

House Research Act Summary

CHAPTER: 304

SESSION: 2002 Regular Session

TOPIC: De facto and interested third party custody of a child

Date: April 8, 2002

Analyst: Peg Hicks, 651-296-8079

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This act establishes a process for a de facto custodian or interested third party to seek custody of a child. The act specifies the procedures and standards a court must consider in de facto and interested third party child custody proceedings. The act also relocates in one chapter provisions in current law relating to third-party child custody and visitation. The act also modifies certain provisions in the Domestic Abuse Act.

- 1 **Definitions.** Adds § 257C.01. Defines "de facto custodian" and "interested third party."
De facto custodian means an individual who is the primary caretaker of a child who has resided with the individual for the last 24 months without a parent present, where the child's parent has a demonstrated consistent lack of participation for (1) a period of six months or more if the child is under three years old or (2) one year or more if the child is three years old or older. Defines "lack of demonstrated consistent participation" by a parent as a parent's refusal or neglect to comply with the duties of the parent-child relationship.
Interested third party means a person who is not a de facto custodian, but who can prove that at least one of the factors in section 257C.03, subdivision 7 (section 3 of the act) is met.
- 2 **Application of other law; construction.** Adds § 257C.02. Specifies that chapters 256 (human services), 257 (children; custody, legitimacy), and 518 (marriage dissolution) and section 525.551 (guardianship) apply to de facto and third-party custody proceedings unless otherwise specified. Specifies that proceedings concerning an Indian child are governed by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. Also specifies that nothing in this chapter relieves a parent of the duty to support their child or prohibits the establishment of parentage.
- 3 **Procedure.** Adds § 257C.03. Establishes procedures for de facto custodian and interested third-party proceedings.

Subd. 1. Commencement of proceedings. Specifies the county in which a de facto or third-party child custody proceeding may be brought and requires personal service of the summons and petition. Also specifies the requirements for commencing a proceeding if an individual other than a parent seeks visitation.

Subd. 2. Requisites of petition or motion. Specifies the information a petitioner must state and allege in a petition for custody under this section.

Subd. 3. Written notice. Specifies requirements for who must receive written notice of a hearing on a petition to establish de facto or third-party custody of child.

Subd. 4. Approval without hearing. Permits approval of an order without a hearing if both parents consent by stipulation or agreement that it is in the child's best interests to be in the custody of the de facto custodian or interested third party. Requires the petitioner to notify the public authority of the agreement or stipulation under certain circumstances.

Subd. 5. Emergency or temporary hearings. Permits a court to grant ex parte or temporary relief under certain circumstances and specifies the procedures for obtaining this relief.

Subd. 6. De facto custodian; burden of proof; factors. To establish that an individual is a de facto custodian, the individual must (1) show by clear and convincing evidence that they meet the definition of de facto custodian (section 1 of this act) and (2) prove by a preponderance of the evidence that it is in the child's best interests to be in the custody of the de facto custodian. Specifies the factors a court must consider in determining a parent's lack of demonstrated consistent participation with the child. Also requires a court to apply the standards in section 4 of the act in determining the best interests of the child.

Subd. 7. Interested third party; burden of proof; factors. To establish that an individual is an interested third party, the individual must (1) show by clear and convincing evidence (i) a parent has abandoned or neglected a child to the extent that the child will be harmed by living with the parent; (ii) presence of physical or emotional danger to the child; or (iii) other extraordinary circumstances; and (2) prove by a preponderance of the evidence that it is in the child's best interests to be in the custody of the interested third party. Specifies the factors a court must consider in determining an interested third party's petition. Also requires a court to apply the standards in section 4 of the act in determining the best interests of the child.

Subd. 8. Dismissal of petition. Requires a court to dismiss a petition for custody if it finds that (1) the petitioner is not a de facto custodian; (2) the petitioner is not an interested third party; or (3) placement of the child with the petitioner is not in the child's best interests.

4 **Best interests of a child.** Adds § 257C.04. Specifies various factors a court must consider in determining the child's best interests.

Subd. 1. Custody factors. Requires a court to consider and evaluate 12 factors in determining the best interests of a child. Requires the court to make detailed findings on how each factor led to its conclusions and determination. Requires the court not to give preference to a party over a de facto custodian or interested third party solely because the party is a parent of the child. Also requires the court not to give preference to a party solely on the basis of the party's gender. Also requires a court not to consider the parents' marital status or conduct of the proposed custodian that does not affect the custodian's relationship to the child.

Subd. 2. Factors when joint custody is sought. Specifies factors a court must consider if either joint legal or joint physical custody is contemplated or sought. Requires a court to make detailed findings if joint legal or physical custody is awarded over the objection of a party.

5 **De facto and third party custody orders.** Adds § 257C.05. Specifies what a court may consider as part of a custody order under this chapter.

Subd. 1. Custody order. Provides that a court may consider the legal custody, physical custody

and residence, parenting time, child support, and other matters reasonably affecting the child's best interests as part of a child custody proceeding under this chapter.

Subd. 2. Attachments to custody order. Requires that Form 3: Appendix A be included with all de facto and interested third party custody orders. Permits the court to notify the parties of the availability and uses of mediation.

6 **Modification.** Adds § 257C.06. Provides that the procedures for modification of a custody order in marriage dissolution (section 518.18) also apply to an order under this chapter.

7 **Review of court ordered placements; permanent placement determination.** Amends § 260C.201, subd. 11. Makes a conforming change to the child protection statute regarding court-ordered dispositions for children in out-of-home placement. Provides that a court may order the social services agency to bring a petition naming a fit and willing relative as the proposed permanent legal and physical custodian of a child.

8 **Procedure.** Amends § 518.156, subd. 1. Strikes provisions from current law permitting an individual other than a parent to seek custody or visitation of a child, which are replaced by the provisions in this act.

9 **Hearing on application; notice.** Amends § 518B.01, subd. 5. Modifies provisions in the Domestic Abuse Act regarding the timing of hearings in cases where the court has issued an ex parte order for protection. Also adds provisions specifying when and for how long a court may grant a continuance in a case.

10 **Ex parte order.** Amends § 518B.01, subd. 7. Strikes language regarding the timing of hearings that is relocated in section 9 of the act.

11 **Copy to law enforcement agency.** Amends § 518B.01, subd. 13. Requires that the court administrator forward within 24 hours any continuance of an order for protection granted under the Domestic Abuse Act to the local law enforcement agency with jurisdiction over the residence of the applicant.

12 **Repealer.** Repeals section 518.158 (relative ex parte temporary custody order), which is replaced by the provisions in this act.

13 **Instruction to revisor.** Instructs the revisor to renumber section 257.0215 (custody consent decree) and section 257.022 (rights of visitation to unmarried persons) so that these sections relating to custody and visitation are located in this chapter.