18 subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse, which includes the  
11.19 status of a parent or household member who presents a safety or health risk to the child and  
11.20 has committed a violation that requires registration as an offender under section 243.166,  
11.21 subdivision 1b, paragraph (a) or (b), or required registration under section 243.166,  
11.22 subdivision 1b, paragraph (a) or (b).