

CHAPTER 257

CHILDREN; CUSTODY, LEGITIMACY

257.02	Surrender of parental rights.	257.3574	Repealed.
257.035	Emergency.	257.3575	Repealed.
257.0651	Compliance with Indian Child Welfare Act.	257.3576	Repealed.
257.066	Rules.	257.3577	Repealed.
257.069	Repealed.	257.3578	Repealed.
257.071	Repealed.	257.3579	Repealed.
257.0711	Repealed.	257.40	Repealed.
257.072	Repealed.	257.41	Repealed.
257.0762	Duties and powers.	257.42	Repealed.
257.0763	Matters appropriate for review.	257.43	Repealed.
257.33	Duties of commissioner of human services.	257.44	Repealed.
257.35	Repealed.	257.45	Repealed.
257.351	Repealed.	257.46	Repealed.
257.352	Repealed.	257.47	Repealed.
257.353	Repealed.	257.48	Repealed.
257.354	Repealed.	257.60	Parties.
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257.02 SURRENDER OF PARENTAL RIGHTS.

No person other than the parents or relatives may assume the permanent care and custody of a child under 14 years of age unless authorized so to do by an order or decree of court. However, if a parent of a child who is being cared for by a relative dies, or if the parent is not or cannot fulfill parental duties with respect to the child, the relative may bring a petition under section 260C.141. Except in proceedings for adoption or by a consent decree entered under section 257.0215, no parent may assign or otherwise transfer to another parental rights or duties with respect to the permanent care and custody of a child under 14 years of age. Any such transfer shall be void.

History: 1999 c 139 art 4 s 2

257.035 EMERGENCY.

A relative who acts to protect a child in an emergency or when a parent dies is not a custodian as defined under section 260C.007. If the relative is unable or unwilling to provide for the ongoing care, custody, and control of the child, the child may be considered a child in need of protection or services under section 260C.007. The relative may report the death or emergency to the local social service agency. Upon receiving the report, the local social service agency shall assess the circumstances and the needs of the child. The agency may place the child in foster care with a relative who meets the licensing standards under chapter 245A, and may pursue court action on behalf of the child.

History: 1999 c 139 art 4 s 2

257.0651 COMPLIANCE WITH INDIAN CHILD WELFARE ACT.

Sections 257.03 to 257.075 and 260C.208 to 260C.215 must be construed consistently with the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

History: 1999 c 139 art 4 s 2

257.066 RULES.

By December 31, 1989, the commissioner of human services shall revise Minnesota Rules, parts 9545.0750 to 9545.0830, 9560.0010 to 9560.0180, and 9560.0500 to 9560.0670 to ensure that, as conditions of licensure, social services and child-placing agencies meet the

requirements of section 260C.215, subdivisions 6 and 7, and keep records in compliance with sections 257.01 and 259.79.

History: 1999 c 139 art 4 s 2

257.069 [Repealed, 1999 c 139 art 4 s 3]

257.071 [Repealed, 1999 c 139 art 4 s 3]

257.0711 [Repealed, 1999 c 139 art 4 s 3]

257.072 [Repealed, 1999 c 139 art 4 s 3]

257.0762 DUTIES AND POWERS.

Subdivision 1. **Duties.** (a) Each ombudsperson shall monitor agency compliance with all laws governing child protection and placement, as they impact on children of color. In particular, the ombudsperson shall monitor agency compliance with sections 256F.07, subdivision 3a; 256F.08; 260C.215; 257.075; 260.751 to 260.835; and 260C.193, subdivision 3.

(b) The ombudsperson shall work with local state courts to ensure that:

(1) court officials, public policymakers, and service providers are trained in cultural diversity. The ombudsperson shall document and monitor court activities in order to heighten awareness of diverse belief systems and family relationships;

(2) experts from the appropriate community of color including tribal advocates are used as court advocates and are consulted in placement decisions that involve children of color;

(3) guardians ad litem and other individuals from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color; and

(4) training programs for bilingual workers are provided.

[For text of subd 2, see M.S.1998]

History: 1999 c 139 art 4 s 2

257.0763 MATTERS APPROPRIATE FOR REVIEW.

(a) In selecting matters for review, an ombudsperson should give particular attention to actions of an agency, facility, or program that:

(1) may be contrary to law or rule;

(2) may be unreasonable, unfair, oppressive, or inconsistent with a policy or order of an agency, facility, or program;

(3) may result in abuse or neglect of a child;

(4) may disregard the rights of a child or other individual served by an agency or facility;

or

(5) may be unclear or inadequately explained, when reasons should have been revealed.

(b) An ombudsperson shall, in selecting matters for review, inform other interested agencies in order to avoid duplicating other investigations or regulatory efforts, including activities undertaken by a tribal organization under the authority of sections 260.751 to 260.835.

History: 1999 c 139 art 4 s 2

257.33 DUTIES OF COMMISSIONER OF HUMAN SERVICES.

[For text of subd 1, see M.S.1998]

Subd. 2. **Minor parents and their children.** (a) Every birth to a minor shall be reported by the hospital where the birth occurs, within three working days after the birth. The hospital shall make the report to the county social services agency in the county in which the minor mother resides and shall notify the minor that the report has been made. The county social services agency shall contact any minor mother who does not have a case manager who resides in the county and determine whether she has a plan for herself and her child. The plan must consider:

- (1) the age of the minor parent;
- (2) the involvement of the minor's parents or of other adults who provide active, ongoing guidance, support, and supervision;
- (3) the involvement of the father of the minor's child, including steps being taken to establish paternity, if appropriate;
- (4) a decision of the minor to keep and raise her child or place the child for adoption;
- (5) completion of high school or GED;
- (6) current economic support of the minor parent and child and plans for economic self-sufficiency;
- (7) parenting skills of the minor parent;
- (8) living arrangement of the minor parent and child;
- (9) child care and transportation needed for education, training, or employment;
- (10) ongoing health care; and
- (11) other services as needed to address personal or family problems or to facilitate the personal growth and development and economic self-sufficiency of the minor parent and child.

(b) If the minor parent does not have a plan for herself and child, the county social services agency shall work with her to develop a plan and shall provide case management services as needed to assure the resources and services are available to meet the plan requirements.

(c) If the minor parent refuses to plan for herself and her child or fails, without good cause, to follow through on an agreed upon plan, the county social services agency may file a petition under section 260C.141 seeking an order for protective supervision under section 260C.201, subdivision 1, clause (a), on the grounds that the minor parent's child is dependent due to the state of immaturity of the minor parent. A contract with a minor parent under section 256J.54, subdivision 2, is an "agreed upon plan" for purposes of this section.

History: 1999 c 139 art 4 s 2; 1999 c 159 s 107

- 257.35 [Repealed, 1999 c 139 art 4 s 3]
 257.351 [Repealed, 1999 c 139 art 4 s 3]
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 257.356 [Repealed, 1999 c 139 art 4 s 3]
 257.3571 [Repealed, 1999 c 139 art 4 s 3]
 257.3572 [Repealed, 1999 c 139 art 4 s 3]
 257.3573 [Repealed, 1999 c 139 art 4 s 3]
 257.3574 [Repealed, 1999 c 139 art 4 s 3]
 257.3575 [Repealed, 1999 c 139 art 4 s 3]
 257.3576 [Repealed, 1999 c 139 art 4 s 3]
 257.3577 [Repealed, 1999 c 139 art 4 s 3]
 257.3578 [Repealed, 1999 c 139 art 4 s 3]
 257.3579 [Repealed, 1999 c 139 art 4 s 3]
 257.40 [Repealed, 1999 c 139 art 4 s 3]
 257.41 [Repealed, 1999 c 139 art 4 s 3]

257.42 [Repealed, 1999 c 139 art 4 s 3]

257.43 [Repealed, 1999 c 139 art 4 s 3]

257.44 [Repealed, 1999 c 139 art 4 s 3]

257.45 [Repealed, 1999 c 139 art 4 s 3]

257.46 [Repealed, 1999 c 139 art 4 s 3]

257.47 [Repealed, 1999 c 139 art 4 s 3]

257.48 [Repealed, 1999 c 139 art 4 s 3]

257.60 PARTIES.

The child may be made a party to the action. If the child is a minor and is made a party, a general guardian or a guardian ad litem shall be appointed by the court to represent the child. The child's mother or father may not represent the child as guardian or otherwise. The biological mother, each man presumed to be the father under section 257.55, and each man alleged to be the biological father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be given an opportunity to be heard. The public agency responsible for support enforcement is joined as a party in each case in which rights are assigned under section 256.741, and in each case in which the public agency is providing services pursuant to an application for child support services. A person who may bring an action under section 257.57 may be made a party to the action. The court may align the parties. The child shall be made a party whenever:

(1) the child is a minor and the case involves a compromise under section 257.64, subdivision 1, or a lump sum payment under section 257.66, subdivision 4, in which case the commissioner of human services shall also be made a party subject to department of human services rules relating to paternity suit settlements; or

(2) the child is a minor and the action is to declare the nonexistence of the father and child relationship; or

(3) an action to declare the existence of the father and child relationship is brought by a man presumed to be the father under section 257.55, or a man who alleges to be the father, and the mother of the child denies the existence of the father and child relationship.

History: 1999 c 159 s 109

257.62 BLOOD AND GENETIC TESTS.

[For text of subds 1 to 3, see M.S.1998]

Subd. 5. **Positive test results.** (a) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that the likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 92 percent or greater, upon motion the court shall order the alleged father to pay temporary child support determined according to chapter 518. The alleged father shall pay the support money to the public authority if the public authority is a party and is providing services to the parties or, if not, into court pursuant to the rules of civil procedure to await the results of the paternity proceedings.

(b) If the results of blood or genetic tests completed in a laboratory accredited by the American Association of Blood Banks indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater, the alleged father is presumed to be the parent and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.

[For text of subd 6, see M.S.1998]

History: 1999 c 245 art 7 s 4

257.66 JUDGMENT OR ORDER.

[For text of subds 1 and 2, see M.S.1998]

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, the social security number of the mother, father, and child, if known at the time of adjudication, 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, including the mother's lost wages due to medical necessity, 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. Pregnancy and confinement expenses and genetic testing costs, submitted by the public authority, are admissible as evidence without third-party foundation testimony and constitute prima facie evidence of the amounts incurred for those services or for the genetic testing. Remedies available for the collection and enforcement of child support apply to confinement costs and are considered additional child support.

[For text of subs 4 to 6, see M.S.1998]

History: 1999 c 245 art 7 s 5

257.69 RIGHT TO COUNSEL; COSTS; FREE TRANSCRIPT ON APPEAL.

[For text of subd 1, see M.S.1998]

Subd. 2. **Guardian; legal fees.** (a) The court may order expert witness and guardian ad litem fees and other costs of the trial and pretrial proceedings, including appropriate tests, to be paid by the parties in proportions and at times determined by the court. The court shall require a party to pay part of the fees of court-appointed counsel according to the party's ability to pay, but if counsel has been appointed the appropriate agency shall pay the party's proportion of all other fees and costs. The agency responsible for child support enforcement shall pay the fees and costs for blood or genetic tests in a proceeding in which it is a party, is the real party in interest, or is acting on behalf of the child. However, at the close of a proceeding in which paternity has been established under sections 257.51 to 257.74, the court shall order the adjudicated father to reimburse the public agency, if the court finds he has sufficient resources to pay the costs of the blood or genetic tests. When a party bringing an action is represented by the county attorney, no filing fee shall be paid to the court administrator.

(b) In each fiscal year, the state treasurer shall deposit guardian ad litem reimbursements in the general fund and credit them to a separate account with the trial courts. The balance of this account is appropriated to the trial courts and does not cancel but is available until expended. Expenditures by the state court administrator's office from this account must be based on the amount of the guardian ad litem reimbursements received by the state from the courts in each judicial district.

[For text of subd 3, see M.S.1998]

History: 1999 c 216 art 7 s 21

NOTE: Laws 1999, chapter 216, article 7, section 46, subdivision 3, provides specific effective dates for the state takeover of miscellaneous court costs under subdivision 2, as amended by Laws 1999, chapter 216, article 7, section 21.

257.74 ADOPTION; TERMINATION PROCEEDINGS.

[For text of subd 1, see M.S.1998]

Subd. 2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have

(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

(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, notice of the adoption proceeding shall be given as required by section 259.49.

History: 1999 c 86 art 1 s 61

257.75 RECOGNITION OF PARENTAGE.

[For text of subs 1 and 1a, see M.S.1998]

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 the earlier of 60 days after the recognition is executed or the date of an administrative or judicial hearing relating to the child in which the revoking party is a party to the related action. A joinder in a recognition may be revoked in a writing signed by the man who executed the joinder and filed with the state registrar of vital statistics within 60 days after the joinder is executed. Upon receipt of a revocation of the recognition of parentage or joinder in a recognition, the state registrar of vital statistics shall forward a copy of the revocation to the nonrevoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition.

[For text of subs 3 to 9, see M.S.1998]

History: 1999 c 245 art 7 s 6

257.85 RELATIVE CUSTODY ASSISTANCE.

[For text of subd 1, see M.S.1998]

Subd. 2. **Scope.** The provisions of this section apply to those situations in which the legal and physical custody of a child is established with a relative or important friend with whom the child has resided or had significant contact according to section 260C.201, subdivision 11, by a court order issued on or after July 1, 1997.

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-S 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 local 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.201, subdivision 11.

(d) "Relative" has the meaning given in section 260C.007, subdivision 14.

(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.

Subd. 4. Duties of local agency. (a) When a local agency seeks a court order under section 260C.201, subdivision 11, to establish permanent legal and physical custody of a child with a relative or important friend with whom the child has resided or had significant contact, or if such an order is issued by the court, the local agency shall perform the duties in this subdivision.

(b) As soon as possible after the local agency determines that it will seek to establish permanent legal and physical custody of the child or, if the agency did not seek to establish custody, as soon as possible after the issuance of the court order establishing custody, the local agency shall inform the relative custodian about the relative custody assistance program, including eligibility criteria and payment levels. Anytime prior to, but not later than seven days after, the date the court issues the order establishing permanent legal and physical custody of the child, the local agency shall determine whether the eligibility criteria in subdivision 6 are met to allow the relative custodian to receive relative custody assistance. Not later than seven days after determining whether the eligibility criteria are met, the local agency shall inform the relative custodian of its determination and of the process for appealing that determination under subdivision 9.

(c) If the local agency determines that the relative custodian is eligible to receive relative custody assistance, the local agency shall prepare the relative custody assistance agreement and ensure that it meets the criteria of subdivision 6.

(d) The local agency shall make monthly payments to the relative custodian as set forth in the relative custody assistance agreement. On a quarterly basis and on a form to be provided by the commissioner, the local agency shall make claims for reimbursement from the commissioner for relative custody assistance payments made.

(e) For a relative custody assistance agreement that is in place for longer than one year, and as long as the agreement remains in effect, the local agency shall send an annual affidavit form to the relative custodian of the eligible child within the month before the anniversary date of the agreement. The local agency shall monitor whether the annual affidavit is returned by the relative custodian within 30 days following the anniversary date of the agreement. The local agency shall review the affidavit and any other information in its possession to ensure continuing eligibility for relative custody assistance and that the amount of payment made according to the agreement is correct.

(f) When the local agency determines that a relative custody assistance agreement should be terminated or modified, it shall provide notice of the proposed termination or modification to the relative custodian at least ten days before the proposed action along with information about the process for appealing the proposed action.

Subd. 5. Relative custody assistance agreement. (a) A relative custody assistance agreement will not be effective, unless it is signed by the local agency and the relative custodian no later than 30 days after the date of the order establishing permanent legal and physical custody, except that a local agency may enter into a relative custody assistance agreement with a relative custodian more than 30 days after the date of the order if it certifies that the delay in entering the agreement was through no fault of the relative custodian. There must be a separate agreement for each child for whom the relative custodian is receiving relative custody assistance.

(b) Regardless of when the relative custody assistance agreement is signed by the local agency and relative custodian, the effective date of the agreement shall be the date of the order establishing permanent legal and physical custody.

(c) If MFIP is not the applicable program for a child at the time that a relative custody assistance agreement is entered on behalf of the child, when MFIP becomes the applicable program, if the relative custodian had been receiving custody assistance payments calculated based upon a different program, the amount of relative custody assistance payment under subdivision 7 shall be recalculated under the Minnesota family investment program.

(d) The relative custody assistance agreement shall be in a form specified by the commissioner and shall include provisions relating to the following:

- (1) the responsibilities of all parties to the agreement;
- (2) the payment terms, including the financial circumstances of the relative custodian, the needs of the child, the amount and calculation of the relative custody assistance payments, and that the amount of the payments shall be reevaluated annually;
- (3) the effective date of the agreement, which shall also be the anniversary date for the purpose of submitting the annual affidavit under subdivision 8;
- (4) that failure to submit the affidavit as required by subdivision 8 will be grounds for terminating the agreement;
- (5) the agreement's expected duration, which shall not extend beyond the child's eighteenth birthday;
- (6) any specific known circumstances that could cause the agreement or payments to be modified, reduced, or terminated and the relative custodian's appeal rights under subdivision 9;
- (7) that the relative custodian must notify the local agency within 30 days of any of the following:
 - (i) a change in the child's status;
 - (ii) a change in the relationship between the relative custodian and the child;
 - (iii) a change in composition or level of income of the relative custodian's family;
 - (iv) a change in eligibility or receipt of benefits under MFIP, or other assistance program; and
 - (v) any other change that could affect eligibility for or amount of relative custody assistance;
- (8) that failure to provide notice of a change as required by clause (7) will be grounds for terminating the agreement;
- (9) that the amount of relative custody assistance is subject to the availability of state funds to reimburse the local agency making the payments;
- (10) that the relative custodian may choose to temporarily stop receiving payments under the agreement at any time by providing 30 days' notice to the local agency and may choose to begin receiving payments again by providing the same notice but any payments the relative custodian chooses not to receive are forfeit; and
- (11) that the local agency will continue to be responsible for making relative custody assistance payments under the agreement regardless of the relative custodian's place of residence.

Subd. 6. Eligibility criteria. A local agency shall enter into a relative custody assistance agreement under subdivision 5 if it certifies that the following criteria are met:

- (1) the juvenile court has determined or is expected to determine that the child, under the former or current custody of the local agency, cannot return to the home of the child's parents;
- (2) the court, upon determining that it is in the child's best interests, has issued or is expected to issue an order transferring permanent legal and physical custody of the child; and
- (3) the child either:
 - (i) is a member of a sibling group to be placed together; or
 - (ii) has a physical, mental, emotional, or behavioral disability that will require financial support.

When the local agency bases its certification that the criteria in clause (1) or (2) are met upon the expectation that the juvenile court will take a certain action, the relative custody assistance agreement does not become effective until and unless the court acts as expected.

Subd. 7. Amount of relative custody assistance payments. (a) The amount of a monthly relative custody assistance payment shall be determined according to the provisions of this paragraph.

- (1) The total maximum assistance rate is equal to the base assistance rate plus, if applicable, the supplemental assistance rate.
 - (i) The base assistance rate is equal to the maximum amount that could be received as basic maintenance for a child of the same age under the adoption assistance program.

(ii) The local agency shall determine whether the child has physical, mental, emotional, or behavioral disabilities that require care, supervision, or structure beyond that ordinarily provided in a family setting to children of the same age such that the child would be eligible for supplemental maintenance payments under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. If the local agency determines that the child has such a disability, the supplemental assistance rate shall be the maximum amount of monthly supplemental maintenance payment that could be received on behalf of a child of the same age, disabilities, and circumstances under the adoption assistance program.

(2) The net maximum assistance rate is equal to the total maximum assistance rate from clause (1) less the following offsets:

(i) if the child is or will be part of an assistance unit receiving an MFIP-S grant or a grant from a similar program of another state, the portion of the MFIP standard relating to the child as calculated under paragraph (b), clause (2);

(ii) Supplemental Security Income payments received by or on behalf of the child;

(iii) veteran's benefits received by or on behalf of the child; and

(iv) any other income of the child, including child support payments made on behalf of the child.

(3) The relative custody assistance payment to be made to the relative custodian shall be a percentage of the net maximum assistance rate calculated in clause (2) based upon the gross income of the relative custodian's family, including the child for whom the relative custodian has permanent legal and physical custody. In no case shall the amount of the relative custody assistance payment exceed that which the child could qualify for under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. The relative custody assistance payment shall be calculated as follows:

(i) if the relative custodian's gross family income is less than or equal to 200 percent of federal poverty guidelines, the relative custody assistance payment shall be the full amount of the net maximum assistance rate;

(ii) if the relative custodian's gross family income is greater than 200 percent and less than or equal to 225 percent of federal poverty guidelines, the relative custody assistance payment shall be 80 percent of the net maximum assistance rate;

(iii) if the relative custodian's gross family income is greater than 225 percent and less than or equal to 250 percent of federal poverty guidelines, the relative custody assistance payment shall be 60 percent of the net maximum assistance rate;

(iv) if the relative custodian's gross family income is greater than 250 percent and less than or equal to 275 percent of federal poverty guidelines, the relative custody assistance payment shall be 40 percent of the net maximum assistance rate;

(v) if the relative custodian's gross family income is greater than 275 percent and less than or equal to 300 percent of federal poverty guidelines, the relative custody assistance payment shall be 20 percent of the net maximum assistance rate; or

(vi) if the relative custodian's gross family income is greater than 300 percent of federal poverty guidelines, no relative custody assistance payment shall be made.

(b) The following provisions cover the relationship between relative custody assistance and assistance programs:

(1) The relative custodian of a child for whom the relative custodian is receiving relative custody assistance is expected to seek whatever assistance is available for the child through MFIP-S or, if the relative custodian resides in a state other than Minnesota, similar programs of that state. If a relative custodian fails to apply for assistance through MFIP-S or other program for which the child is eligible, the child's portion of the MFIP standard will be calculated as if application had been made and assistance received.

(2) The portion of the MFIP standard relating to each child for whom relative custody assistance is being received shall be calculated as follows:

(i) determine the total MFIP standard for the assistance unit;

(ii) determine the amount that the MFIP standard would have been if the assistance unit had not included the children for whom relative custody assistance is being received;

(iii) subtract the amount determined in item (ii) from the amount determined in item (i); and

(iv) divide the result in item (iii) by the number of children for whom relative custody assistance is being received that are part of the assistance unit.

(3) If a child for whom relative custody assistance is being received is not eligible for assistance through MFIP-S or similar programs of another state, the portion of MFIP standard relating to that child shall be equal to zero.

[For text of subd 8, see M.S.1998]

Subd. 9. Right of appeal. A relative custodian who enters or seeks to enter into a relative custody assistance agreement with a local agency has the right to appeal to the commissioner according to section 256.045 when the local agency establishes, denies, terminates, or modifies the agreement. Upon appeal, the commissioner may review only:

(1) whether the local agency has met the legal requirements imposed by this chapter for establishing, denying, terminating, or modifying the agreement;

(2) whether the amount of the relative custody assistance payment was correctly calculated under the method in subdivision 7;

(3) whether the local agency paid for correct time periods under the relative custody assistance agreement;

(4) whether the child remains in the physical custody of the relative custodian;

(5) whether the local agency correctly modified the amount of the supplemental assistance rate based on a change in the child's physical, mental, emotional, or behavioral needs, or based on the relative custodian's failure to provide documentation, after the local agency has requested such documentation, that the child continues to have physical, mental, emotional, or behavioral needs that support the current amount of relative custody assistance; and

(6) whether the local agency correctly modified or terminated the amount of relative custody assistance based on a change in the gross income of the relative custodian's family or based on the relative custodian's failure to provide documentation of the gross income of the relative custodian's family after the local agency has requested such documentation.

[For text of subd 10, see M.S.1998]

Subd. 11. Financial considerations. (a) Payment of relative custody assistance under a relative custody assistance agreement is subject to the availability of state funds and payments may be reduced or suspended on order of the commissioner if insufficient funds are available.

(b) Upon receipt from a local agency of a claim for reimbursement, the commissioner shall reimburse the local agency in an amount equal to 100 percent of the relative custody assistance payments provided to relative custodians. The local agency may not seek and the commissioner shall not provide reimbursement for the administrative costs associated with performing the duties described in subdivision 4.

(c) For the purposes of determining eligibility or payment amounts under MFIP-S, relative custody assistance payments shall be excluded in determining the family's available income.

History: 1999 c 139 art 4 s 2; 1999 c 159 s 111; 1999 c 245 art 8 s 26-33

NOTE: Subdivision 3, paragraph (a) was also amended by Laws 1999, chapter 159, section 110, to read as follows:

"(a) "MFIP standard" means the transitional standard used to calculate assistance under MFIP."

NOTE: Subdivision 7 was also amended by Laws 1999, chapter 159, section 112, to read as follows:

"Subd. 7. **Amount of relative custody assistance payments.** (a) The amount of a monthly relative custody assistance payment shall be determined according to the provisions of this paragraph.

(1) The total maximum assistance rate is equal to the base assistance rate plus, if applicable, the supplemental assistance rate.

(i) The base assistance rate is equal to the maximum amount that could be received as basic maintenance for a child of the same age under the adoption assistance program.

(ii) The local agency shall determine whether the child has physical, mental, emotional, or behavioral disabilities that require care, supervision, or structure beyond that ordinarily provided in a family setting to children of the same age such that the child would be eligible for supplemental maintenance payments under the adoption assistance program if an adoption assistance agree-

ment were entered on the child's behalf. If the local agency determines that the child has such a disability, the supplemental assistance rate shall be the maximum amount of monthly supplemental maintenance payment that could be received on behalf of a child of the same age, disabilities, and circumstances under the adoption assistance program.

(2) The net maximum assistance rate is equal to the total maximum assistance rate from clause (1) less the following offsets:

- (i) if the child is or will be part of an assistance unit receiving an MFIP grant, the portion of the MFIP standard relating to the child;
- (ii) Supplemental Security Income payments received by or on behalf of the child;
- (iii) veteran's benefits received by or on behalf of the child; and
- (iv) any other income of the child, including child support payments made on behalf of the child.

(3) The relative custody assistance payment to be made to the relative custodian shall be a percentage of the net maximum assistance rate calculated in clause (2) based upon the gross income of the relative custodian's family, including the child for whom the relative has permanent legal and physical custody. In no case shall the amount of the relative custody assistance payment exceed that which the child could qualify for under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. The relative custody assistance payment shall be calculated as follows:

- (i) if the relative custodian's gross family income is less than or equal to 200 percent of federal poverty guidelines, the relative custody assistance payment shall be the full amount of the net maximum assistance rate;
- (ii) if the relative custodian's gross family income is greater than 200 percent and less than or equal to 225 percent of federal poverty guidelines, the relative custody assistance payment shall be 80 percent of the net maximum assistance rate;
- (iii) if the relative custodian's gross family income is greater than 225 percent and less than or equal to 250 percent of federal poverty guidelines, the relative custody assistance payment shall be 60 percent of the net maximum assistance rate;
- (iv) if the relative custodian's gross family income is greater than 250 percent and less than or equal to 275 percent of federal poverty guidelines, the relative custody assistance payment shall be 40 percent of the net maximum assistance rate;
- (v) if the relative custodian's gross family income is greater than 275 percent and less than or equal to 300 percent of federal poverty guidelines, the relative custody assistance payment shall be 20 percent of the net maximum assistance rate; or
- (vi) if the relative custodian's gross family income is greater than 300 percent of federal poverty guidelines, no relative custody assistance payment shall be made.

(b) This paragraph specifies the provisions pertaining to the relationship between relative custody assistance and the Minnesota family investment program:

(1) the relative custodian of a child for whom the relative is receiving relative custody assistance is expected to seek whatever assistance is available for the child through the Minnesota family investment program. If a relative custodian fails to apply for assistance through the Minnesota family investment program for which the child is eligible, the child's portion of the MFIP standard will be calculated as if application had been made and assistance received;

(2) the portion of the MFIP standard relating to each child for whom relative custody assistance is being received shall be calculated as follows:

- (i) determine the total MFIP standard for the assistance unit;
 - (ii) determine the amount that the MFIP standard would have been if the assistance unit had not included the children for whom relative custody assistance is being received;
 - (iii) subtract the amount determined in item (ii) from the amount determined in item (i); and
 - (iv) divide the result in item (iii) by the number of children for whom relative custody assistance is being received that are part of the assistance unit; or
- (3) if a child for whom relative custody assistance is being received is not eligible for assistance through the Minnesota family investment program, the portion of MFIP standard relating to that child shall be equal to zero."

NOTE: Subdivision 11 was also amended by Laws 1999, chapter 159, section 113, to read as follows:

"Subd. 11. **Financial considerations.** (a) Payment of relative custody assistance under a relative custody assistance agreement is subject to the availability of state funds and payments may be reduced or suspended on order of the commissioner if insufficient funds are available.

(b) Upon receipt from a local agency of a claim for reimbursement, the commissioner shall reimburse the local agency in an amount equal to 100 percent of the relative custody assistance payments provided to relative custodians. The local agency may not seek and the commissioner shall not provide reimbursement for the administrative costs associated with performing the duties described in subdivision 4.

(c) For the purposes of determining eligibility or payment amounts under the AFDC program as of July 16, 1996, relative custody assistance payments shall be considered excluded income."