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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 4276

03/28/2018 Authored by Liebling, Hausman, Schultz and Lee
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to children; modifying child welfare laws governing possession or use of
1.3 small amount of marijuana by parent; modifying grounds for removal of a child
1.4 from the home; modifying grounds for denial or reduction of child custody or
1.5 parenting time; modifying crimes; amending Minnesota Statutes 2016, sections
1.6 260C.007, subdivision 5; 260C.141, subdivision 1; 260C.175, subdivision 1;
1.7 518.17, subdivisions 1, 3; 609.378, subdivision 1.

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

1.9 Section 1. Minnesota Statutes 2016, section 260C.007, subdivision 5, is amended to read:

1.10 Subd. 5. Child abuse. "Child abuse" means an act that involves a minor victim that
1.11 constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322,
1.12 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, or that is physical
1.13 or sexual abuse as defined in section 626.556, subdivision 2, or an act committed in another
1.14 state that involves a minor victim and would constitute a violation of one of these sections
1.15 if committed in this state. Child abuse is not established solely on the basis of an accusation,
1.16 charge, or conviction of possession or sale of small amounts of marijuana, as defined in
1.17 section 152.027, subdivision 4, or possession of marijuana-related paraphernalia.

1.18 Sec. 2. Minnesota Statutes 2016, section 260C.141, subdivision 1, is amended to read:

1.19 Subdivision 1. Who may file; required form. (a) Any reputable person, including but
1.20 not limited to any agent of the commissioner of human services, having knowledge of a
1.21 child in this state or of a child who is a resident of this state, who appears to be in need of
1.22 protection or services or neglected and in foster care, may petition the juvenile court in the
1.23 manner provided in this section.

2.1 (b) A petition for a child in need of protection filed by an individual who is not a county  
 2.2 attorney or an agent of the commissioner of human services shall be filed on a form developed  
 2.3 by the state court administrator and provided to court administrators. Copies of the form  
 2.4 may be obtained from the court administrator in each county. The court administrator shall  
 2.5 review the petition before it is filed to determine that it is completed. The court administrator  
 2.6 may reject the petition if it does not indicate that the petitioner has contacted the responsible  
 2.7 social services agency.

2.8 An individual may file a petition under this subdivision without seeking internal review  
 2.9 of the responsible social services agency's decision. The court shall determine whether there  
 2.10 is probable cause to believe that a need for protection or services exists before the matter  
 2.11 is set for hearing. If the matter is set for hearing, the court administrator shall notify the  
 2.12 responsible social services agency by sending notice to the county attorney.

2.13 The petition must contain:

2.14 (1) a statement of facts that would establish, if proven, that there is a need for protection  
 2.15 or services for the child named in the petition;

2.16 (2) a statement that petitioner has reported the circumstances underlying the petition to  
 2.17 the responsible social services agency, and protection or services were not provided to the  
 2.18 child;

2.19 (3) a statement whether there are existing juvenile or family court custody orders or  
 2.20 pending proceedings in juvenile or family court concerning the child; and

2.21 (4) a statement of the relationship of the petitioner to the child and any other parties.

2.22 The court may not allow a petition to proceed under this paragraph if it appears that the  
 2.23 sole purpose of the petition is to modify custody between the parents.

2.24 (c) A petition for a child in need of protection may not be filed solely on the basis of an  
 2.25 accusation, charge, or conviction of possession or sale of small amounts of marijuana, as  
 2.26 defined in section 152.027, subdivision 4, or possession of marijuana-related paraphernalia.

2.27 Sec. 3. Minnesota Statutes 2016, section 260C.175, subdivision 1, is amended to read:

2.28 Subdivision 1. **Immediate custody.** (a) No child may be taken into immediate custody  
 2.29 except:

2.30 (1) with an order issued by the court in accordance with the provisions of section  
 2.31 260C.151, subdivision 6, or Laws 1997, chapter 239, article 10, section 10, paragraph (a),

3.1 clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the  
3.2 provisions of section 260C.154;

3.3 (2) by a peace officer:

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

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

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

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

3.17 (b) A child may not be taken into immediate custody solely on the basis of (1) an  
3.18 accusation, charge, or conviction of a parent, guardian, or custodian of possession or sale  
3.19 of small amounts of marijuana, as defined in section 152.027, subdivision 4, or (2) possession  
3.20 of marijuana-related paraphernalia by a parent, guardian, or custodian.

3.21 Sec. 4. Minnesota Statutes 2016, section 518.17, subdivision 1, is amended to read:

3.22 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child  
3.23 for purposes of determining issues of custody and parenting time, the court must consider  
3.24 and evaluate all relevant factors, including:

3.25 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of  
3.26 the proposed arrangements on the child's needs and development;

3.27 (2) any special medical, mental health, or educational needs that the child may have that  
3.28 may require special parenting arrangements or access to recommended services;

3.29 (3) the reasonable preference of the child, if the court deems the child to be of sufficient  
3.30 ability, age, and maturity to express an independent, reliable preference;

3.31 (4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents'  
3.32 or either parent's household or relationship; the nature and context of the domestic abuse;

4.1 and the implications of the domestic abuse for parenting and for the child's safety, well-being,  
4.2 and developmental needs;

4.3 (5) any physical, mental, or chemical health issue of a parent that affects the child's  
4.4 safety or developmental needs, except as provided in paragraph (b), clause (10);

4.5 (6) the history and nature of each parent's participation in providing care for the child;

4.6 (7) the willingness and ability of each parent to provide ongoing care for the child; to  
4.7 meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to  
4.8 maintain consistency and follow through with parenting time;

4.9 (8) the effect on the child's well-being and development of changes to home, school,  
4.10 and community;

4.11 (9) the effect of the proposed arrangements on the ongoing relationships between the  
4.12 child and each parent, siblings, and other significant persons in the child's life;

4.13 (10) the benefit to the child in maximizing parenting time with both parents and the  
4.14 detriment to the child in limiting parenting time with either parent;

4.15 (11) except in cases in which domestic abuse as described in clause (4) has occurred,  
4.16 the disposition of each parent to support the child's relationship with the other parent and  
4.17 to encourage and permit frequent and continuing contact between the child and the other  
4.18 parent; and

4.19 (12) the willingness and ability of parents to cooperate in the rearing of their child; to  
4.20 maximize sharing information and minimize exposure of the child to parental conflict; and  
4.21 to utilize methods for resolving disputes regarding any major decision concerning the life  
4.22 of the child.

4.23 (b) Clauses (1) to ~~(9)~~ (10) govern the application of the best interests of the child factors  
4.24 by the court:

4.25 (1) The court must make detailed findings on each of the factors in paragraph (a) based  
4.26 on the evidence presented and explain how each factor led to its conclusions and to the  
4.27 determination of custody and parenting time. The court may not use one factor to the  
4.28 exclusion of all others, and the court shall consider that the factors may be interrelated.

4.29 (2) The court shall consider that it is in the best interests of the child to promote the  
4.30 child's healthy growth and development through safe, stable, nurturing relationships between  
4.31 a child and both parents.

5.1 (3) The court shall consider both parents as having the capacity to develop and sustain  
5.2 nurturing relationships with their children unless there are substantial reasons to believe  
5.3 otherwise. In assessing whether parents are capable of sustaining nurturing relationships  
5.4 with their children, the court shall recognize that there are many ways that parents can  
5.5 respond to a child's needs with sensitivity and provide the child love and guidance, and  
5.6 these may differ between parents and among cultures.

5.7 (4) The court shall not consider conduct of a party that does not affect the party's  
5.8 relationship with the child.

5.9 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child  
5.10 shall not be determinative of the custody of the child.

5.11 (6) The court shall consider evidence of a violation of section 609.507 in determining  
5.12 the best interests of the child.

5.13 (7) There is no presumption for or against joint physical custody, except as provided in  
5.14 clause (9).

5.15 (8) Joint physical custody does not require an absolutely equal division of time.

5.16 (9) The court shall use a rebuttable presumption that upon request of either or both  
5.17 parties, joint legal custody is in the best interests of the child. However, the court shall use  
5.18 a rebuttable presumption that joint legal custody or joint physical custody is not in the best  
5.19 interests of the child if domestic abuse, as defined in section 518B.01, has occurred between  
5.20 the parents. In determining whether the presumption is rebutted, the court shall consider  
5.21 the nature and context of the domestic abuse and the implications of the domestic abuse for  
5.22 parenting and for the child's safety, well-being, and developmental needs. Disagreement  
5.23 alone over whether to grant sole or joint custody does not constitute an inability of parents  
5.24 to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

5.25 (10) In determining the best interests of the child, the court shall not consider an  
5.26 accusation, charge, or conviction of possession or sale of small amounts of marijuana, as  
5.27 defined in section 152.027, subdivision 4, or possession of marijuana-related paraphernalia.  
5.28 The court shall not deny or limit custody or parenting time solely on this basis.

5.29 (c) In a proceeding involving the custodial responsibility of a service member's child, a  
5.30 court may not consider only a parent's past deployment or possible future deployment in  
5.31 determining the best interests of the child. For purposes of this paragraph, "custodial  
5.32 responsibility" has the meaning given in section 518E.102, paragraph (f).

6.1 Sec. 5. Minnesota Statutes 2016, section 518.17, subdivision 3, is amended to read:

6.2 Subd. 3. **Custody order.** (a) Upon adjudging the nullity of a marriage, or in a dissolution  
6.3 or separation proceeding, or in a child custody proceeding, the court shall make such further  
6.4 order as it deems just and proper concerning:

6.5 (1) the legal custody of the minor children of the parties which shall be sole or joint;

6.6 (2) their physical custody and residence; and

6.7 (3) their support. In determining custody, the court shall consider the best interests of  
6.8 each child and shall not prefer one parent over the other solely on the basis of the sex of the  
6.9 parent.

6.10 (b) The court shall grant the rights listed in subdivision 3a to each of the parties, regardless  
6.11 of custodial designation, unless specific findings are made under section 518.68, subdivision  
6.12 1. The court shall include in the custody order the notice under subdivision 3a.

6.13 (c) The court may waive any of the rights under this section if it finds it is necessary to  
6.14 protect the welfare of a party or child.

6.15 (d) If a court order or law prohibits contact by a party, the notifications and information  
6.16 required to be sent under subdivision 3a, clauses (1), (2), (3), (5), and (6), shall not be made  
6.17 by direct communication of the parties. Third-party communication shall be limited to the  
6.18 specific purposes delineated in this subdivision or subdivision 3a. Nothing in this subdivision  
6.19 or subdivision 3a shall modify, suspend, revoke, or terminate a court order or law that  
6.20 prohibits contact by a party.

6.21 (e) If one of the parties is a program participant under chapter 5B, the other party shall  
6.22 send all information and notifications required under subdivision 3a, clauses (1), (2), (3),  
6.23 (5), and (6), to the participant's designated address. The program participant is exempted  
6.24 from the requirements of subdivision 3a.

6.25 (f) Failure to notify or inform a party of rights under subdivision 3a does not form a  
6.26 basis for modification under section 518.18, paragraph (d), clause (iv), unless other grounds  
6.27 are alleged which would support a modification.

6.28 (g) If the court orders a party to submit to a drug test as part of a custody or parenting  
6.29 time order, detection of cannabis metabolites in the ordered drug test shall not be grounds  
6.30 for any penalty or restriction, including denial or limitation of custody or parenting time.

7.1 Sec. 6. Minnesota Statutes 2016, section 609.378, subdivision 1, is amended to read:

7.2 Subdivision 1. **Persons guilty of neglect or endangerment.** (a)(1) A parent, legal  
7.3 guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter,  
7.4 health care, or supervision appropriate to the child's age, when the parent, guardian, or  
7.5 caretaker is reasonably able to make the necessary provisions and the deprivation harms or  
7.6 is likely to substantially harm the child's physical, mental, or emotional health is guilty of  
7.7 neglect of a child and may be sentenced to imprisonment for not more than one year or to  
7.8 payment of a fine of not more than \$3,000, or both. If the deprivation results in substantial  
7.9 harm to the child's physical, mental, or emotional health, the person may be sentenced to  
7.10 imprisonment for not more than five years or to payment of a fine of not more than \$10,000,  
7.11 or both. If a parent, guardian, or caretaker responsible for the child's care in good faith  
7.12 selects and depends upon spiritual means or prayer for treatment or care of disease or  
7.13 remedial care of the child, this treatment or care is "health care," for purposes of this clause.

7.14 (2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical  
7.15 or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment  
7.16 for not more than one year or to payment of a fine of not more than \$3,000, or both.

7.17 (b) A parent, legal guardian, or caretaker who endangers the child's person or health by:

7.18 (1) intentionally or recklessly causing or permitting a child to be placed in a situation  
7.19 likely to substantially harm the child's physical, mental, or emotional health or cause the  
7.20 child's death; or

7.21 (2) knowingly causing or permitting the child to be present where any person is selling,  
7.22 manufacturing, possessing immediate precursors or chemical substances with intent to  
7.23 manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision  
7.24 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child  
7.25 endangerment and may be sentenced to imprisonment for not more than one year or to  
7.26 payment of a fine of not more than \$3,000, or both.

7.27 If the endangerment results in substantial harm to the child's physical, mental, or  
7.28 emotional health, the person may be sentenced to imprisonment for not more than five years  
7.29 or to payment of a fine of not more than \$10,000, or both.

7.30 This paragraph does not prevent a parent, legal guardian, or caretaker from causing or  
7.31 permitting a child to engage in activities that are appropriate to the child's age, stage of  
7.32 development, and experience, or from selecting health care as defined in subdivision 1,  
7.33 paragraph (a). A person is not guilty of neglect or endangerment under this paragraph solely  
7.34 on the basis of an accusation, charge, or conviction of possession or sale of small amounts

8.1 of marijuana, as defined in section 152.027, subdivision 4, or possession of marijuana-related  
8.2 paraphernalia.

8.3 (c) A person who intentionally or recklessly causes a child under 14 years of age to be  
8.4 placed in a situation likely to substantially harm the child's physical health or cause the  
8.5 child's death as a result of the child's access to a loaded firearm is guilty of child  
8.6 endangerment and may be sentenced to imprisonment for not more than one year or to  
8.7 payment of a fine of not more than \$3,000, or both.

8.8 If the endangerment results in substantial harm to the child's physical health, the person  
8.9 may be sentenced to imprisonment for not more than five years or to payment of a fine of  
8.10 not more than \$10,000, or both.

8.11 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes  
8.12 committed on or after that date.