A bill for an act

relating to children; creating the Family Reunification Act of 2011; amending Minnesota Statutes 2010, section 260C.101, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 260C.

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

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

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

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

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

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

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

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

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

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

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

Subdivision 1. **Citation.** This section may be cited as the "Family Reunification Act of 2011."

Subd. 2. **Definition.** For purposes of this section, "reestablishment of the legal parent and child relationship" means reunification of a child and a previously terminated birth parent and restoration of all rights, powers, privileges, immunities, duties, and obligations that were severed and terminated by the court under section 260C.317.

Subd. 3. **Process for minors.** (a) Any of the following parties may bring a motion to reestablish the legal parent and child relationship:

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

(2) a parent whose parental rights have been terminated under section 260C.317, other than a parent:

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

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

(3) the child's guardian ad litem;

(4) an Indian child's tribe; or

(5) the responsible social services agency.

(b) The motion to reestablish the legal parent and child relationship:

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

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

(3) must state the factual basis for the request to reestablish the legal parent and child relationship;

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

(5) if brought by a parent, must contain or attach all documentary evidence showing the basis for reestablishing the legal parent and child relationship.

(c) A motion to reestablish the legal parent and child relationship may not be brought:

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

(2) unless the child has been in foster care for at least 24 months after a final order terminated parental rights and freeing the child for adoption; or

(3) if the child is the subject of a written adoption placement agreement between the responsible social services agency and the prospective adoptive parent, as required under Minnesota Rules, part 9560.0060, subpart 2.

(d) The motion and notice of hearing on the motion must be served on:

(1) the child's foster parent; and

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

(e) A hearing on the motion must be conducted during a regularly scheduled review hearing. The person filing the motion has the burden of proof. The court may not shift the burden to any other party.

(f) The responsible social services agency and the child's guardian ad litem, unless a moving party, must file with the court the report specified under section 260C.193, subdivision 2, at least five days prior to the hearing. The report must support or oppose the motion for the reestablishment of the legal parent and child relationship, and must include the facts and evidence upon which support or opposition is based. The responsible social services agency's report must include an assessment of whether the parent's home constitutes a safe environment for the child.

(g) The court may accept information voluntarily offered by a child who is the petitioner or subject of the petition. The information may be provided informally under section 260C.163, subdivision 6.

(h) The court may grant the motion ordering reestablishment of the legal parent and child relationship between the child and a parent who had a previous legal relationship if:

(1) the child has not been adopted;

(2) the child has been in foster care for at least 24 months following a final order terminating parental rights and freeing the child for adoption; and

(3) the court makes detailed and individualized findings that there is clear and convincing evidence that reestablishment of the legal parent and child relationship is in the child's best interests, taking into account these factors:

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

(ii) agreement by the child to reestablishment of the legal parent and child relationship;

(iii) the child's relationship with whole, half, or step siblings, and whether the siblings are in the same foster home as the child;

(iv) whether the reestablishment of the legal parent and child relationship achieves the physical reunification of the parent and child as a family unit;

(v) whether the parent is presently fit to safely maintain the day-to-day care of the child; and

(vi) any other factor the court considers relevant to the best interests of the child.

The court must consider as the paramount determinant whether granting the motion to reestablish the legal parent and child relationship is in the child's best interests.

(i) The court may grant the motion conditionally for a designated period of up to six months, during which time guardianship of the child shall remain with the commissioner while the child may visit or be placed on a trial home visit with the birth parent or birth parents. The court must:

(1) direct the responsible social services agency to supervise the child's birth parent or birth parents;

(2) develop a reunification plan;

(3) provide appropriate transitional services to the child and the birth parent or birth parents; and

(4) report to the parties and the court not later than 30 days prior to the expiration of the designated period.

The court must schedule a hearing prior to the expiration of the designated period to determine whether to grant the motion permanently in accordance with paragraph (h). The order granting or dismissing the motion must include the reasons for the determination. If the child has been removed from the custody of the birth parent or birth parents prior to the expiration of the designated period by reason of a report of suspected child abuse or maltreatment, the court must schedule a hearing with notice to the parties. The court may terminate the trial home visit and may dismiss the petition.

(j) The court administrator must serve:

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

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

Subd. 4. **Process for persons over 18 years of age.** (a) The following parties may bring a motion to reestablish the legal parent and child relationship:

(1) a person at least 18 years of age who was the subject of a guardianship and transfer of legal custody order under section 260C.325 and who has not been adopted; or

(2) a parent whose rights regarding the person have been terminated under section 260C.317.

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

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

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

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

(4) the names and addresses of any natural person or agency entitled to notice of the motion under this subdivision.

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

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

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

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

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

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

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

(d) Upon motion and hearing, the court must order the legal parent and child relationship reestablished when:

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

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

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

(4) the person has not been adopted; and

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

(e) The order granting or denying the motion to reestablish the legal parent and child relationship must be served on:

(1) the person;

(2) the previously terminated birth parent;

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

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

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

Subd. 5. **No right to appointed counsel.** A motion for a reestablishment of the parent and child relationship made under this chapter does not provide a right to the appointment of counsel to the parent under section 260C.163, subdivision 3, or the Rules of Juvenile Protection Procedure, section 25.02, subdivision 2. Nothing in this subdivision affects the representation of a child appointed counsel under subdivision 2 or 3 of this section.

Subd. 6. **Effect of order.** (a) As of the effective date of a court order reestablishing the legal parent and child relationship:

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

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

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

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

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

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

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

(c) Reestablishment of the legal parent and child relationship:

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

(2) eliminates the requirement that the county attorney file a termination of parental rights or child in need of protection or services petition due to an involuntary termination of parental rights order and subsequent birth of a child to the parent that would have otherwise arisen under section 260C.301, subdivision 3, paragraph (a), and 260C.007, subdivision 6, paragraph (16), and provides an affirmative defense to an action in the event such a petition is filed.