

CHAPTER 257

CHILDREN; CUSTODY; LEGITIMACY

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|----------|--|---------|---|
| 257.022 | Rights of visitation to unmarried persons. | 257.55 | Presumption of paternity. |
| 257.0651 | Compliance with Indian Child Welfare Act. | 257.57 | Determination of father and child relationship; who may bring action; when action may be brought. |
| 257.071 | Children in foster homes; placement; review. | 257.59 | Jurisdiction; venue. |
| 257.072 | Welfare of minority children. | 257.66 | Judgment or order. |
| 257.0755 | Office of ombudsperson; creation; qualifications; function | 257.67 | Enforcement of judgment or order. |
| 257.3573 | Eligible services. | 257.73 | Birth records. |
| 257.54 | How parent and child relationship established. | 257.74 | Adoption; termination proceedings. |
| 257.541 | Custody and visitation of children born outside of marriage. | 257.75 | Recognition of parentage. |
| | | 257.803 | Disbursement of funds for child abuse prevention. |

257.022 RIGHTS OF VISITATION TO UNMARRIED PERSONS.

[For text of subd 1, see M.S.1992]

Subd. 2. **Family court proceedings.** In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after the commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

[For text of subds 2a to 3, see M.S.1992]

Subd. 4. **Establishment of interference with parent and child relationship.** The court may not deny visitation rights under this section based on allegations that the visitation rights would interfere with the relationship between the custodial parent and the child unless after a hearing the court determines by a preponderance of the evidence that interference would occur.

Subd. 5. **Visitation proceeding may not be combined with proceeding under chapter 518b.** Proceedings under this section may not be combined with a proceeding under chapter 518B.

History: 1993 c 62 s 1; 1993 c 322 s 3,4

257.0651 COMPLIANCE WITH INDIAN CHILD WELFARE ACT.

Sections 257.03 to 257.075 must be construed consistently with the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

History: 1993 c 291 s 1

257.071 CHILDREN IN FOSTER HOMES; PLACEMENT; REVIEW.

Subdivision 1. **Placement; plan.** A case plan shall be prepared within 30 days after any child is placed in a residential facility by court order or by the voluntary release of the child by the parent or parents.

For purposes of this section, a residential facility means any group home, family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision, or any agency thereof, to provide those services or foster care as defined in section 260.015, subdivision 7.

For the purposes of this section, a case plan means a written document which is ordered by the court or which is prepared by the social service agency responsible for the residential facility placement and is signed by the parent or parents, or other custodian, of the child, the child's legal guardian, the social service agency responsible for the residential facility placement, and, if possible, the child. The document shall be explained to all persons involved in its implementation, including the child who has signed the document, and shall set forth:

(1) The specific reasons for the placement of the child in a residential facility, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home;

(2) 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 (1), and the time period during which the actions are to be taken;

(3) The financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the residential facility;

(4) The visitation rights and obligations of the parent or parents or other relatives as defined in section 260.181, if such visitation is consistent with the best interest of the child, during the period the child is in the residential facility;

(5) The social and other supportive services to be provided to the parent or parents of the child, the child, and the residential facility during the period the child is in the residential facility;

(6) The date on which the child is expected to be returned to the home of the parent or parents;

(7) The nature of the effort to be made by the social service agency responsible for the placement to reunite the family; and

(8) Notice to the parent or parents that placement of the child in foster care may result in termination of parental rights but only after notice and a hearing as provided in chapter 260.

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

After the plan has been agreed upon by the parties involved, the foster parents shall be fully informed of the provisions of the case plan.

When an agency accepts a child for placement, the agency shall determine whether the child has had a physical examination by or under the direction of a licensed physician within the 12 months immediately preceding the date when the child came into the agency's care. If there is documentation that the child has had such an examination within the last 12 months, the agency is responsible for seeing that the child has another physical examination within one year of the documented examination and annually in subsequent years. If the agency determines that the child has not had a physical examination within the 12 months immediately preceding placement, the agency shall ensure that the child has the examination within 30 days of coming into the agency's care and once a year in subsequent years.

Subd. 1a. Protection of heritage or background. The authorized child placing agency shall ensure that the child's best interests are met by giving due, not sole, consideration of the child's race or ethnic heritage in making a family foster care placement. The authorized child placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by following the preferences described in section 260.181, subdivision 3.

In instances where a child from a family of color is placed in a family foster home of a different racial or ethnic background, the local social service agency shall review

the placement after 30 days and each 30 days thereafter for the first six months to determine if there is another available placement that would better satisfy the requirements of this subdivision.

Subd. 1b. Limit on multiple placements. If a child has been placed in a residential facility pursuant to a court order under section 260.172 or 260.191, the social service agency responsible for the residential facility placement for the child may not change the child's placement unless the agency specifically documents that the current placement is unsuitable or another placement is in the best interests of the child. This subdivision does not apply if the new placement is in an adoptive home or other permanent placement.

[For text of subd 2, see M.S.1992]

Subd. 3. Review of voluntary placements. Except as provided in subdivision 4, if the child has been placed in a residential facility pursuant to a voluntary release by the parent or parents, and is not returned home within six months after initial placement in the residential facility, the social service agency responsible for the placement shall:

- (1) return the child to the home of the parent or parents; or
- (2) file an appropriate petition pursuant to section 260.131, subdivision 1, or 260.231.

The case plan must be updated when a petition is filed and must include a specific plan for permanency.

[For text of subs 4 to 7, see M.S.1992]

Subd. 8. Rules on removal of children. The commissioner shall adopt rules establishing criteria for removal of children from their homes and return of children to their homes.

History: 1993 c 291 s 2-6; 1Sp1993 c 6 s 16

257.072 WELFARE OF MINORITY CHILDREN.

Subdivision 1. Recruitment of foster families. Each authorized child placing agency shall make special efforts to recruit a foster family from among the child's relatives, except as authorized in section 260.181, subdivision 3, and among families of the same racial or ethnic heritage. Special efforts include contacting and working with community organizations and religious organizations and may include contracting with these organizations, utilizing local media and other local resources, conducting outreach activities, and increasing the number of minority recruitment staff employed by the agency. The requirement of special efforts in this section is satisfied if the responsible child-placing agency has made appropriate efforts for six months following the child's placement in a residential facility and the court approves the agency's efforts pursuant to section 260.191, subdivision 3a. The agency may accept any gifts, grants, offers of services, and other contributions to use in making special recruitment efforts.

[For text of subs 2 to 5, see M.S.1992]

Subd. 6. [Repealed, 1993 c 337 s 20]

Subd. 7. Duties of child-placing agencies. Each authorized child-placing agency must:

- (1) develop and follow procedures for implementing the order of preference prescribed by section 260.181, subdivision 3, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923;

(a) In implementing the order of preference, an authorized child-placing agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable placement. The agency shall disclose only data that is necessary to facilitate implementing the preference. If a parent makes an explicit request that the relative preference not be followed, the agency shall bring the

matter to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives unless ordered to do so by the juvenile court; and

(b) In determining the suitability of a proposed placement of an Indian child, the standards to be applied must be the prevailing social and cultural standards of the Indian child's community, and the agency shall defer to tribal judgment as to suitability of a particular home when the tribe has intervened pursuant to the Indian Child Welfare Act;

(2) have a written plan for recruiting minority adoptive and foster families. The plan must include (a) strategies for using existing resources in minority communities, (b) use of minority outreach staff wherever possible, (c) use of minority foster homes for placements after birth and before adoption, and (d) other techniques as appropriate;

(3) have a written plan for training adoptive and foster families of minority children;

(4) if located in an area with a significant minority population, have a written plan for employing minority social workers in adoption and foster care. The plan must include staffing goals and objectives;

(5) ensure that adoption and foster care workers attend training offered or approved by the department of human services regarding cultural diversity and the needs of special needs children; and

(6) develop and implement procedures for implementing the requirements of the Indian Child Welfare Act and the Minnesota Indian family preservation act.

[For text of subd 8, see M.S.1992]

Subd. 9. **Rules.** The commissioner of human services shall adopt rules to establish standards for relative foster care placement, conducting relative searches, and recruiting foster and adoptive families of the same racial or ethnic heritage as the child.

History: 1993 c 291 s 7-9

257.0755 OFFICE OF OMBUDSPERSON; CREATION; QUALIFICATIONS; FUNCTION.

An ombudsperson for families shall be appointed to operate independently but under the auspices of each of the following groups: the Indian Affairs Council, the Spanish-Speaking Affairs Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans. Each of these groups shall select its own ombudsperson subject to final approval by the advisory board established under section 257.0768. Each ombudsperson shall serve at the pleasure of the advisory board, shall be in the unclassified service, shall be selected without regard to political affiliation, and shall be a person highly competent and qualified to analyze questions of law, administration, and public policy regarding the protection and placement of children from families of color. In addition, the ombudsperson must be experienced in dealing with communities of color and knowledgeable about the needs of those communities. No individual may serve as ombudsperson while holding any other public office. The ombudsperson shall have the authority to investigate decisions, acts, and other matters of an agency, program, or facility providing protection or placement services to children of color. Money appropriated for each office of ombudsperson from the general fund or the special fund authorized by section 256.01, subdivision 2, clause (15), is under the control of the office of ombudsperson for which it is appropriated.

History: 1993 c 369 s 77

257.3573 ELIGIBLE SERVICES.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. **Revenue enhancement.** The commissioner shall submit claims for federal reimbursement earned through the activities and services supported through Indian

child welfare grants. The commissioner may set aside a portion of the federal funds earned under this subdivision to establish and support a new Indian child welfare position in the department of human services to provide program development. The commissioner shall use any federal revenue not set aside to expand services under section 257.3571. The federal revenue earned under this subdivision is available for these purposes until the funds are expended.

History: *1Sp1993 c 1 art 3 s 30*

257.54 HOW PARENT AND CHILD RELATIONSHIP ESTABLISHED.

The parent and child relationship between a child and

- (a) the biological mother may be established by proof of her having given birth to the child, or under sections 257.51 to 257.74 or 257.75;
- (b) the biological father may be established under sections 257.51 to 257.74 or 257.75; or
- (c) an adoptive parent may be established by proof of adoption.

History: *1Sp1993 c 1 art 6 s 33*

257.541 CUSTODY AND VISITATION OF CHILDREN BORN OUTSIDE OF MARRIAGE.

Subdivision 1. Mother's right to custody. The biological mother of a child born to a mother who was not married to the child's father neither when the child was born nor when the child was conceived has sole custody of the child until paternity has been established under sections 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156.

Subd. 2. Father's right to visitation and custody. (a) If paternity has been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the father's rights of visitation or custody are determined under sections 518.17 and 518.175.

(b) If paternity has not been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the biological father may petition for rights of visitation or custody in the paternity proceeding or in a separate proceeding under section 518.156.

Subd. 3. Father's right to visitation and custody; recognition of paternity. If paternity has been recognized under section 257.75, the father may petition for rights of visitation or custody in an independent action under section 518.156. The proceeding must be treated as an initial determination of custody under section 518.17. The provisions of chapter 518 apply with respect to the granting of custody and visitation. These proceedings may not be combined with any proceeding under chapter 518B.

History: *1Sp1993 c 1 art 6 s 34*

257.55 PRESUMPTION OF PATERNITY.

Subdivision 1. Presumption. A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court;

(b) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth certificate; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child;

(e) He and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under section 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) Evidence of statistical probability of paternity based on blood testing establishes the likelihood that he is the father of the child, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater;

(g) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision; or

(h) He and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75.

[For text of subd 2, see M.S.1992]

History: *1Sp1993 c 1 art 6 s 35*

257.57 DETERMINATION OF FATHER AND CHILD RELATIONSHIP; WHO MAY BRING ACTION; WHEN ACTION MAY BE BROUGHT.

Subdivision 1. A child, the child's biological mother, or a man presumed to be the child's father under section 257.55, subdivision 1, paragraph (a), (b), or (c) may bring an action:

(a) At any time for the purpose of declaring the existence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (a), (b), or (c); or

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (a), (b), or (c), only if the action is brought within two years after the person bringing the action has reason to believe that the presumed father is not the father of the child, but in no event later than three years after the child's birth. However, if the presumed father was divorced from the child's mother and if, on or before the 280th day after the judgment and decree of divorce or dissolution became final, he did not know that the child was born during the marriage or within 280 days after the marriage was terminated, the action is not barred until one year after the child reaches the age of majority or one year after the presumed father knows or reasonably should have known of the birth of the child, whichever is earlier. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

Subd. 2. The child, the mother, or personal representative of the child, the public authority chargeable by law with the support of the child, the personal representative

or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor may bring an action:

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (d), (e), (f), (g), or (h), or the nonexistence of the father and child relationship presumed under clause (d) of that subdivision;

(2) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (e) or (g), only if the action is brought within three years after the date of the execution of the declaration or recognition of parentage; or

(3) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (f), only if the action is brought within three years after the party bringing the action, or the party's attorney of record, has been provided the blood test results.

[For text of subds 3 to 6, see M.S.1992]

History: 1993 c 322 s 5; 1Sp1993 c 1 art 6 s 36

257.59 JURISDICTION; VENUE.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. The action may be brought in the county in which the child or the defendant resides or is found or, if the defendant is deceased, in which proceedings for probate of the defendant's estate have been or could be commenced.

History: 1Sp1993 c 1 art 6 s 37

257.66 JUDGMENT OR ORDER.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. **Judgment; order.** The judgment or order shall contain provisions concerning the duty of support, the custody of the child, the name of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Custody and visitation and all subsequent motions related to them shall proceed and be determined under section 257.541. The remaining matters and all subsequent motions related to them shall proceed and be determined in accordance with chapter 518. The judgment or order may direct the appropriate party to pay all or a proportion of the reasonable expenses of the mother's pregnancy and confinement, after consideration of the relevant facts, including the relative financial means of the parents; the earning ability of each parent; and any health insurance policies held by either parent, or by a spouse or parent of the parent, which would provide benefits for the expenses incurred by the mother during her pregnancy and confinement. Remedies available for the collection and enforcement of child support apply to confinement costs and are considered additional child support.

[For text of subds 4 and 5, see M.S.1992]

History: 1993 c 340 s 15

257.67 ENFORCEMENT OF JUDGMENT OR ORDER.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. Willful failure to obey the judgment or order of the court is a contempt of the court. All remedies for the enforcement of judgments apply including those available under chapters 518 and 518C and sections 256.871 to 256.878.

History: 1993 c 340 s 16

257.73 BIRTH RECORDS.

Subdivision 1. Upon compliance with the provisions of section 257.55, subdivision 1, paragraph (e), 257.75, or upon order of a court of this state or upon request of a court of another state, the local registrar of vital statistics shall prepare a new certificate of birth consistent with the acknowledgment or the findings of the court and shall substitute the new certificate for the original certificate of birth.

[For text of subds 2 and 3, see M.S.1992]

History: *1Sp1993 c 1 art 6 s 38*

257.74 ADOPTION; TERMINATION PROCEEDINGS.

Subdivision 1. If a mother relinquishes or proposes to relinquish for adoption a child who has

- (a) a presumed father under section 257.55, subdivision 1,
- (b) a father whose relationship to the child has been determined by a court or established under section 257.75, or
- (c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding as provided in section 259.26.

[For text of subd 2, see M.S.1992]

History: *1Sp1993 c 1 art 6 s 39*

257.75 RECOGNITION OF PARENTAGE.

Subdivision 1. **Recognition by parents.** The mother and father of a child born to a mother who was not married to the child's father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the state registrar of vital statistics, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents. The recognition must be in the form prepared by the commissioner of human services under subdivision 5.

Subd. 2. **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the state registrar of vital statistics within 30 days after the recognition is executed. Upon receipt of a revocation of the recognition of parentage, the state registrar of vital statistics shall forward a copy of the revocation to the nonrevoking parent.

Subd. 3. **Effect of recognition.** Subject to subdivision 2 and section 257.55, subdivision 1, paragraph (g) or (h), the recognition has the force and effect of a judgment or order determining the existence of the parent and child relationship under section 257.66. If the conditions in section 257.55, subdivision 1, paragraph (g) or (h), exist, the recognition creates only a presumption of paternity for purposes of sections 257.51 to 257.74. Until an order is entered granting custody to another, the mother has sole custody. The recognition is:

- (1) a basis for bringing an action to award custody or visitation rights to either parent, establishing a child support obligation, ordering a contribution by a parent under section 256.87, or ordering a contribution to the reasonable expenses of the mother's pregnancy and confinement, as provided under section 257.66, subdivision 3;
- (2) determinative for all other purposes related to the existence of the parent and child relationship; and
- (3) entitled to full faith and credit in other jurisdictions.

Subd. 4. **Action to vacate recognition.** An action to vacate a recognition of paternity may be brought by the mother, father, or child. A mother or father must bring the action within one year of the execution of the recognition or within six months after discovery of evidence in support of the action, whichever is later. A child must bring an action

to vacate within six months of discovery of evidence, in support of the action or within one year of reaching the age of majority, whichever is later. If the court finds a prima facie basis for vacating the recognition, the court shall order the child, mother, and father to submit to blood tests. If the court issues an order for the taking of blood tests, the court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood tests. If the party fails to pay for the costs of the blood tests, the court shall dismiss the action to vacate with prejudice. The court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney fees, costs, and disbursements. If the results of the blood tests establish that the man who executed the recognition is not the father, the court shall vacate the recognition. The court shall terminate the obligation of a party to pay ongoing child support based on the recognition. A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.

Subd. 5. Recognition form. The commissioner of human services shall prepare a form for the recognition of parentage under this section. In preparing the form, the commissioner shall consult with the individuals specified in subdivision 6. The recognition form must be drafted so that the force and effect of the recognition and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition and the revocation procedure under subdivision 2. The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the commissioner of human services describing the recognition of paternity. Each parent must receive a copy of the recognition.

Subd. 6. Paternity educational materials. The commissioner of human services shall prepare educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under sections 257.51 to 257.74. The commissioner shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing the materials, the commissioner shall consult with child advocates and support workers, battered women's advocates, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The commissioner shall consult with representatives of communities of color. On and after January 1, 1994, the commissioner shall make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.

Subd. 7. Hospital distribution of educational materials; recognition form. Hospitals that provide obstetric services shall distribute the educational materials and recognition of parentage forms prepared by the commissioner of human services to new parents and shall assist parents in understanding the recognition of parentage form. On and after January 1, 1994, hospitals may not distribute the declaration of parentage forms.

Subd. 8. Notice. If the state registrar of vital statistics receives more than one recognition of parentage for the same child, the registrar shall notify both signatories on each recognition that the recognition is no longer final and that each man has only a presumption of paternity under section 257.55, subdivision 1.

History: *1Sp1993 c 1 art 6 s 40*

257.803 DISBURSEMENT OF FUNDS FOR CHILD ABUSE PREVENTION.

Subdivision 1. Authority to disburse funds. The commissioner, with the advice and consent of the advisory council established under this section, may disburse trust fund money to any public or private nonprofit agency to fund a child abuse prevention program. State funds appropriated for child maltreatment prevention grants may be trans-

ferred to the children's trust fund special revenue account and are available to carry out this section.

[For text of subds 2 to 4, see M.S.1992]

History: *1Sp1993 c 1 art 3 s 31*