

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3283

03/24/2014 Authored by Allen

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

1.1 A bill for an act
1.2 relating to human services; modifying provisions governing Indian child welfare;
1.3 making conforming changes; amending Minnesota Statutes 2012, sections
1.4 245A.035, subdivisions 1, 5; 245C.22, subdivision 7; 257.85, subdivision
1.5 3; 259A.01, subdivision 25; 259A.10, subdivision 6; 260.755, by adding
1.6 subdivisions; 260B.007, subdivision 12; 260C.007, subdivision 27, by adding
1.7 a subdivision; 260C.168; 260C.201, subdivision 5; 260C.212, subdivision
1.8 1; Minnesota Statutes 2013 Supplement, sections 256N.02, subdivision 18;
1.9 256N.23, subdivision 6; proposing coding for new law in Minnesota Statutes,
1.10 chapter 260.

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

1.12 Section 1. Minnesota Statutes 2012, section 245A.035, subdivision 1, is amended to
1.13 read:

1.14 Subdivision 1. **Emergency placement.** Notwithstanding section 245A.03,
1.15 subdivision 2a, or 245C.13, subdivision 2, a county agency may place a child with a
1.16 relative who is not licensed to provide foster care, provided the requirements of this
1.17 section are met. As used in this section, the term "relative" has the meaning given it under
1.18 section 260C.007, subdivision 26b or 27.

1.19 Sec. 2. Minnesota Statutes 2012, section 245A.035, subdivision 5, is amended to read:

1.20 Subd. 5. **Child foster care license application.** (a) The relatives with whom the
1.21 emergency placement has been made shall complete the child foster care license application
1.22 and necessary paperwork within ten days of the placement. The county agency shall assist
1.23 the applicant to complete the application. The granting of a child foster care license to a
1.24 relative shall be under the procedures in this chapter and according to the standards in
1.25 Minnesota Rules, chapter 2960. In licensing a relative, the commissioner shall consider
1.26 the importance of maintaining the child's relationship with relatives as an additional

significant factor in determining whether a background study disqualification should be set aside under section 245C.22, or a variance should be granted under section 245C.30.

(b) When the county or private child-placing agency is processing an application for child foster care licensure of a relative as defined in section 260B.007, subdivision 12, or 260C.007, subdivision 26b or 27, the county agency or child-placing agency must explain the licensing process to the prospective licensee, including the background study process and the procedure for reconsideration of an initial disqualification for licensure. The county or private child-placing agency must also provide the prospective relative licensee with information regarding appropriate options for legal representation in the pertinent geographic area. If a relative is initially disqualified under section 245C.14, the commissioner must provide written notice of the reasons for the disqualification and the right to request a reconsideration by the commissioner as required under section 245C.17.

(c) The commissioner shall maintain licensing data so that activities related to applications and licensing actions for relative foster care providers may be distinguished from other child foster care settings.

Sec. 3. Minnesota Statutes 2012, section 245C.22, subdivision 7, is amended to read:

Subd. 7. **Classification of certain data.** (a) Notwithstanding section 13.46, upon setting aside a disqualification under this section, the identity of the disqualified individual who received the set-aside and the individual's disqualifying characteristics are public data if the set-aside was:

(1) for any disqualifying characteristic under section 245C.15, when the set-aside relates to a child care center or a family child care provider licensed under chapter 245A; or

(2) for a disqualifying characteristic under section 245C.15, subdivision 2.

(b) Notwithstanding section 13.46, upon granting a variance to a license holder under section 245C.30, the identity of the disqualified individual who is the subject of the variance, the individual's disqualifying characteristics under section 245C.15, and the terms of the variance are public data, when the variance:

(1) is issued to a child care center or a family child care provider licensed under chapter 245A; or

(2) relates to an individual with a disqualifying characteristic under section 245C.15, subdivision 2.

(c) The identity of a disqualified individual and the reason for disqualification remain private data when:

(1) a disqualification is not set aside and no variance is granted, except as provided under section 13.46, subdivision 4;

(2) the data are not public under paragraph (a) or (b);

(3) the disqualification is rescinded because the information relied upon to disqualify the individual is incorrect;

(4) the disqualification relates to a license to provide relative child foster care.

As used in this clause, "relative" has the meaning given it under section 260C.007, subdivision 26b or 27; or

(5) the disqualified individual is a household member of a licensed foster care provider and:

(i) the disqualified individual previously received foster care services from this licensed foster care provider;

(ii) the disqualified individual was subsequently adopted by this licensed foster care provider; and

(iii) the disqualifying act occurred before the adoption.

(d) Licensed family child care providers and child care centers must provide notices as required under section 245C.301.

(e) Notwithstanding paragraphs (a) and (b), the identity of household members who are the subject of a disqualification related set-aside or variance is not public data if:

(1) the household member resides in the residence where the family child care is provided;

(2) the subject of the set-aside or variance is under the age of 18 years; and

(3) the set-aside or variance only relates to a disqualification under section 245C.15, subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

Sec. 4. Minnesota Statutes 2013 Supplement, section 256N.02, subdivision 18, is amended to read:

Subd. 18. **Relative.** "Relative," as described in section 260C.007, subdivision 27, means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative, as described in section 260C.007, subdivision 26b, includes ~~members~~ a person who is a member of the Indian child's extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Sec. 5. Minnesota Statutes 2013 Supplement, section 256N.23, subdivision 6, is amended to read:

Subd. 6. **Exclusions.** The commissioner must not enter into an adoption assistance agreement with the following individuals:

(1) a child's biological parent or stepparent;

(2) a child's relative under section 260C.007, subdivision 26b or 27, with whom the child resided immediately prior to child welfare involvement unless:

(i) the child was in the custody of a Minnesota county or tribal agency pursuant to an order under chapter 260C or equivalent provisions of tribal code and the agency had placement and care responsibility for permanency planning for the child; and

(ii) the child is under guardianship of the commissioner of human services according to the requirements of section 260C.325, subdivision 1 or 3, or is a ward of a Minnesota tribal court after termination of parental rights, suspension of parental rights, or a finding by the tribal court that the child cannot safely return to the care of the parent;

(3) an individual adopting a child who is the subject of a direct adoptive placement under section 259.47 or the equivalent in tribal code;

(4) a child's legal custodian or guardian who is now adopting the child; or

(5) an individual who is adopting a child who is not a citizen or resident of the United States and was either adopted in another country or brought to the United States for the purposes of adoption.

Sec. 6. Minnesota Statutes 2012, section 257.85, subdivision 3, is amended to read:

Subd. 3. **Definitions.** For purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "MFIP standard" means the transitional standard used to calculate assistance under the MFIP program, or, if permanent legal and physical custody of the child is given to a relative custodian residing outside of Minnesota, the analogous transitional standard or standard of need used to calculate assistance under the TANF program of the state where the relative custodian lives.

(b) "Local agency" means the county social services agency or tribal social services agency with legal custody of a child prior to the transfer of permanent legal and physical custody.

(c) "Permanent legal and physical custody" means permanent legal and physical custody ordered by a Minnesota Juvenile Court under section 260C.515, subdivision 4.

(d) "Relative" has the meaning given in section 260C.007, subdivision 26b or 27.

(e) "Relative custodian" means a person who has permanent legal and physical custody of a child. When siblings, including half-siblings and stepsiblings, are placed together in permanent legal and physical custody, the person receiving permanent legal

and physical custody of the siblings is considered a relative custodian of all of the siblings for purposes of this section.

(f) "Relative custody assistance agreement" means an agreement entered into between a local agency and a person who has been or will be awarded permanent legal and physical custody of a child.

(g) "Relative custody assistance payment" means a monthly cash grant made to a relative custodian pursuant to a relative custody assistance agreement and in an amount calculated under subdivision 7.

(h) "Remains in the physical custody of the relative custodian" means that the relative custodian is providing day-to-day care for the child and that the child lives with the relative custodian; absence from the relative custodian's home for a period of more than 120 days raises a presumption that the child no longer remains in the physical custody of the relative custodian.

Sec. 7. Minnesota Statutes 2012, section 259A.01, subdivision 25, is amended to read:

Subd. 25. **Relative.** "Relative" means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes ~~members a person who is a member of the Indian child's extended family as defined by law or custom of the Indian child's tribe, or, in the absence of law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.~~ a person who is a member of the Indian child's extended family as defined by law or custom of the Indian child's tribe, or, in the absence of law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Sec. 8. Minnesota Statutes 2012, section 259A.10, subdivision 6, is amended to read:

Subd. 6. **Exclusions.** The commissioner shall not enter into an adoption assistance agreement with:

(1) a child's biological parent or stepparent;

(2) a child's relative, according to section 260C.007, subdivision 26b or 27, with whom the child resided immediately prior to child welfare involvement unless:

(i) the child was in the custody of a Minnesota county or tribal agency pursuant to an order under chapter 260C or equivalent provisions of tribal code and the agency had placement and care responsibility for permanency planning for the child; and

(ii) the child is under guardianship of the commissioner of human services according to the requirements of section 260C.325, subdivision 1, paragraphs (a) and (b), or subdivision 3, paragraphs (a) and (b), or is a ward of a Minnesota tribal court after

6.1 termination of parental rights, suspension of parental rights, or a finding by the tribal court
6.2 that the child cannot safely return to the care of the parent;

6.3 (3) a child's legal custodian or guardian who is now adopting the child;

6.4 (4) an individual adopting a child who is the subject of a direct adoptive placement
6.5 under section 259.47 or the equivalent in tribal code; or

6.6 (5) an individual who is adopting a child who is not a citizen or resident of the
6.7 United States and was either adopted in another country or brought to this country for
6.8 the purposes of adoption.

6.9 Sec. 9. **[260.753] PURPOSES.**

6.10 The purposes of this act are to (1) protect the long-term best interests, as defined by
6.11 the tribes, of Indian children, their families as defined by law or custom, and the child's
6.12 tribe; and (2) preserve the Indian family and tribal identity, including an understanding that
6.13 Indian children suffer damage if family and child tribal identity and contact are denied.
6.14 Indian children are the future of the tribes and are vital to their very existence.

6.15 Sec. 10. Minnesota Statutes 2012, section 260.755, is amended by adding a subdivision
6.16 to read:

6.17 Subd. 1a. **Active efforts.** "Active efforts" means a rigorous and concerted level
6.18 of case work that requires the local social services agency to request participation of the
6.19 Indian child's tribe at the earliest time possible and actively solicit the tribe's participation
6.20 throughout the case. Active efforts sets a higher standard than reasonable efforts to preserve
6.21 and reunify the Indian family and prevent breakup of the Indian family. In applying active
6.22 efforts, the local social services agency must use the prevailing social and cultural values,
6.23 conditions, and way of life of an Indian child's tribe to preserve the Indian child's family,
6.24 to prevent out-of-home placement of an Indian child, and, if placement occurs, to return an
6.25 Indian child to the Indian child's family at the earliest time possible. Active efforts must be
6.26 provided to the Indian child's family and to relatives of an Indian child, as defined in section
6.27 260C.007, subdivision 26b, to place an Indian child within the placement preferences for
6.28 Indian children as defined in United States Code, title 25, sections 1901 to 1963.

6.29 Sec. 11. Minnesota Statutes 2012, section 260.755, is amended by adding a subdivision
6.30 to read:

6.31 Subd. 2a. **Best interests of an Indian child.** "Best interests of an Indian child"
6.32 means compliance with the Indian Child Welfare Act and the Minnesota Indian Family
6.33 Preservation Act to preserve and maintain an Indian child's family. The best interests of

7.1 an Indian child support the child's sense of belonging to family, extended family, and
7.2 tribe. The best interests of an Indian child are interwoven with the best interests of the
7.3 Indian child's tribe.

7.4 Sec. 12. Minnesota Statutes 2012, section 260B.007, subdivision 12, is amended to read:

7.5 Subd. 12. **Relative.** "Relative" means a parent, stepparent, grandparent, brother,
7.6 sister, uncle, or aunt of the minor. This relationship may be by blood or marriage. For an
7.7 Indian child, relative includes ~~members~~ a person who is a member of the Indian child's
7.8 extended family as defined by the law or custom of the Indian child's tribe or, in the
7.9 absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the
7.10 Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

7.11 Sec. 13. Minnesota Statutes 2012, section 260C.007, is amended by adding a
7.12 subdivision to read:

7.13 Subd. 26b. **Relative of an Indian child.** "Relative of an Indian child" means a
7.14 person who is a member of the Indian child's extended family as defined in the Indian
7.15 Child Welfare Act of 1978, United States Code, title 25, section 1903.

7.16 Sec. 14. Minnesota Statutes 2012, section 260C.007, subdivision 27, is amended to read:

7.17 Subd. 27. **Relative.** "Relative" means a person related to the child by blood,
7.18 marriage, or adoption, or an individual who is an important friend with whom the child
7.19 has resided or had significant contact. ~~For an Indian child, relative includes members of~~
7.20 ~~the extended family as defined by the law or custom of the Indian child's tribe or, in the~~
7.21 ~~absence of law or custom, nieces, nephews, or first or second cousins, as provided in the~~
7.22 ~~Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.~~

7.23 Sec. 15. Minnesota Statutes 2012, section 260C.168, is amended to read:

7.24 **260C.168 COMPLIANCE WITH INDIAN CHILD WELFARE ACT AND**
7.25 **MINNESOTA INDIAN FAMILY PRESERVATION ACT.**

7.26 The provisions of this chapter must be construed consistently with the Indian
7.27 Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963, and the
7.28 Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.

7.29 Sec. 16. Minnesota Statutes 2012, section 260C.201, subdivision 5, is amended to read:

7.30 Subd. 5. **Visitation.** If the court orders the child into foster care, the court shall
7.31 review and either modify or approve the agency's plan for supervised or unsupervised

visitation that contributes to the objectives of the court-ordered case plan and the maintenance of the familial relationship, and that meets the requirements of section 260C.212, subdivision 1, paragraph (c), clause (5). No parent may be denied visitation unless the court finds at the disposition hearing that the visitation would endanger the child's physical or emotional well-being, is not in the child's best interests, or is not required under section 260C.178, subdivision 3, paragraph (c) or (d). The court shall review and either modify or approve the agency plan for visitation for any relatives as defined in section 260C.007, subdivision 26b or 27, and with siblings of the child, if visitation is consistent with the best interests of the child.

Sec. 17. Minnesota Statutes 2012, section 260C.212, subdivision 1, is amended to read:

Subdivision 1. **Out-of-home placement; plan.** (a) An out-of-home placement plan shall be prepared within 30 days after any child is placed in foster care by court order or a voluntary placement agreement between the responsible social services agency and the child's parent pursuant to section 260C.227 or chapter 260D.

(b) An out-of-home placement plan means a written document which is prepared by the responsible social services agency jointly with the parent or parents or guardian of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the foster care facility, and, where appropriate, the child. For a child in voluntary foster care for treatment under chapter 260D, preparation of the out-of-home placement plan shall additionally include the child's mental health treatment provider. As appropriate, the plan shall be:

(1) submitted to the court for approval under section 260C.178, subdivision 7;

(2) ordered by the court, either as presented or modified after hearing, under section 260C.178, subdivision 7, or 260C.201, subdivision 6; and

(3) signed by the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social services agency, and, if possible, the child.

(c) The out-of-home placement plan shall be explained to all persons involved in its implementation, including the child who has signed the plan, and shall set forth:

(1) a description of the foster care home or facility selected, including how the out-of-home placement plan is designed to achieve a safe placement for the child in the least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification, and how the placement is consistent with the best interests and special needs of the child according to the factors under subdivision 2, paragraph (b);

(2) the specific reasons for the placement of the child in foster care, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make in order for the child to safely return home;

(3) a description of the services offered and provided to prevent removal of the child from the home and to reunify the family including:

(i) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (2), and the time period during which the actions are to be taken; and

(ii) the reasonable efforts, or in the case of an Indian child, active efforts to be made to achieve a safe and stable home for the child including social and other supportive services to be provided or offered to the parent or parents or guardian of the child, the child, and the residential facility during the period the child is in the residential facility;

(4) a description of any services or resources that were requested by the child or the child's parent, guardian, foster parent, or custodian since the date of the child's placement in the residential facility, and whether those services or resources were provided and if not, the basis for the denial of the services or resources;

(5) the visitation plan for the parent or parents or guardian, other relatives as defined in section 260C.007, subdivision 26b or 27, and siblings of the child if the siblings are not placed together in foster care, and whether visitation is consistent with the best interest of the child, during the period the child is in foster care;

(6) documentation of steps to finalize the adoption or legal guardianship of the child if the court has issued an order terminating the rights of both parents of the child or of the only known, living parent of the child. At a minimum, the documentation must include child-specific recruitment efforts such as relative search and the use of state, regional, and national adoption exchanges to facilitate orderly and timely placements in and outside of the state. A copy of this documentation shall be provided to the court in the review required under section 260C.317, subdivision 3, paragraph (b);

(7) efforts to ensure the child's educational stability while in foster care, including:

(i) efforts to ensure that the child remains in the same school in which the child was enrolled prior to placement or upon the child's move from one placement to another, including efforts to work with the local education authorities to ensure the child's educational stability; or

(ii) if it is not in the child's best interest to remain in the same school that the child was enrolled in prior to placement or move from one placement to another, efforts to ensure immediate and appropriate enrollment for the child in a new school;

- 10.1 (8) the educational records of the child including the most recent information
10.2 available regarding:
- 10.3 (i) the names and addresses of the child's educational providers;
 - 10.4 (ii) the child's grade level performance;
 - 10.5 (iii) the child's school record;
 - 10.6 (iv) a statement about how the child's placement in foster care takes into account
10.7 proximity to the school in which the child is enrolled at the time of placement; and
 - 10.8 (v) any other relevant educational information;
- 10.9 (9) the efforts by the local agency to ensure the oversight and continuity of health
10.10 care services for the foster child, including:
- 10.11 (i) the plan to schedule the child's initial health screens;
 - 10.12 (ii) how the child's known medical problems and identified needs from the screens,
10.13 including any known communicable diseases, as defined in section 144.4172, subdivision
10.14 2, will be monitored and treated while the child is in foster care;
 - 10.15 (iii) how the child's medical information will be updated and shared, including
10.16 the child's immunizations;
 - 10.17 (iv) who is responsible to coordinate and respond to the child's health care needs,
10.18 including the role of the parent, the agency, and the foster parent;
 - 10.19 (v) who is responsible for oversight of the child's prescription medications;
 - 10.20 (vi) how physicians or other appropriate medical and nonmedical professionals
10.21 will be consulted and involved in assessing the health and well-being of the child and
10.22 determine the appropriate medical treatment for the child; and
 - 10.23 (vii) the responsibility to ensure that the child has access to medical care through
10.24 either medical insurance or medical assistance;
- 10.25 (10) the health records of the child including information available regarding:
- 10.26 (i) the names and addresses of the child's health care and dental care providers;
 - 10.27 (ii) a record of the child's immunizations;
 - 10.28 (iii) the child's known medical problems, including any known communicable
10.29 diseases as defined in section 144.4172, subdivision 2;
 - 10.30 (iv) the child's medications; and
 - 10.31 (v) any other relevant health care information such as the child's eligibility for
10.32 medical insurance or medical assistance;
- 10.33 (11) an independent living plan for a child age 16 or older. The plan should include,
10.34 but not be limited to, the following objectives:
- 10.35 (i) educational, vocational, or employment planning;
 - 10.36 (ii) health care planning and medical coverage;

11.1 (iii) transportation including, where appropriate, assisting the child in obtaining a
11.2 driver's license;

11.3 (iv) money management, including the responsibility of the agency to ensure that
11.4 the youth annually receives, at no cost to the youth, a consumer report as defined under
11.5 section 13C.001 and assistance in interpreting and resolving any inaccuracies in the report;

11.6 (v) planning for housing;

11.7 (vi) social and recreational skills; and

11.8 (vii) establishing and maintaining connections with the child's family and
11.9 community; and

11.10 (12) for a child in voluntary foster care for treatment under chapter 260D, diagnostic
11.11 and assessment information, specific services relating to meeting the mental health care
11.12 needs of the child, and treatment outcomes.

11.13 (d) The parent or parents or guardian and the child each shall have the right to legal
11.14 counsel in the preparation of the case plan and shall be informed of the right at the time
11.15 of placement of the child. The child shall also have the right to a guardian ad litem.
11.16 If unable to employ counsel from their own resources, the court shall appoint counsel
11.17 upon the request of the parent or parents or the child or the child's legal guardian. The
11.18 parent or parents may also receive assistance from any person or social services agency
11.19 in preparation of the case plan.

11.20 After the plan has been agreed upon by the parties involved or approved or ordered
11.21 by the court, the foster parents shall be fully informed of the provisions of the case plan
11.22 and shall be provided a copy of the plan.

11.23 Upon discharge from foster care, the parent, adoptive parent, or permanent legal and
11.24 physical custodian, as appropriate, and the child, if appropriate, must be provided with
11.25 a current copy of the child's health and education record.