

CHAPTER 257

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CUSTODY

257.01 RECORDS REQUIRED.

Each person or authorized child-placing agency permitted by law to receive children, secure homes for children, or care for children, shall keep a record containing the name, age, former residence, legal status, health records, sex, race, and accumulated length of time in foster care, if applicable, of each child received; the name, former residence, occupation, health history, and character, of each birth parent; the date of reception, placing out, and adoption of each child, and the name, race, occupation, and residence of the person with whom a child is placed; the date of the removal of any child to another home and the reason for removal; the date of termination of the guardianship; the history of each child until the child reaches the age of 18 years, is legally adopted, or is discharged according to law; and further demographic and other information as is required by the commissioner of human services.

History: (4560) *Ex1919 c 51 s 1; 1951 c 644 s 1; 1973 c 725 s 47; 1983 c 278 s 1; 1984 c 654 art 5 s 58; 1986 c 444; 1994 c 631 s 31*

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 257C.07, 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: (4561) *Ex1919 c 51 s 2; 1986 c 444; 1996 c 421 s 2; 1997 c 112 s 1; 1999 c 139 art 4 s 2; 2002 c 304 s 13*

257.021 [Repealed, 3Sp1981 c 3 s 20]

257.0215 [Renumbered 257C.07]

257.022 [Renumbered 257C.08]

257.025 CUSTODY DISPUTES.

(a) In any proceeding where two or more parties seek custody of a child the court shall consider and evaluate all relevant factors in determining the best interests of the child, including the following factors:

- (1) the wishes of the party or parties as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each party and the child;
- (5) the interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363A.03, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture, religion, or creed, if any;
- (11) the child's cultural background; and
- (12) the effect on the child of the actions of an abuser, if related to domestic abuse as defined in section 518B.01, that has occurred between the parents or the parties.

The court may not use one factor to the exclusion of all others. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The fact that the parents of the child are not or were never married to each other shall not be determinative of the custody of the child.

(c) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

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

(e) A person may seek custody of a child by filing a petition or motion pursuant to section 518.156.

(f) Section 518.619 applies to this section.

History: 1974 c 330 s 1; 1980 c 589 s 29; 1990 c 574 s 2; 1992 c 557 s 1

257.03 NOTICE TO COMMISSIONER OF HUMAN SERVICES.

Any person not exempted from the requirement for licensure under chapter 245A receiving a child in the person's home:

- (1) because of the death, injury, or illness of the child's parent if the person intends to keep the child for more than 30 days; or
- (2) with intent to adopt the child or keep the child permanently, except a person receiving a child from an authorized agency, must notify the commissioner of human services in writing within 30 days after the child is received. Notice shall state the true name of the child; the child's last previous address; the name and address of the child's

parents or legal guardian and of persons with whom the child last resided; and the names and addresses of persons who placed the child in the home, arranged for, or assisted with arrangements for the child's placement there; and such other facts about the child or the home as the commissioner may require. It is the duty of the commissioner or a designated agent to investigate the circumstances surrounding the child's entry into the home and to take appropriate action to assure for the child, the biological parents, and the foster parents the full protection of all laws of Minnesota relating to custody and foster care of children. Except as provided by section 317A.907, no person shall solicit, receive, or accept any payment, promise of payment, or compensation, for placing a child in foster care or for assisting to place a child in foster care. Nor shall any person pay or promise to pay or in any way compensate any person, for placing or for assisting to place a child in foster care.

History: (4562) *Ex1919 c 51 s 3; 1949 c 227 s 1; 1951 c 644 s 2; 1955 c 587 s 1; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 403 art 3 s 96; 1989 c 304 s 132; 1996 c 421 s 3*

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 chapters 245A and 245C, and may pursue court action on behalf of the child.

History: *1996 c 421 s 4; 1999 c 139 art 4 s 2; 2003 c 15 art 1 s 33.*

257.04 INVESTIGATION.

Upon receipt of the notice provided for in section 257.03 the commissioner of human services or a designated agent of the commissioner shall visit the child and the home and shall continue to visit and supervise the home and the child or take other appropriate action to assure that the welfare of the child, biological parents and foster parents are fully protected.

History: (4563) *Ex1919 c 51 s 4; 1935 c 112 s 2; 1949 c 227 s 2; 1955 c 587 s 2; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 403 art 3 s 94*

257.05 IMPORTATION.

Subdivision 1. Notification and duties of commissioner. No person, except as provided by subdivisions 2 and 3, shall bring or send into the state any child for the purpose of placing the child out or procuring the child's adoption without first obtaining the consent of the commissioner of human services, and such person shall conform to all rules of the commissioner of human services and laws of the state of Minnesota relating to protection of children in foster care. Before any child shall be brought or sent into the state for the purpose of being placed in foster care, the person bringing or sending the child into the state shall first notify the commissioner of human services of the person's intention, and shall obtain from the commissioner of human services a certificate stating that the home in which the child is to be placed is, in the opinion of the commissioner of human services, a suitable adoptive home for the child if legal adoption is contemplated or that the home meets the commissioner's requirements for licensing of foster homes if legal adoption is not contemplated. The commissioner is responsible for protecting the child's interests so long as the child remains within the state and until the child reaches the age of 18 or is legally adopted. Notice to the commissioner shall state the name, age, and personal description of the child, and the name and address of the person with whom the child is to be placed, and such other information about the child and the foster home as may be required by the commissioner.

Subd. 2. **Exempt relatives.** A parent, stepparent, grandparent, brother, sister and aunt or uncle in the first degree of the minor child who bring a child into the state for placement within their own home shall be exempt from the provisions of subdivision 1. This relationship may be by blood or marriage.

Subd. 3. **International adoptions.** Subject to state and federal laws and rules, adoption agencies licensed under chapter 245A and Minnesota Rules, parts 9545.0755 to 9545.0845, and county social services agencies are authorized to certify that the prospective adoptive home of a child brought into the state from another country for the purpose of adoption is a suitable home, or that the home meets the commissioner's requirements for licensing of foster homes if legal adoption is not contemplated.

History: (4564) *Ex1919 c 51 s 5; 1949 c 21 s 1; 1955 c 587 s 3; 1965 c 115 s 1; 1973 c 725 s 48; 1984 c 654 art 5 s 58; 1986 c 444; 1991 c 326 s 11; 1Sp2003 c 14 art 4 s 12*

257.06 EXPORTATION.

No person except a parent or guardian may take or send a child out of the state for purposes of placing the child in foster care without first obtaining the approval of the commissioner of human services.

History: (4565) *Ex1919 c 51 s 6; 1955 c 587 s 4; 1984 c 654 art 5 s 58; 1986 c 444*

257.065 AUTHORIZED CHILD-PLACING AGENCY DEFINITION.

For the purposes of this chapter and chapter 259, "authorized child-placing agency" means the local social service agency under the authority of the local social services agency or human service board, or any agency licensed by the commissioner of human services or a comparable authority in the state or United States, to place children for foster care or adoption.

History: *1983 c 278 s 2; 1984 c 654 art 5 s 58; 1994 c 631 s 31*

257.0651 COMPLIANCE WITH INDIAN CHILD WELFARE ACT.

Sections 257.03 to 257.0725 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: *1993 c 291 s 1; 1999 c 139 art 4 s 2; 1Sp2003 c 14 art 11 s 11*

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: *1988 c 689 art 2 s 210; 1994 c 631 s 31; 1999 c 139 art 4 s 2*

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

257.07 [Repealed, 1978 c 602 s 13]

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]

257.0725 ANNUAL REPORT.

The commissioner of human services shall publish an annual report on child maltreatment and on children in out-of-home placement. The commissioner shall confer with counties, child welfare organizations, child advocacy organizations, the courts, and other groups on how to improve the content and utility of the department's

annual report. In regard to child maltreatment, the report shall include the number and kinds of maltreatment reports received and any other data that the commissioner determines is appropriate to include in a report on child maltreatment. In regard to children in out-of-home placement, the report shall include, by county and statewide, information on legal status, living arrangement, age, sex, race, accumulated length of time in placement, reason for most recent placement, race of family with whom placed, and other information deemed appropriate on all children in out-of-home placement. Out-of-home placement includes placement in any facility by an authorized child-placing agency.

History: 1988 c 689 art 2 s 216; 1996 c 416 s 9; 1Sp2001 c 9 art 11 s 4; 2002 c 379 art 1 s 113

257.075 [Repealed, 1Sp2003 c 14 art 11 s 12]

OMBUDSPERSON FOR FAMILIES

257.0755 OFFICE OF OMBUDSPERSON; CREATION; QUALIFICATIONS; FUNCTION.

Subdivision 1. **Creation.** One ombudsperson shall operate independently from but in collaboration with each of the following groups: the Indian Affairs Council, the Council on Affairs of Chicano/Latino people, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans.

Subd. 2. **Selection; qualifications.** The ombudsperson for each community shall be selected by the applicable community-specific board established in section 257.0768. Each ombudsperson serves in the unclassified service at the pleasure of the community-specific board and may be removed only for just cause. Each ombudsperson must 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.

Subd. 3. **Appropriation.** Money appropriated for each ombudsperson from the general fund or the special fund authorized by section 256.01, subdivision 2, clause (15), is under the control of each ombudsperson for which it is appropriated.

History: 1991 c 292 art 3 s 20; 1993 c 369 s 77; 1994 c 632 art 4 s 62; 1997 c 7 art 3 s 7

257.076 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 257.0755 to 257.0768, the following terms shall have the meanings given them in this section.

Subd. 2. **Agency.** "Agency" means the divisions, officials, or employees of the state Departments of Human Services and Health and local district courts or a designated county social service agency as defined in section 256G.02, subdivision 7, engaged in providing child protection and placement services for children. "Agency" also means any individual, service, or program providing child protection or placement services in coordination with or under contract to any other entity specified in this subdivision.

Subd. 3. **Communities of color.** "Communities of color" means the following: American Indian, Hispanic-Latino, Asian-Pacific, African, and African-American communities.

Subd. 4. **Compadrazgo.** "Compadrazgo" is a kinship institution within the Hispanic-Latino community used as a means of parenting and caring for children from birth to adulthood.

Subd. 5. **Family of color.** "Family of color" means any family with a child under the age of 18 who is identified by one or both parents or another trusted adult to be of

American Indian, Hispanic-Latino, Asian-Pacific, African, or African-American descent.

Subd. 6. **Facility.** "Facility" means any entity required to be licensed under chapter 245A.

Subd. 7. **Trusted adult.** "Trusted adult" means an individual recognized by the child's parent or legal guardian, the child's community, or both, as speaking for the child's best interest. The term includes compadrazgo and other individuals with a kinship or community relationship with the child.

History: 1991 c 292 art 3 s 21

257.0761 ORGANIZATION OF OFFICE OF OMBUDSPERSON.

Subdivision 1. **Staff; unclassified status; retirement.** The ombudsperson for each group specified in section 257.0755 may select, appoint, and compensate out of available funds the assistants and employees as deemed necessary to discharge responsibilities. All employees, except the secretarial and clerical staff, shall serve at the pleasure of the ombudsperson in the unclassified service. The ombudsperson and full-time staff shall be members of the Minnesota State Retirement Association.

Subd. 2. **Delegation to staff.** The ombudsperson may delegate to staff members any of the ombudsperson's authority or duties except the duty of formally making recommendations to an administrative agency or reports to the Office of the Governor, or to the legislature.

History: 1991 c 292 art 3 s 22

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 260C.215; 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 policy makers, 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.

Subd. 2. **Powers.** Each ombudsperson has the authority to investigate decisions, acts, and other matters of an agency, program, or facility providing protection or placement services to children of color. In carrying out this authority and the duties in subdivision 1, each ombudsperson has the power to:

(1) prescribe the methods by which complaints are to be made, reviewed, and acted upon;

(2) determine the scope and manner of investigations to be made;

(3) investigate, upon a complaint or upon personal initiative, any action of any agency;

(4) request and be given access to any information in the possession of any agency deemed necessary for the discharge of responsibilities. The ombudsperson is authorized to set reasonable deadlines within which an agency must respond to requests for information. Data obtained from any agency under this clause shall retain the classification which it had under section 13.02 and shall be maintained and disseminated by the ombudsperson according to chapter 13;

- (5) examine the records and documents of an agency;
- (6) enter and inspect, during normal business hours, premises within the control of an agency; and
- (7) subpoena any agency personnel to appear, testify, or produce documentary or other evidence which the ombudsperson deems relevant to a matter under inquiry, and may petition the appropriate state court to seek enforcement with the subpoena; provided, however, that any witness at a hearing or before an investigation as herein provided, shall possess the same privileges reserved to such a witness in the courts or under the laws of this state. The ombudsperson may compel nonagency individuals to testify or produce evidence according to procedures developed by the advisory board.

History: 1991 c 292 art 3 s 23; 1994 c 632 art 4 s 63; 1999 c 139 art 4 s 2; 1Sp2003 c 14 art 11 s 11

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: 1991 c 292 art 3 s 24; 1999 c 139 art 4 s 2

257.0764 COMPLAINTS.

An ombudsperson may receive a complaint from any source concerning an action of an agency, facility, or program. After completing a review, the ombudsperson shall inform the complainant, agency, facility, or program. Services to a child shall not be unfavorably altered as a result of an investigation or complaint. An agency, facility, or program shall not retaliate or take adverse action, as defined in section 626.556, subdivision 4a, paragraph (c), against an individual who, in good faith, makes a complaint or assists in an investigation.

History: 1991 c 292 art 3 s 25

257.0765 RECOMMENDATIONS TO AGENCY.

(a) If, after reviewing a complaint or conducting an investigation and considering the response of an agency, facility, or program and any other pertinent material, the ombudsperson determines that the complaint has merit or the investigation reveals a problem, the ombudsperson may recommend that the agency, facility, or program:

- (1) consider the matter further;
- (2) modify or cancel its actions;
- (3) alter a rule, order, or internal policy;
- (4) explain more fully the action in question; or
- (5) take other action as authorized under section 257.0762.

(b) At the ombudsperson's request, the agency, facility, or program shall, within a reasonable time, inform the ombudsperson about the action taken on the recommendation or the reasons for not complying with it.

History: 1991 c 292 art 3 s 26

257.0766 RECOMMENDATIONS AND PUBLIC REPORTS.

Subdivision 1. **Specific reports.** An ombudsperson may send conclusions and suggestions concerning any matter reviewed to the governor and shall provide copies of all reports to the advisory board and to the groups specified in section 257.0768, subdivision 1. Before making public a conclusion or recommendation that expressly or implicitly criticizes an agency, facility, program, or any person, the ombudsperson shall inform the governor and the affected agency, facility, program, or person concerning the conclusion or recommendation. When sending a conclusion or recommendation to the governor that is adverse to an agency, facility, program, or any person, the ombudsperson shall include any statement of reasonable length made by that agency, facility, program, or person in defense or mitigation of the ombudsperson's conclusion or recommendation.

Subd. 2. **General reports.** In addition to whatever conclusions or recommendations the ombudsperson may make to the governor on an ad hoc basis, the ombudsperson shall at the end of each year report to the governor concerning the exercise of the ombudsperson's functions during the preceding year.

History: 1991 c 292 art 3 s 27

257.0767 CIVIL ACTIONS.

The ombudsperson and designees are not civilly liable for any action taken under sections 257.0755 to 257.0768 if the action was taken in good faith, was within the scope of the ombudsperson's authority, and did not constitute willful or reckless misconduct.

History: 1991 c 292 art 3 s 28

257.0768 COMMUNITY-SPECIFIC BOARDS.

Subdivision 1. **Membership.** Four community-specific boards are created. Each board consists of five members. The chair of each of the following groups shall appoint the board for the community represented by the group: the Indian Affairs Council; the Council on Affairs of Chicano/Latino people; the Council on Black Minnesotans; and the Council on Asian-Pacific Minnesotans. In making appointments, the chair must consult with other members of the council.

Subd. 2. **Compensation; chair.** Members do not receive compensation but are entitled to receive reimbursement for reasonable and necessary expenses incurred.

Subd. 3. **Meetings.** Each board shall meet regularly at the request of the appointing chair or the ombudsperson.

Subd. 4. **Duties.** Each board shall appoint the ombudsperson for its community. Each board shall advise and assist the ombudsperson for its community in selecting matters for attention; developing policies, plans, and programs to carry out the ombudspersons' functions and powers; establishing protocols for working with the communities of color; developing procedures for the ombudspersons' use of the subpoena power to compel testimony and evidence from nonagency individuals; and making reports and recommendations for changes designed to improve standards of competence, efficiency, justice, and protection of rights.

Subd. 5. **Terms, compensation, removal, and expiration.** The membership terms, compensation, and removal of members of each board and the filling of membership vacancies are governed by section 15.0575.

Subd. 6. **Joint meetings.** The members of the four community-specific boards shall meet jointly at least four times each year to advise the ombudspersons on overall policies, plans, protocols, and programs for the office.

History: 1986 c 444; 1991 c 292 art 3 s 29; 1994 c 632 art 4 s 64; 1997 c 7 art 3 s 8

257.0769 FUNDING FOR THE OMBUDSPERSON PROGRAM.

Subdivision 1. **Appropriations.** (a) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Indian Affairs Council for the purposes of sections 257.0755 to 257.0768.

(b) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the council on affairs of Chicano/Latino people for the purposes of sections 257.0755 to 257.0768.

(c) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Council of Black Minnesotans for the purposes of sections 257.0755 to 257.0768.

(d) Money is appropriated from the special fund authorized by section 256.01, subdivision 2, clause (15), to the Council on Asian-Pacific Minnesotans for the purposes of sections 257.0755 to 257.0768.

Subd. 2. **Title IV-E reimbursement.** The commissioner shall obtain federal title IV-E financial participation for eligible activity by the ombudsperson for families under section 257.0755. The ombudsperson for families shall maintain and transmit to the Department of Human Services documentation that is necessary in order to obtain federal funds.

History: 1991 c 292 art 3 s 30; 1997 c 7 art 3 s 9; 1Sp2003 c 14 art 6 s 52

257.08 [Repealed, 1953 c 613 s 4]

257.081 Subdivision 1. [Repealed, 1976 c 243 s 15]

Subd. 2. [Repealed, 1976 c 243 s 15]

Subd. 3. [Repealed, 1976 c 243 s 15]

Subd. 4. [Repealed, 1976 c 243 s 15]

Subd. 5. [Repealed, 1976 c 243 s 15]

Subd. 6. [Repealed, 1976 c 243 s 15]

Subd. 7. [Repealed, 1976 c 243 s 15]

Subd. 8. [Renumbered 257.082, subdivision 1]

Subd. 9. [Renumbered 257.082, subd 2]

Subd. 10. [Repealed, 1976 c 243 s 15]

257.082 [Repealed, 1976 c 243 s 15]

257.09 [Repealed, 1953 c 613 s 10]

257.091 [Repealed, 1976 c 243 s 15]

257.10 [Repealed, 1953 c 613 s 2]

257.101 [Repealed, 1976 c 243 s 15]

257.102 [Repealed, 1976 c 243 s 15]

257.11 [Repealed, 1953 c 613 s 6]

257.111 Subdivision 1. [Repealed, 1976 c 243 s 15]

Subd. 2. [Repealed, 1971 c 539 s 8]

Subd. 3. [Repealed, 1971 c 539 s 8]

Subd. 4. [Repealed, 1971 c 539 s 8]

Subd. 5. [Repealed, 1971 c 539 s 8]

Subd. 6. [Repealed, 1971 c 539 s 8]

257.12 [Repealed, 1953 c 613 s 6]

257.121 [Repealed, 1971 c 539 s 8]

257.123 [Repealed, 1976 c 243 s 15]

257.124 [Repealed, 1976 c 243 s 15]

257.13 [Repealed, 1971 c 539 s 8]

257.14 [Repealed, 1971 c 539 s 8]

257.15 [Repealed, 1971 c 539 s 8]

257.16 [Repealed, 1953 c 613 s 10]

257.17 [Repealed, 1953 c 613 s 10]

257.175 DUTIES OF COMMISSIONER OF HUMAN SERVICES:

It shall be the duty of the commissioner of human services to promote the enforcement of all laws for the protection of defective, dependent, neglected, and delinquent children, to cooperate to this end with juvenile courts and all reputable child-helping and child-placing agencies of a public or private character, and to take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made. The commissioner may appoint a chief executive officer and such assistants as shall be necessary to carry out the purposes of this section and section 257.33.

History: (4456) 1917 c 194 s 3; 1965 c 45 s 37; 1980 c 589 s 30; 1984 c 654 art 5 s 58

257.176 [Repealed, 1959 c 480 s 6]

257.177 [Repealed, 1959 c 480 s 6]

257.18 [Repealed, 1971 c 143 s 16]

257.19 [Repealed, 1971 c 143 s 16]

257.20 [Repealed, 1971 c 143 s 16]

257.21 [Repealed, 1971 c 143 s 16]

257.22 [Repealed, 1971 c 143 s 16]

257.23 [Repealed, 1971 c 143 s 16]

257.24 [Repealed, 1971 c 143 s 16]

257.25 [Repealed, 1971 c 143 s 16]

257.251 [Repealed, 1980 c 589 s 38]

257.252 [Repealed, 1980 c 589 s 38]

257.253 [Repealed, 1980 c 589 s 38]

257.254 [Repealed, 1980 c 589 s 38]

257.255 [Repealed, 1980 c 589 s 38]

257.256 [Repealed, 1980 c 589 s 38]

257.257 [Repealed, 1980 c 589 s 38]

257.258 [Repealed, 1980 c 589 s 38]

257.259 [Repealed, 1980 c 589 s 38]

257.26 [Repealed, 1971 c 143 s 16]

257.261 [Repealed, 1980 c 589 s 38]

257.262 [Repealed, 1980 c 589 s 38]

257.263 [Repealed, 1980 c 589 s 38]

257.264 [Repealed, 1980 c 589 s 38]

257.27 [Repealed, 1980 c 589 s 38]

257.28 [Repealed, 1980 c 589 s 38]

257.29 [Repealed, 1980 c 589 s 38]

257.30 [Repealed, 1980 c 589 s 38]

257.31 [Repealed, 1980 c 589 s 38]

257.32 [Repealed, 1980 c 589 s 38]

257.33 DUTIES OF COMMISSIONER OF HUMAN SERVICES.

Subdivision 1. **Services to pregnant women.** It shall be the duty of the commissioner of human services to offer appropriate social services to any pregnant woman who is in need of social services under criteria prescribed by rule of the commissioner. The commissioner shall also offer appropriate social services to the woman and her child after the birth of the child.

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: (4455) 1917 c 194 s 2; 1980 c 589 s 31; 1981 c 257 s 1; 1984 c 654 art 5 s 58; 1987 c 403 art 3 s 44; 1999 c 139 art 4 s 2; 1999 c 159 s 107

257.34 DECLARATION OF PARENTAGE.

Subdivision 1. **Acknowledgment by parents.** The mother and father of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public, declare and acknowledge under oath that they are the biological parents of the child. The declaration may provide that any such child born to the mother at any time before or up to ten months after the date of execution of the declaration is the biological child of the signatories. Execution of the declaration shall:

(a) have the same consequences as an acknowledgment by the signatories of parentage of the child for the purposes of sections 62A.041 and 62C.14, subdivision 5a;

(b) be conclusive evidence that the signatories are parents of the child for the purposes of sections 176.111, 197.75, and 197.752;

(c) create a presumption that the signatory is the biological father of the child for the purposes of sections 257.51 to 257.74;

(d) when timely filed with the Department of Health as provided in section 259.52, qualify as an affidavit stating the intention of the signatories to retain parental rights as provided in section 259.52 if it contains the information required by section 259.52 or rules promulgated thereunder;

(e) have the same consequences as a writing declaring paternity of the child for the purposes of section 524.2-109; and

(f) be conclusive evidence that the signatories are parents of the child for the purposes of chapter 573.

Subd. 2. [Repealed, 1987 c 403 art 3 s 98]

Subd. 3. **Effect of declaration.** The declaration authorized by subdivision 1 shall not affect the rights or duties arising out of a parent-child relationship of any person not a signatory to the declaration claiming to be the parent of the child nor shall the declaration impair any rights of the child arising out of a parent-child relationship against any person not a signatory to the declaration.

Subd. 4. **Expiration of authority for declarations.** No acknowledgment of parentage shall be entered into on or after August 1, 1995, under this section. The mother and father of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born may before, on, or after August 1, 1995, sign a recognition of parentage under section 257.75.

History: 1980 c 561 s 3; 1981 c 349 s 1; 1983 c 7 s 7; 1983 c 243 s 5 subd 7; 1985 c 250 s 23; 1987 c 384 art 2 s 64; 1987 c 403 art 3 s 45; 1994 c 631 s 31; 1995 c 257 art 4 s 3; 2000 c 260 s 31

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

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

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

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

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

- 257.355 [Repealed, 1999 c 139 art 4 s 3]
- 257.356 [Repealed, 1999 c 139 art 4 s 3]
- 257.357 [Repealed, 1989 c 155 s 5]
- 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]

PARENTAGE ACT

257.51 CITATION.

Sections 257.51 to 257.74 may be cited as the Parentage Act.

History: 1980 c 589 s 1

257.52 PARENT AND CHILD RELATIONSHIP DEFINED.

As used in sections 257.51 to 257.74, "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: 1980 c 589 s 2; 1986 c 444; 1987 c 403 art 3 s 96

257.53 RELATIONSHIP NOT DEPENDENT ON MARRIAGE.

The parent and child relationship may exist regardless of the marital status of the parents.

History: 1980 c 589 s 3

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: 1980 c 589 s 4; 1987 c 403 art 3 s 96; 1Sp1993 c 1 art 6 s 33.

257.541 CUSTODY AND PARENTING TIME WITH 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 when the child was born and was not married to the child's father 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 parenting time 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 parenting time 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 parenting time or custody in the paternity proceeding or in a separate proceeding under section 518.156.

Subd. 3. **Father's right to parenting time and custody; recognition of paternity.** If paternity has been recognized under section 257.75, the father may petition for rights of parenting time 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 parenting time. An action to determine custody and parenting time may be commenced pursuant to chapter 518 without an adjudication of parentage. These proceedings may not be combined with any proceeding under chapter 518B.

History: 1983 c 308 s 3; 1987 c 403 art 3 s 96; 1990 c 574 s 3; 1Sp1993 c 1 art 6 s 34; 2000 c 444 art 2 s 6

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. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(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 record; 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 or genetic 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;

(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; or

(i) He and the child's biological mother executed a recognition of parentage in accordance with section 257.75 when either or both of the signatories were less than 18 years of age.

Subd. 2. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

History: 1980 c 589 s 5; 1983 c 308 s 4; 1987 c 403 art 3 s 96; 1989 c 282 art 2 s 161; 1Sp1993 c 1 art 6 s 35; 1995 c 207 art 10 s 7; 1995 c 216 s 1; 1995 c 257 art 4 s 4; 1Sp2001 c 9 art 15 s 32

257.56 ARTIFICIAL INSEMINATION.

Subdivision 1. **Husband treated as biological father.** If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the biological father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The consent must be retained by the physician for at least four years after the confirmation of a pregnancy that occurs during the process of artificial insemination.

All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

Subd. 2. **Donor not treated as biological father.** The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the biological father of a child thereby conceived.

History: 1980 c 589 s 6; 1987 c 126 s 1; 1987 c 403 art 3 s 96

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

Subdivision 1. **Actions under section 257.55, subdivision 1, paragraph (a), (b), or (c).** 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. **Actions under other paragraphs of section 257.55, subdivision 1.** 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 six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the presumed father is not the father of the child;

(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 or genetic test results; or

(4) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.75, subdivision 9, only if the action is brought by the minor signatory within six months after the minor signatory reaches the age of 18. In the case of a recognition of parentage executed by two minor signatories, the action to declare the nonexistence of the father and child relationship must be brought within six months after the youngest signatory reaches the age of 18.

Subd. 3. **Action regarding child with no presumed father under section 257.55.** An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 257.55 may be brought by 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.

Subd. 4. **Effect of agreement by mother and alleged or presumed father.** Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 257.64, between an alleged or presumed father and the

mother, does not bar an action under this section by the child or the public authority chargeable by law with the support of the child.

Subd. 5. **Action brought before birth of child.** If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

Subd. 6. **Adopted child.** If the child has been adopted, an action may not be brought.

History: 1980 c 589 s 7; 1986 c 444; 1987 c 403 art 3 s 46,96; 1989 c 282 art 2 s 162; 1990 c 568 art 2 s 65; 1991 c 292 art 5 s 69; 1993 c 322 s 5; 1Sp1993 c 1 art 6 s 36; 1995 c 207 art 10 s 8; 1995 c 216 s 2; 1995 c 257 art 4 s 5

257.58 LIMITATION OF ACTIONS; EXCEPTIONS.

Subdivision 1. **Actions for children without a presumed father.** Except as otherwise provided in section 259.52, an action to determine the existence of the father and child relationship as to a child who has no presumed father under section 257.55 is not barred until one year after the child reaches the age of majority.

Subd. 2. **Heirship.** Section 257.57 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

History: 1980 c 589 s 8; 1983 c 308 s 5; 1985 c 131 s 5; 1997 c 218 s 6

257.59 JURISDICTION; VENUE.

Subdivision 1. **Court jurisdiction.** The district court has jurisdiction of an action brought under sections 257.51 to 257.74. The action may be joined with an action for dissolution, annulment, legal separation, custody under chapter 518, or reciprocal enforcement of support.

Subd. 2. **Acquisition of personal jurisdiction.** In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with section 543.19.

Subd. 3. **Venue.** 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: 1980 c 589 s 9; 1983 c 308 s 6; 1Sp1993 c 1 art 6 s 37; 1998 c 254 art 2 s 29

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: 1980 c 589 s 10; 1983 c 308 s 7; 1984 c 654 art 5 s 58; 1987 c 403 art 3 s 47; 1994 c 529 s 18; 1995 c 257 art 4 s 6; 1999 c 159 s 109

257.61 PRETRIAL PROCEEDINGS.

As soon as practicable, after an action to declare the existence or nonexistence of the father and child relationship has been brought, a pretrial hearing shall be held in accordance with the Rules of Civil Procedure. The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court so orders.

History: 1980 c 589 s 11

257.62 BLOOD AND GENETIC TESTS.

Subdivision 1. **Blood or genetic tests required.** (a) The court or public authority may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood or genetic tests. A mother or alleged father requesting the tests shall file with the court an affidavit either alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the requisite sexual contact between the parties.

(b) A copy of the test results must be served on each party by first class mail to the party's last known address. Any objection to the results of blood or genetic tests must be made in writing no later than 30 days after service of the results. Test results served upon a party must include notice of this right to object.

(c) If the alleged father is dead, the court may, and upon request of a party shall, require the decedent's parents or brothers and sisters or both to submit to blood or genetic tests. However, in a case involving these relatives of an alleged father, who is deceased, the court may refuse to order blood or genetic tests if the court makes an express finding that submitting to the tests presents a danger to the health of one or more of these relatives that outweighs the child's interest in having the tests performed. Unless the person gives consent to the use, the results of any blood or genetic tests of the decedent's parents, brothers, or sisters may be used only to establish the right of the child to public assistance including but not limited to Social Security and veterans' benefits. The tests shall be performed by a qualified expert appointed by the court.

Subd. 2. **Additional testing.** Unless otherwise agreed by the parties, a party wanting additional testing must first contest the original tests in subdivision 1, paragraph (b), and must pay in advance for the additional testing. The additional testing must be performed by another qualified expert.

Subd. 3. **Experts qualifications.** In all cases, the court shall determine the number and qualifications of the experts.

Subd. 4. [Repealed, 1985 c 131 s 15]

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.

Subd. 6. **Tests, evidence admissible.** In any hearing brought under subdivision 5, a certified report of the facts and results of a laboratory analysis or examination of blood or genetic tests, that is performed in a laboratory accredited to meet the Standards for Parentage Testing of the American Association of Blood Banks and is prepared and attested by a qualified expert appointed by the court, shall be admissible in evidence without proof of the seal, signature, or official character of the person whose name is signed to it. If no objection is made, the blood or genetic test results are admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

History: 1980 c 589 s 12; 1983 c 308 s 8,9; 1987 c 403 art 3 s 48; 1989 c 282 art 2 s 163; 1995 c 207 art 10 s 9-11; 1997 c 203 art 6 s 21,22; 1999 c 245 art 7 s 4

257.63 EVIDENCE RELATING TO PATERNITY.

Subdivision 1. **Included evidence.** Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(c) Genetic and blood test results, weighed in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) All other evidence relevant to the issue of paternity of the child.

Subd. 2. **Compelled testimony.** Upon refusal of a witness, including a party, to testify under oath or produce evidence, the court may order the party to testify under oath and produce evidence concerning all relevant facts. No testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except for perjury committed in the testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is subject to the sanctions within the jurisdiction of the court.

Subd. 3. **Medical privilege.** Testimony of a physician concerning the medical circumstances of the pregnancy itself and the condition and characteristics of the child upon birth is not privileged.

History: 1980 c 589 s 13; 1986 c 444; 1987 c 403 art 3 s 49

257.64 PRETRIAL ORDERS AND RECOMMENDATIONS.

Subdivision 1. **Permissible orders and recommendations.** On the basis of the information produced at the pretrial hearing, including information as to the financial status of the parties, the court may:

(a) recommend that the alleged father voluntarily acknowledge his paternity of the child if the parties have agreed on a financial settlement; or

(b) recommend that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the court. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the court shall consider the best interest of the child, in the light of the applicable factors enumerated in section 518.17, subdivision 3, discounted by the improbability, as it appears to the court, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best

interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him. The child, on reaching 21 years of age or older, may petition the court to disclose the alleged father's identity. The court shall grant the petition if after considering the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.

Subd. 2. Agreement with recommendations. If the parties accept a recommendation made in accordance with subdivision 1, judgment shall be entered accordingly. The court shall advise all parties that pretrial recommendations are not binding and will have no effect if the recommendation is disregarded and the matter is set for trial.

Subd. 3. Refusal to agree with recommendations. If a party refuses to accept a recommendation made under subdivision 1 and blood or genetic tests have not been taken, the court shall require the parties to submit to blood or genetic tests. If a party refuses to accept the final recommendation the action shall be set for trial.

Subd. 4. Guardian ad litem. The guardian ad litem may accept or refuse to accept a recommendation under this section.

Subd. 5. Setting action for trial. The informal hearing may be terminated and the action set for trial if the court finds it unlikely that all parties would accept a recommendation made under subdivisions 1 or 3.

History: 1980 c 589 s 14; 1Sp1981 c 4 art 2 s 26; 1983 c 308 s 10; 1986 c 444; 1995 c 207 art 10 s 12; 1998 c 382 art 1 s 2

257.65 CIVIL ACTION.

An action under sections 257.51 to 257.74 is a civil action governed by the Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 257.62 and 257.63 apply to proceedings under this section.

History: 1980 c 589 s 15

257.651 DEFAULT ORDER OF PARENTAGE.

In an action to determine the existence of the father and child relationship under sections 257.51 to 257.74, if the alleged father fails to appear at a hearing after service duly made and proved, the court shall enter a default judgment or order of paternity.

History: 1995 c 257 art 4 s 7

257.66 JUDGMENT OR ORDER.

Subdivision 1. Determinative. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

Subd. 2. New birth record. If the judgment or order of the court is at variance with the child's birth record, the court shall order that a new birth record be issued under section 257.73.

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, parenting time 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 parenting time 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.

Subd. 4. **Statute of limitations.** Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment may be ordered in lieu of periodic payments of support. The court shall limit the parent's liability for past support of the child to the proportion of the expenses that the court deems just, which were incurred in the two years immediately preceding the commencement of the action. In determining the amount of the parent's liability for past support, the court may deviate downward from the guidelines if:

- (1) the child for whom child support is sought is more than five years old and the obligor discovered or was informed of the existence of the parent and child relationship within one year of commencement of the action seeking child support;
- (2) the obligor is a custodian for or pays support for other children; and
- (3) the obligor's family income is less than 175 percent of the federal poverty level.

Subd. 5. **Entry of judgment.** Any order for support or maintenance issued under this section shall provide for a conspicuous notice that, if the obligor fails to make a support payment, the payment owed becomes a judgment by operation of law on and after the date the payment is due and the obligee or a public agency responsible for support enforcement may obtain entry and docketing of the judgment for the unpaid amounts under the provisions of section 548.091.

Subd. 6. **Required information.** Upon entry of judgment or order, each parent who is a party in a paternity proceeding shall:

- (1) file with the public authority responsible for child support enforcement the party's Social Security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of any employer if the party is receiving services from the public authority or begins receiving services from the public authority;
- (2) file the information in clause (1) with the district court; and
- (3) notify the court and, if applicable, the public authority responsible for child support enforcement of any change in the information required under this section within ten days of the change.

History: 1980 c 589 s 16; 1983 c 308 s 11,12; 1984 c 547 s 3; 1988 c 593 s 5; 1993 c 340 s 15; 1995 c 257 art 1 s 18; 1997 c 203 art 6 s 23,24; 1999 c 245 art 7 s 5; 2000 c 444 art 2 s 7; 1Sp2001 c 9 art 15 s 32.

257.67 ENFORCEMENT OF JUDGMENT OR ORDER.

Subdivision 1. **Who may enforce; determinations from other states.** If existence of the parent and child relationship is declared, or parentage or a duty of support has been acknowledged or adjudicated under sections 257.51 to 257.74 or under prior law, the obligation of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent that person has furnished or is furnishing these expenses. Full faith and credit shall be given to a determination of paternity made by another state, whether established through voluntary acknowledgment or through administrative or judicial processes.

Subd. 2. **Payees.** The court may order support payments to be made to the custodial parent, the court administrator, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

Subd. 3. **Contempt of court.** 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.

History: 1980 c 589 s 17; 1985 c 248 s 41; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 384 art 2 s 1; 1993 c 340 s 16; 1994 c 465 art 1 s 32; 1995 c 257 art 4 s 8

257.68 MODIFICATION OF JUDGMENT OR ORDER.

A court entering a judgment or order for the payment of a lump sum under section 257.66, subdivision 4, may specify that the judgment or order may not be modified or revoked.

History: 1980 c 589 s 18

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

Subdivision 1. **Representation by counsel.** In all proceedings under sections 257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the public authority. The court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under sections 257.51 to 257.74.

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 commissioner of finance 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.

Subd. 3. **Inability to pay for transcript.** If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: 1980 c 589 s 19; 1983 c 308 s 13; 1Sp1986 c 3 art 1 s 82; 1995 c 207 art 10 s 13,14; 1999 c 216 art 7 s 21; 2003 c 112 art 2 s 50

257.70 HEARINGS AND RECORDS; CONFIDENTIALITY.

(a) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under sections 257.51 to 257.74 shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the state Department of Human Services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(b) In all actions under this chapter in which public assistance is assigned under section 256.741 or the public authority provides services to a party or parties to the action, notwithstanding statutory or other authorization for the public authority to release private data on the location of a party to the action, information on the location of one party may not be released by the public authority to the other party if:

(1) the public authority has knowledge that a protective order with respect to the other party has been entered; or

(2) the public authority has reason to believe that the release of the information may result in physical or emotional harm to the other party.

History: 1980 c 589 s 20; 1984 c 654 art 5 s 58; 1997 c 203 art 6 s 25

257.71 ACTION TO DECLARE MOTHER AND CHILD RELATIONSHIP.

A child, the father 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 father if the father has died, a woman alleged or alleging herself to be the mother, or the personal representative or a parent of the alleged mother if the alleged mother has died or is a minor may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of sections 257.51 to 257.74 applicable to the father and child relationship apply.

History: 1980 c 589 s 21

257.72 PROMISE TO RENDER SUPPORT.

Subdivision 1. **No consideration required.** A person's signed promise to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms, subject to section 257.57, subdivision 4.

Subd. 2. **Confidentiality.** In the best interest of the child or the custodial parent, the court may, and if a provision of the writing so requires shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: 1980 c 589 s 22

257.73 BIRTH RECORDS.

Subdivision 1. **Replacement birth record.** 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 state or local registrar of vital statistics shall prepare a replacement record of birth consistent with the acknowledgment or the findings of the court and shall substitute the replacement certificate for the original record of birth.

Subd. 2. **Information contained.** The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the replacement certificate but the actual place and date of birth shall be shown.

Subd. 3. **Confidentiality.** The evidence upon which the replacement record was made and the original birth record shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

History: 1980 c 589 s 23; 1Sp1993 c 1 art 6 s 38; 1997 c 205 s 31; 1Sp2001 c 9 art 15 s 32

257.74 ADOPTION; TERMINATION PROCEEDINGS.

Subdivision 1. **Notification of father.** 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 259.49.

Subd. 2. **No father.** 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: 1980 c 589 s 24; 1Sp1993 c 1 art 6 s 39; 1994 c 631 s 31; 1999 c 86 art 1 s 61

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, except that it may also include the joinder in recognition provisions under subdivision 1a. The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under subdivision 1a.

Subd. 1a. **Joinder in recognition by husband.** A man who is a presumed father under section 257.55, subdivision 1, paragraph (a), may join in a recognition of parentage that recognizes that another man is the child's biological father. The man who is the presumed father under section 257.55, subdivision 1, paragraph (a), must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under section 257.55, subdivision 1, paragraph (a), and recognizing that the father who is executing the recognition under subdivision 1 is the biological father of the child. A joinder in a recognition under this subdivision must be executed within one year after the child's birth and the joinder must be filed with the state registrar of vital statistics. The joinder must be on a form prepared by the commissioner of human services. Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under subdivision 1. A joinder without a corresponding recognition of parentage has no legal effect.

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.

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. Once a recognition has been properly executed and filed with the state registrar of vital statistics, if there are no competing presumptions of paternity, a

judicial or administrative court may not allow further action to determine parentage regarding the signator of the recognition. An action to determine custody and parenting time may be commenced pursuant to chapter 518 without an adjudication of parentage. 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 parenting time to either parent, establishing a child support obligation which may include up to the two years immediately preceding the commencement of the action, 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, or ordering reimbursement for the costs of blood or genetic testing, as provided under section 257.69, subdivision 2;

(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. (a) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, or the child. An action to vacate a recognition of parentage may be brought by the public authority. A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the man who executed the recognition is not the father of the child. A child must bring an action to vacate within six months after the child obtains the result of blood or genetic tests that indicate that the man who executed the recognition is not the father of the child, 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, father, and husband or former husband who executed a joinder 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. If a recognition is vacated, any joinder in the recognition under subdivision 1a is also vacated. 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.

(b) The burden of proof in an action to vacate the recognition is on the moving party. The moving party must request the vacation on the basis of fraud, duress, or material mistake of fact. The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.

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, the alternatives to executing a 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. The individual providing the form to the

parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. 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 and advocates for domestic abuse victims, 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 and Department of Health distribution of educational materials; recognition form. Hospitals that provide obstetric services and the state registrar of vital statistics 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, including following the provisions for notice under subdivision 5. 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.

Subd. 9. Execution by a minor parent. A recognition of parentage executed and filed in accordance with this section by a minor parent creates a presumption of paternity for the purposes of sections 257.51 to 257.74.

History: 1Sp1993 c 1 art 6 s 40; 1995 c 216 s 3-6; 1995 c 257 art 4 s 9,10; 1997 c 203 art 6 s 26-30; 1997 c 245 art 1 s 11; art 3 s 8; 1999 c 245 art 7 s 6; 2000 c 444 art 2 s 8; 2000 c 445 art 2 s 7.

257.80 [Renumbered 119A.10]

257.801 [Renumbered 119A.11]

257.802 [Renumbered 119A.12]

257.803 [Renumbered 119A.13]

257.804 [Renumbered 119A.14]

257.805 Subdivision 1. [Renumbered 119A.15, subdivision 1]

Subd. 2. [Renumbered 119A.15, subd 2]

Subd. 3. [Renumbered 119A.15, subd 3]

Subd. 4. [Renumbered 119A.15, subd 4]

Subd. 5. [Renumbered 119A.15, subd 5]

Subd. 6. [Repealed, 1Sp1987 c 4 art 2 s 9]

Subd. 7. [Renumbered 119A.15, subd 6]

Subd. 8. [Renumbered 119A.15, subd 7]

257.806 [Renumbered 119A.16]

257.807 [Renumbered 119A.17]

257.81 [Repealed, 1Sp2003 c 14 art 11 s 12]

257.85 RELATIVE CUSTODY ASSISTANCE.

Subdivision 1. **Citation.** This section may be cited as the "Relative Custody Assistance Act."

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 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 27.

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

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

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

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

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

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 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 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 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 or similar programs of another state, the portion of MFIP standard relating to that child shall be equal to zero.

Subd. 8. **Annual affidavit.** When a relative custody assistance agreement remains in effect for more than one year, the local agency shall require the relative custodian to annually submit an affidavit in a form to be specified by the commissioner. The affidavit must be submitted to the local agency each year no later than 30 days after the relative custody assistance agreement's anniversary date. The affidavit shall document the following:

- (1) that the child remains in the physical custody of the relative custodian;
- (2) that there is a continuing need for the relative custody assistance payments due to the child's physical, mental, emotional, or behavioral needs; and
- (3) the current gross income of the relative custodian's family.

The relative custody assistance agreement may be modified based on information or documentation presented to the local agency under this requirement and as required by annual adjustments to the federal poverty guidelines.

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.

Subd. 10. **Child's county of residence.** For the purposes of the Unitary Residency Act under chapter 256G, time spent by a child in the custody of a relative custodian receiving payments under this section is not excluded time. A child is a resident of the county where the relative custodian is a resident.

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, relative custody assistance payments shall be excluded in determining the family's available income.

History: 1997 c 203 art 5 s 21; 1998 c 406 art 1 s 14,15,37; 1998 c 407 art 9 s 14; 1999 c 139 art 4 s 2; 1999 c 159 s 110-113; 1999 c 245 art 8 s 26-33; 2000 c 260 s 97; 2001 c 178 art 1 s 44; 1Sp2001 c 9 art 10 s 66