

## CHAPTER 257C

### DE FACTO CUSTODIAN AND INTERESTED THIRD PARTY

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#### 257C.01 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **De facto custodian.** (a) "De facto custodian" means an individual who has been the primary caretaker for a child who has, within the 24 months immediately preceding the filing of the petition, resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of:

- (1) six months or more, which need not be consecutive, if the child is under three years of age; or
- (2) one year or more, which need not be consecutive, if the child is three years of age or older.

(b) For purposes of the definition in this subdivision, any period of time after a legal proceeding has been commenced and filed must not be included in determining whether the child has resided with the individual for the required minimum period.

(c) For purposes of the definition in this subdivision, "lack of demonstrated consistent participation" by a parent means refusal or neglect to comply with the duties imposed upon the parent by the parent-child relationship, including, but not limited to, providing the child necessary food, clothing, shelter, health care, education, creating a nurturing and consistent relationship, and other care and control necessary for the child's physical, mental, or emotional health and development.

(d) "De facto custodian" does not include an individual who has a child placed in the individual's care:

- (1) through a custody consent decree under section 257C.07;
- (2) through a court order or voluntary placement agreement under chapter 260C; or
- (3) for adoption under chapter 259.

(e) A standby custody designation under chapter 257B is not a designation of de facto custody unless that intent is indicated within the standby custody designation.

Subd. 3. **Interested third party.** (a) "Interested third party" means an individual who is not a de facto custodian but who can prove that at least one of the factors in section 257C.03, subdivision 7, paragraph (a), is met.

- (b) "Interested third party" does not include an individual who has a child placed in the individual's care:
- (1) through a custody consent decree under section 257C.07;
  - (2) through a court order or voluntary placement under chapter 260C; or

(3) for adoption under chapter 259.

**History:** 2002 c 304 s 1,13; 2003 c 7 s 1

### **257C.02 APPLICATION OF OTHER LAW; CONSTRUCTION.**

(a) Chapters 256, 257, and 518 and sections 524.5-201 to 524.5-317 apply to third-party and de facto custody proceedings unless otherwise specified in this chapter. De facto or third-party child custody proceedings concerning an Indian child are child custody proceedings governed by the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1963; by the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835; and by this chapter when not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

(b) Nothing in this chapter relieves a parent of a duty to support the parent's child. A preexisting child support order is not suspended or terminated when a third party takes custody of a child unless otherwise provided by court order. A de facto or third-party custodian has a cause of action against a parent for child support under section 256.87, subdivision 5, and the public authority has a cause of action against a parent for child support under section 256.87, subdivision 1.

(c) Nothing in this chapter prohibits the establishment of parentage under chapter 257.

**History:** 2002 c 304 s 2; 2004 c 146 art 3 s 30

### **257C.03 PROCEDURE.**

Subdivision 1. **Commencement of proceedings.** (a) In a court of this state with jurisdiction to decide child custody matters, a de facto or third-party child custody proceeding may be brought by an individual other than a parent by filing a petition seeking custody in the county where:

(1) the child is permanently a resident, the child is found, or an earlier order for custody of the child has been entered; or

(2) the court has jurisdiction over the matter under chapter 518D.

(b) The proceeding is commenced by personal service of the summons and petition.

(c) An individual other than a parent who seeks visitation under this section must qualify under one of the provisions of section 257C.08, and must comply with the provisions of this subdivision to commence the proceeding.

Subd. 2. **Requisites of petition or motion.** (a) A petition for custody filed under this section must state and allege:

(1) the name and address of the petitioner and any prior or other name used by the petitioner;

(2) the name and, if known, the address and Social Security number of the respondent mother and father or guardian and any prior or other name used by the respondent and known to the petitioner;

(3) the name and date of birth of each child for whom custody is sought;

(4) the relationship of the petitioner to each child for whom custody is sought;

(5) the petitioner or petitioners' basis for jurisdiction under section 257C.01, subdivision 2 or 3;

(6) the current legal and physical custodial status of each child for whom custody is sought and a list of all prior orders of custody, if known to the petitioner;

(7) whether any party is a member of the armed services;

(8) the length of time each child has resided with the petitioner and has resided in the state of Minnesota;

(9) whether a separate proceeding for dissolution, legal separation, or custody is pending in a court in this state or elsewhere;

(10) whether a permanent or temporary standby custody designation has been executed or filed in a court in this state or elsewhere;

(11) whether a permanent or temporary standby custody designee differs in identity from the de facto custodian and reasons why the proposed de facto custodian should have custodial priority over a designated standby custodian;

(12) whether parenting time should be granted to the respondents;

(13) any temporary or permanent child support, attorney fees, costs, and disbursements;

(14) whether an order of protection under chapter 518B or a similar law of another state that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered; and

(15) that it is in the best interests of the child under section 257C.04 that the petitioner have custody of the child.

(b) The petition must be verified by the petitioner or petitioners and its allegations established by competent evidence.

Subd. 3. **Written notice.** (a) Written notice of a hearing on a petition to establish de facto or third-party custody of a child must be given to:

(1) the parent of the child, if:

(i) the person's name appears on the child's birth certificate as a parent;

(ii) the person has substantially supported the child;

(iii) the person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;

(iv) the person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both;

(v) the person has been adjudicated the child's parent;

(vi) the person has filed a paternity action within 30 days after the child's birth and the action is still pending; or

(vii) the person and the mother of the child signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked, or a recognition of parentage under section 257.75 which has not been revoked or vacated;

(2) the guardian or legal custodian, if any, of the child; and

(3) the child's tribe pursuant to section 260.761, subdivision 3, if the child is an Indian child.

(b) Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated.

(c) Written notice of a hearing on a petition to establish de facto or third-party custody of a child must be given to the public authority if either parent receives public assistance, the petitioner receives public assistance on behalf of the child, or either parent receives child support enforcement services from the public authority or applies for public assistance or child support enforcement services from the public authority after a petition under this section is filed. Notice to the public authority must include a copy of the petition.

Subd. 4. **Approval without hearing.** (a) Approval of an order under this section without a hearing is permitted if both parents consent by stipulation or agreement that it is in the best interests of the child to be in the custody of the de facto custodian or interested third party.

(b) If either parent receives public assistance, the petitioner receives public assistance on behalf of the child, or either parent receives child support enforcement services from the public authority, the petitioner must notify the public authority of the stipulation or agreement under this subdivision.

Subd. 5. **Emergency or temporary hearings.** (a) The court must be guided by the factors set forth in section 518.131, concerning temporary orders and restraining orders; chapter 518A, concerning child support; sections 518.17 to 518.175, concerning custody and parenting time; and sections 518.14 and 518A.735, concerning costs and attorney fees, in making temporary orders and restraining orders.

(b) The court may grant ex parte relief only if requested by a motion with a properly executed supporting affidavit. The affidavit must outline specific supporting facts as to why the case needs to be expedited.

(c) The court shall grant ex parte or temporary relief if the petitioner and situation fit the factors outlined for de facto custodian or third-party custodian under subdivisions 6 and 7, and section 257C.01, subdivisions 2 and 3.

(d) If the court orders temporary custody under this subdivision, the de facto custodian or interested third party shall seek temporary or permanent custody of the child pursuant to a petition under this chapter and the other standards of this chapter apply.

Subd. 6. **De facto custodian; burden of proof; factors.** (a) To establish that an individual is a de facto custodian, the individual must:

(1) show by clear and convincing evidence that the individual satisfies the provisions of section 257C.01, subdivision 2; and

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian.

(b) The following factors must be considered by the court in determining a parent's lack of demonstrated consistent participation for purposes of section 257C.01, subdivision 2:

(1) the intent of the parent or parents in placing the child with the de facto custodian;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the facts and circumstances of the parent's absence;

(4) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(5) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence; and

(6) whether a sibling of the child is already in the petitioner's care.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

**Subd. 7. Interested third party; burden of proof; factors.** (a) To establish that an individual is an interested third party, the individual must:

(1) show by clear and convincing evidence that one of the following factors exist:

(i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;

(ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or

(iii) other extraordinary circumstances;

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party; and

(3) show by clear and convincing evidence that granting the petition would not violate section 518.179.

(b) The following factors must be considered by the court in determining an interested third party's petition:

(1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;

(2) the amount of involvement the parent had with the child during the parent's absence;

(3) the presence or involvement of other interested third parties;

(4) the facts and circumstances of the parent's absence;

(5) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence;

(7) whether a sibling of the child is already in the care of the interested third party; and

(8) the existence of a standby custody designation under chapter 257B.

(c) In determining the best interests of the child, the court must apply the standards in section 257C.04.

**Subd. 8. Dismissal of petition.** (a) The court must dismiss a petition for custody if the court finds that:

(1) the petitioner is not a de facto custodian as set forth in section 257C.01, subdivision 2;

(2) the petitioner does not establish at least one of the factors in subdivision 7, paragraph (a); or

(3) placement of the child with the petitioner is not in the best interests of the child.

(b) If the court finds that a party cannot establish factors for visitation under section 257C.08, the court must dismiss a petition for visitation.

**History:** 2002 c 304 s 3,13; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2006 c 280 s 5; 2016 c 158 art 1 s 149

#### **257C.04 BEST INTERESTS OF A CHILD.**

Subdivision 1. **Custody factors.** (a) If two or more parties seek custody of a child, the court must 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, subdivision 12, 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 interests 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 and 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, subdivision 2, that has occurred between the parents or the parties.

(b) 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.

(c) The court must not give preference to a party over the de facto custodian or interested third party solely because the party is a parent of the child.

(d) The court must not prefer a parent over the de facto custodian or third-party custodian solely on the basis of the gender of the parent, de facto custodian, or third party.

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

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

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

(h) Section 518.619 applies to actions under this section.

**Subd. 2. Factors when joint custody is sought.** (a) In addition to the factors listed in subdivision 1, if either joint legal or joint physical custody is contemplated or sought, the court must consider the following relevant factors:

(1) the ability of the parties to cooperate in the rearing of the child;

(2) methods for resolving disputes regarding any major decision concerning the life of the child and the parties' willingness to use those methods;

(3) whether it would be detrimental to the child if one party were to have sole authority over the child's upbringing; and

(4) whether domestic abuse, as defined in section 518B.01, subdivision 2, has occurred between the parties.

(b) If the court awards joint legal or physical custody over the objection of a party, the court must make detailed findings on each of the factors in this subdivision and explain how the factors led to its determination that joint custody would be in the best interests of the child.

**History:** 2002 c 304 s 4

#### **257C.05 DE FACTO AND THIRD-PARTY CUSTODY ORDERS.**

**Subdivision 1. Custody order.** In a child custody proceeding under this chapter, the court must make any additional order it considers just and proper concerning:

(1) the legal custody of a minor child, whether sole or joint;

(2) the child's physical custody and residence;

(3) the quality and duration of parenting time and whether it is supervised or unsupervised;

(4) child support as determined under chapter 518A; and

(5) other matters reasonably affecting the best interests of the child.

**Subd. 2. Attachments to custody order.** All de facto and interested third-party custody orders must include Form 3: Appendix A under the Appendix of Forms in the Family Court Procedure in General Rules of Practice. The court may also notify the parties of the availability and uses of mediation.

**History:** 2002 c 304 s 5; 2005 c 164 s 29; 1Sp2005 c 7 s 28

#### **257C.06 MODIFICATION.**

The procedures in section 518.18 for modification of a custody order also govern modification of an order under this chapter.

**History:** 2002 c 304 s 6

**257C.07 CUSTODY CONSENT DECREE.**

In a proceeding under this chapter, a parent may transfer legal and physical custody of a child by a consent decree entered under this section. The court may approve a proposed consent decree if the custody arrangement is in the best interests of the child and all parties to the decree agree to it after being fully informed of its contents. A consent decree under this section must:

(1) transfer legal and physical custody of the child to a third party and state that this includes the ability to determine the child's residence; make decisions regarding the child's education, religious training, and health care; and obtain information and public services on behalf of the child in the same manner as a parent;

(2) indicate whether the transfer of custody is temporary or permanent; and

(3) include an order for child support in the guidelines amount and an allocation of child care costs as provided by section 518A.40, subject to income withholding under section 518A.53 and including an order for medical support under section 518A.41.

A party to a consent decree under this section may file a motion to modify or terminate the consent decree at any time. Section 518.18, paragraphs (d) and (e), apply to all modifications. A party who has custody of a child under this section must seek modification of the consent decree before transferring physical or legal custody of the child to anyone.

**History:** 1997 c 112 s 2; 1997 c 203 art 6 s 92; 2002 c 304 s 13; 2003 c 7 s 2; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2006 c 280 s 46

**257C.08 RIGHTS OF VISITATION TO UNMARRIED PERSONS.**

Subdivision 1. **If parent is deceased.** If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried minor child during minority by the district court upon finding that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

Subd. 2. **Family court proceedings.** (a) In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after the commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that: (1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

(b) If a motion for grandparent visitation has been heard and denied, unless agreed to in writing by the parties, no subsequent motion may be filed within six months after disposition of a prior motion on its merits.

Subd. 3. **If child has resided with grandparents.** If an unmarried minor has resided with grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by the minor's parents, the grandparents or great-grandparents may petition the district court for an order granting them reasonable visitation rights to the child during minority. The court shall grant the petition if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent and child relationship.



Subd. 4. **If child has resided with other person.** If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority. The court shall grant the petition if it finds that:

- (1) visitation rights would be in the best interests of the child;
- (2) the petitioner and child had established emotional ties creating a parent and child relationship; and
- (3) visitation rights would not interfere with the relationship between the custodial parent and the child.

The court shall consider the reasonable preference of the child, if the court considers the child to be of sufficient age to express a preference.

Subd. 5. **Exception for adopted children.** This section shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.

Subd. 6. **Grandparent visitation with an adopted child.** (a) A grandparent of a child adopted by a stepparent may petition and a court may grant an order setting visitation with the child if:

- (1) the grandparent is the parent of:
  - (i) a deceased parent of the child; or
  - (ii) a parent of the child whose parental relationship was terminated by a decree of adoption according to section 259.57, subdivision 1; and
- (2) the court determines that the requested visitation:
  - (i) is in the best interests of the child; and
  - (ii) would not interfere with the parent and child relationship.

(b) Failure to comply with the terms of an order for visitation granted under this subdivision is not a basis for revoking, setting aside, or otherwise challenging the validity of a consent, relinquishment, or adoption of a child.

Subd. 7. **Establishment of interference with parent and child relationship.** The court may not deny visitation rights under this section based on allegations that the visitation rights would interfere with the relationship between the custodial parent and the child unless after a hearing the court determines by a preponderance of the evidence that interference would occur.

*[See Note.]*

Subd. 8. **Visitation proceeding may not be combined with proceeding under chapter 518B.** Proceedings under this section may not be combined with a proceeding under chapter 518B.

**History:** 1976 c 198 s 1; 1977 c 238 s 1,2; 1986 c 444; 1988 c 668 s 4; 1989 c 248 s 1; 1993 c 62 s 1; 1993 c 322 s 3,4; 1997 c 177 s 2,3; 1998 c 254 art 2 s 27,28; 2002 c 304 s 13

**NOTE:** Subdivision 7 was found unconstitutional in *Soohoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007).